
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3 Session of
2019

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HERSHEY, SAMUELSON, B. MILLER, MADDEN, KENYATTA AND ECKER,
JUNE 4, 2019

SENATOR SCAVELLO, BANKING AND INSURANCE, IN SENATE, AS AMENDED,
JUNE 24, 2019

AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated
2 Statutes, providing for health insurance markets oversight;
3 and establishing the Pennsylvania Health Insurance Exchange
4 Fund.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Title 40 of the Pennsylvania Consolidated
8 Statutes is amended by adding a part to read:

9 PART V

10 HEALTH INSURANCE MARKETS OVERSIGHT

11 Chapter

1 91. Preliminary Provisions

2 93. State-based Exchange

3 95. Reinsurance Program

4 97. Miscellaneous Provisions

5 CHAPTER 91

6 PRELIMINARY PROVISIONS

7 Sec.

8 9101. Scope of part.

9 9102. Purpose and intent.

10 9103. Definitions.

11 § 9101. Scope of part.

12 This part relates to health insurance markets oversight.

13 § 9102. Purpose and intent.

14 The General Assembly finds and declares as follows:

15 (1) The Commonwealth intends to maintain the
16 Commonwealth's sovereignty over the regulation of health
17 insurance in this Commonwealth.

18 (2) The health insurance marketplace in this
19 Commonwealth is unique and unlike the marketplace in any
20 other state.

21 (3) It is necessary to maintain the Commonwealth's
22 sovereignty over the regulation of health insurance in this
23 Commonwealth as permitted by Federal law, including the
24 Federal acts. The provisions of this part are intended to
25 meet these requirements while retaining the Commonwealth's
26 authority to regulate health insurance in this Commonwealth.

27 § 9103. Definitions.

28 Subject to additional definitions contained in subsequent
29 provisions of this part which are applicable to specific
30 provisions of this part, the following words and phrases when

1 used in this part shall have the meanings given to them in this
2 section unless the context clearly indicates otherwise:

3 "Affordable Care Act." The Patient Protection and Affordable
4 Care Act (Public Law 111-148, 124 Stat. 119), as amended by the
5 Health Care and Education Reconciliation Act of 2010 (Public Law
6 111-152, 124 Stat. 1029).

7 "Attachment point." The threshold amount for claims costs
8 incurred by an eligible insurer for an enrolled individual's
9 covered benefits in a benefit year, above which the claims costs
10 for benefits are eligible for reinsurance payments under this
11 part.

12 "Benefit year." The calendar year during which an eligible
13 insurer provides coverage through a health care plan.

14 "Board." The governing body of the exchange authority.

15 "Children's Health Insurance Program." The children's health
16 insurance program under Article XXIII-A of the act of May 17,
17 1921 (P.L.682, No.284), known as The Insurance Company Law of
18 1921.

19 "Coinsurance rate." The percentage rate at which the
20 reinsurance program will reimburse an eligible insurer for
21 claims incurred for an enrollee's covered benefits in a benefit
22 year above the attachment point and below the reinsurance cap.

23 "Commissioner." The Insurance Commissioner of the
24 Commonwealth.

25 "Department." The Insurance Department of the Commonwealth.

26 "Eligible insurer." An insurer offering reinsurance-eligible
27 health care plans to consumers in this Commonwealth.

28 "Enrollee." A policyholder, certificate holder, subscriber,
29 covered person or other individual who is enrolled to receive
30 health care services pursuant to a health insurance policy.

1 "Exchange." A health insurance exchange as contemplated by
2 section 1321(b) of the Affordable Care Act, established or
3 operating in this Commonwealth, that facilitates or assists in
4 facilitating enrollment in qualified plans.

5 "Exchange assister." The term has the meaning given to it in
6 section 2 of the act of June 19, 2015 (P.L.25, No.7), known as
7 the Navigator and Exchange Assister Accessibility and Regulation
8 Act.

9 "Exchange authority." The Pennsylvania Health Insurance
10 Exchange Authority established under section 9302(a) (relating
11 to Pennsylvania Health Insurance Exchange Authority).

12 "Exchange fund." The Pennsylvania Health Insurance Exchange
13 Fund established under section 9312 (relating to exchange fund).

14 "Federal acts." The Affordable Care Act and any amendments
15 thereto, and related provisions of the Public Health Service Act
16 (58 Stat. 682, 42 U.S.C. § 201 et seq.).

17 "Government program." A program of government sponsored or
18 subsidized health care coverage, including:

19 (1) A premium tax credit or cost-sharing subsidy under
20 the Federal acts.

21 (2) Coverage under Medicare Parts A and B or Medicare
22 Advantage Part C under Title XVIII of the Social Security Act
23 (49 Stat. 620, 42 U.S.C. § 1395 et seq.).

24 (3) A TRICARE or other health care plan provided through
25 the Civilian Health and Medical Program of the Uniformed
26 Services (CHAMPUS) as defined under 10 U.S.C. § 1072
27 (relating to definitions).

28 (4) A health care plan provided through the Federal
29 Employees Health Benefits Program established under 5 U.S.C.
30 Ch. 89 (relating to health insurance).

1 (5) The Commonwealth's medical assistance program
2 established under the act of June 13, 1967 (P.L.31, No.21),
3 known as the Human Services Code.

4 (6) The Children's Health Insurance Program.

5 (7) Health care coverage provided by the Commonwealth, a
6 county, a city, or other State or local governmental entity
7 or an agency, subdivision or department of a governmental
8 entity, including:

9 (i) a corporation or other arrangement organized by
10 the entity for the provision of health care coverage and
11 subject to control by the entity or an instrumentality of
12 one or more of them;

13 (ii) the Pennsylvania Employee Benefit Trust Fund
14 for active and retired employees; and

15 (iii) benefit programs administered by the
16 Department of Corrections.

17 "Grandfathered health care plan." Individual or group health
18 insurance coverage in which an individual was enrolled prior to
19 the date of enactment of the Affordable Care Act, or as
20 otherwise specified in section 1251 of the Affordable Care Act
21 (42 U.S.C. § 18011).

22 "Health care plan." A package of coverage benefits with a
23 particular cost-sharing structure, network and service area that
24 is purchased through a health insurance policy.

25 "Health insurance policy." A policy, subscriber contract,
26 certificate or plan issued by an insurer that provides hospital
27 or medical/surgical health care coverage. The term does not
28 include any of the following:

29 (1) An accident only policy.

30 (2) A credit only policy.

- 1 (3) A long-term care or disability income policy.
- 2 (4) A specified disease policy.
- 3 (5) A Medicare supplement policy.
- 4 (6) A fixed indemnity policy.
- 5 (7) An adult-only dental only policy.
- 6 (8) A vision only policy.
- 7 (9) A workers' compensation policy.
- 8 (10) An automobile medical payment policy.
- 9 (11) A policy under which benefits are provided by the
10 Federal Government to active or former military personnel and
11 their dependents.
- 12 (12) Any other similar policies providing for limited
13 benefits.
- 14 "Hospital plan corporation." An entity organized and
15 operating under Chapter 61 (relating to hospital plan
16 corporations).
- 17 "Individual market." The market for health insurance
18 coverage offered to individuals other than in connection with a
19 group.
- 20 "Innovation waiver." A waiver applied for pursuant to
21 section 1332 of the Affordable Care Act (42 U.S.C. §18052).
- 22 "Insurance producer." The term has the meaning given to it
23 in section 601-A of the act of May 17, 1921 (P.L.789, No.285),
24 known as The Insurance Department Act of 1921.
- 25 "Insurer." An entity that offers, issues or renews an
26 individual or group health, accident or sickness insurance
27 policy, contract or plan, and that is governed under any of the
28 following:
- 29 (1) Chapter 61.
- 30 (2) Chapter 63 (relating to professional health services

1 plan corporations).

2 (3) The Insurance Company Law of 1921, including section
3 630 and Article XXIV.

4 (4) The act of December 29, 1972 (P.L.1701, No.364),
5 known as the Health Maintenance Organization Act.

6 "Medical assistance program." The Commonwealth's medical
7 assistance program established under the Human Services Code.

8 "Professional health services plan corporation." An entity
9 organized and operating under Chapter 63.

10 "Qualified enrollee." A qualified employee or qualified
11 individual, as defined in section 1312(f) of the Affordable Care
12 Act and regulations promulgated under that act.

13 "Qualified plan." A plan as defined in section 1301(a) of
14 the Affordable Care Act that provides health care or dental care
15 coverage that has been certified by the department as meeting
16 the criteria set forth in this part and any regulations issued
17 pursuant to this part.

18 "Reinsurance cap." The upper limit amount for claims costs
19 incurred by an eligible insurer for an enrolled individual's
20 covered benefits in a benefit year, over which the claims costs
21 for benefits are no longer eligible for reinsurance payments
22 under the reinsurance program.

23 "Reinsurance-eligible enrollee." An enrollee who is insured
24 in a reinsurance-eligible health care plan under this part.

25 "Reinsurance-eligible health care plan." A health care plan
26 that is not a grandfathered health care plan.

27 "Reinsurance payment." An amount paid by the reinsurance
28 program to an eligible insurer under the program.

29 "Reinsurance program." The Commonwealth Health Insurance
30 Reinsurance Program established under section 9502(b) (relating

1 to implementation of waiver and establishment of reinsurance
2 program).

3 "Small group market." The market for health insurance for
4 coverage offered through a group health insurance policy for a
5 group of at least one employee and up to 50 employees, exclusive
6 of dependents.

7 CHAPTER 93

8 STATE-BASED EXCHANGE

9 Sec.

10 9301. Scope of chapter.

11 9302. Pennsylvania Health Insurance Exchange Authority.

12 9303. Advisory council.

13 9304. Meetings and operation.

14 9305. Powers and duties of exchange authority.

15 9306. Limitations.

16 9307. Confidentiality and disclosure.

17 9308. Not an entitlement.

18 9309. Nonliability.

19 9310. Audits.

20 9311. Reports.

21 9312. Exchange fund.

22 9313. Federal guidance.

23 9314. Expiration.

24 § 9301. Scope of chapter.

25 This chapter relates to the Pennsylvania Health Insurance
26 Exchange Authority.

27 § 9302. Pennsylvania Health Insurance Exchange Authority.

28 (a) Establishment.--The Pennsylvania Health Insurance
29 Exchange Authority is established as a State-affiliated entity.
30 The powers and duties of the exchange authority shall be vested

1 in and exercised by a board, which shall have the sole power
2 under section 9305 (relating to powers and duties of exchange
3 authority) to employ staff, including an executive director.
4 Individuals employed by the exchange authority shall be
5 employees of the Commonwealth. The exchange authority may
6 contract with persons or entities, including legal counsel,
7 consultants or service providers, as deemed necessary in the
8 exchange authority's discretion.

9 (b) Purpose.--The purpose of the exchange authority shall be
10 to create, manage and maintain in this Commonwealth the
11 Pennsylvania Health Insurance Exchange to do all of the
12 following:

13 (1) Benefit the Pennsylvania health insurance market and
14 persons enrolling in health insurance policies.

15 (2) Facilitate or assist in facilitating the purchase of
16 on-exchange qualified plans by qualified enrollees in the
17 individual market or the individual and small group markets.

18 (c) Composition.--The board shall consist of the following
19 members:

20 (1) Three voting members who shall be the following
21 heads of agencies or a designee who shall be an employee of
22 the agency designated in writing by the head of the agency
23 prior to service:

24 (i) The commissioner, ex-officio.

25 (ii) The Secretary of Human Services, ex-officio.

26 (iii) The Secretary of Health, ex-officio.

27 (2) Four voting members appointed by the Governor:

28 (i) One member from among the insurers that offer
29 health insurance policies through the exchange that are a
30 hospital plan corporation, a professional health services

1 plan corporation or a parent, affiliate, subsidiary or
2 other associated entity or successor of a hospital plan
3 corporation or a professional health services plan.

4 (ii) One member from among the insurers that offer
5 health insurance policies through the exchange that are
6 not a hospital plan corporation, a professional health
7 services plan corporation or a parent, affiliate,
8 subsidiary or other associated entity or successor of a
9 hospital plan corporation or a professional health
10 services plan.

11 (iii) One member with experience in health care
12 public education and consumer assistance activities who
13 does not have a conflict of interest as described in
14 subsection (k).

15 (iv) One member who is a consumer representative.

16 (3) Four voting members appointed by the General
17 Assembly each with relevant experience in health benefits <--
18 administration, health care finance, health care plan
19 purchasing, health care delivery system administration,
20 public health or health policy related to the individual and
21 small group markets and the uninsured: AS FOLLOWS: <--

22 (i) One member INDIVIDUAL appointed by the President <--
23 pro tempore of the Senate.

24 (ii) One member INDIVIDUAL appointed by the Minority <--
25 Leader of the Senate.

26 (iii) One member INDIVIDUAL appointed by the Speaker <--
27 of the House of Representatives.

28 (iv) One member INDIVIDUAL appointed by the Minority <--
29 Leader of the House of Representatives.

30 (4) The executive director shall attend meetings of the

1 board but shall not be a member, may not vote and may not be
2 counted for purposes of establishing a quorum.

3 (d) Chairperson.--The commissioner or a designee shall serve
4 as chairperson.

5 (e) Compensation.--Board members shall not be entitled to
6 any compensation for their services as members, except that,
7 subject to the availability of funds, board members shall be
8 entitled to reimbursement for actual and necessary travel
9 expenses. The expenses shall be paid for by the exchange fund.

10 (f) Terms.--The terms of the board members shall be as
11 follows:

12 (1) A board member appointed under subsection (c) (3)
13 who:

14 (i) Is a member of the General Assembly shall serve
15 a term concurrent with their holding of public office.

16 (ii) Is not a member of the General Assembly shall
17 serve a term concurrent with their appointing official's
18 holding of public office.

19 (2) A board member appointed under subsection (c) (2)
20 shall serve a term of four years, not to exceed more than two
21 full consecutive four-year terms, except that the following
22 shall apply:

23 (i) Initial appointments shall be so staggered that
24 less than 50% of the membership shall expire each year.

25 (ii) A member's term shall continue until the
26 member's replacement is appointed.

27 (g) Vacancies.--Vacancies in appointed positions shall be
28 filled in the same manner as the original appointment. Members
29 shall serve until their successors are appointed and qualified.

30 (h) Formation.--The exchange authority shall be formed

1 within 60 days of the effective date of this section. Prior to
2 formation of the exchange authority, the commissioner may take
3 action necessary to effect a timely transition from a federally
4 administered exchange to the Pennsylvania Health Insurance
5 Exchange.

6 (i) Quorum.--A majority of the appointed members of the
7 board shall constitute a quorum. Action may be taken by the
8 board at a meeting upon a vote of a quorum of its members
9 present in person or through electronic means. If a tie vote
10 occurs at any meeting, it shall be the duty of the chairperson
11 of the board to cast a second and deciding vote.

12 (j) Meetings.--The board shall meet at the call of the
13 chairperson or as may be provided in the bylaws of the board.
14 The board shall hold meetings at least quarterly, which shall be
15 subject to the requirements of 65 Pa.C.S. Ch. 7 (relating to
16 open meetings).

17 (k) Experience and interests.--For purposes of this chapter,
18 the board shall assure that it complies with section 1321 of the
19 Affordable Care Act (42 U.S.C. § 18041) and regulations
20 promulgated under the Affordable Care Act regarding conflicts of
21 interest and relevant experience.

22 (l) Conflict of interest.--The following apply:

23 ~~(i)~~ (1) Except as provided under ~~subparagraph (ii)~~ <--
24 PARAGRAPH (2), a non-State employee board member shall not be <--
25 subject to 65 Pa.C.S. Ch. 11 (relating to ethics standards
26 and financial disclosure), including the requirements for
27 filing statements of financial interests.

28 ~~(ii)~~ (2) A non-State employee board member may not <--
29 engage in conduct that, if that member were a State employee,
30 would constitute a conflict of interest under 65 Pa.C.S. Ch.

1 11.

2 ~~(iii)~~ (3) A majority of the voting members of the board <--
3 may not have a conflict of interest as set forth in section
4 1321 of the Affordable Care Act and regulations promulgated
5 under the Affordable Care Act.

6 § 9303. Advisory council.

7 (a) Establishment.--An advisory council is created to advise
8 the exchange authority under section 9304(g) (relating to
9 meetings and operation).

10 (b) Composition.--The advisory council shall consist of the
11 following members, who may not be in the employ of the
12 Commonwealth:

13 (1) Four consumer representatives which include two
14 representatives appointed by the Governor at least one of
15 whom shall be a registered insurance exchange navigator or
16 assister, one appointed by the President pro tempore of the
17 Senate and one appointed by the Speaker of the House of
18 Representatives.

19 (2) One representative selected by the Hospital and
20 Healthsystem Association of Pennsylvania.

21 (3) One representative selected by the Pennsylvania
22 Medical Society.

23 (4) One representative selected by the Pennsylvania
24 Chamber of Business and Industry from a small group employer.

25 (5) One representative selected by the Pennsylvania
26 Association of Health Underwriters.

27 § 9304. Meetings and operation.

28 (a) Chairperson.--The members of the advisory council shall
29 annually elect a chairperson from among its membership.

30 (b) Terms of members.--Each member's term shall be four

1 years, not to exceed more than two full consecutive four-year
2 terms, except that:

3 (1) Initial appointments shall be staggered to ensure
4 less than 50% of the membership expire each year.

5 (2) A member's term shall continue until the member's
6 successor is appointed.

7 (c) Meetings.--All meetings of the advisory council shall be
8 conducted in accordance with 65 Pa.C.S. Ch. 7 (relating to open
9 meetings), except as provided in this section. Meetings must be
10 held in accordance with the following:

11 (1) The advisory council shall meet at least twice per
12 year, with each meeting held prior to a meeting of the board.
13 Additional meetings may be held upon reasonable notice at
14 times and locations selected by the board. The council shall
15 meet at the call of the chairperson or upon written request
16 of three members of the council.

17 (2) The executive director of the exchange authority, or
18 a designee, shall attend each meeting of the advisory
19 council.

20 (3) Meeting dates shall be set by a majority vote of
21 members of the advisory council or by call of the chairperson
22 upon seven days' notice to all members.

23 (4) The advisory council shall post notice of the
24 council's meetings on the exchange authority's publicly
25 accessible Internet website at least five days prior to each
26 meeting. The notice must specify the date, time and place of
27 the meeting and shall state that the council's meetings are
28 open to the general public.

29 (5) All action taken by the advisory council shall be
30 taken in open public session and may not be taken except upon

1 a majority vote of the members present at a meeting at which
2 a quorum is present.

3 (d) Compensation.--The members of the advisory council shall
4 not be entitled to any compensation for their services as
5 members, except that, subject to the availability of money, the
6 members of the advisory council shall be entitled to
7 reimbursement for actual and necessary travel expenses. The
8 expenses shall be paid for by the exchange fund.

9 (e) Vacancies.--Vacancies in appointed positions shall be
10 filled in the same manner as the original appointment. Members
11 shall serve until their successors are appointed and qualified.

12 (f) Quorum.--A majority of the advisory council members
13 shall constitute a quorum and a quorum may act for the advisory
14 council in all matters.

15 (g) Duties.--Upon request by the exchange authority, the
16 advisory council shall advise the exchange authority on the
17 following administrative and operational decisions:

18 (1) Initial operational decisions.

19 (2) Ongoing financing decisions.

20 (3) Other decisions as the exchange authority may deem
21 appropriate.

22 § 9305. Powers and duties of exchange authority.

23 (a) Corporate operations.--The exchange authority shall
24 exercise all powers and duties necessary and appropriate to
25 carry out its purpose, including the following:

26 (1) Adopt bylaws.

27 (2) Employ staff.

28 (3) Make, execute and deliver contracts.

29 (4) Apply for, solicit and receive money from any source
30 consistent with the purpose of this chapter.

1 (5) Establish priorities for, allocate and disburse
2 money received.

3 (6) Submit annually to the Appropriations Committee of
4 the Senate and the Appropriations Committee of the House of
5 Representatives, at the same time the exchange authority
6 submits its budget to the Governor, a copy of its budget
7 request and all subsequently revised budget requests for the
8 ensuing fiscal year. The budget shall include the amounts to
9 be appropriated out of the fund established under section
10 9312 (relating to exchange fund) necessary to administer the
11 provisions of this chapter and the conveyance of money to the
12 Reinsurance Fund established under section 9510 (relating to
13 Reinsurance Fund).

14 (7) Establish travel reimbursement policies for the
15 exchange authority, its board, and its advisory council.

16 (8) Coordinate with the appropriate Federal and State
17 agencies to seek waivers from statutory or regulatory
18 requirements as necessary to carry out the purposes of this
19 chapter.

20 (9) Enter into other arrangements, including without
21 limitation, interagency agreements with Federal agencies and
22 Commonwealth agencies or other states' agencies, as may be
23 necessary or appropriate to carry out the duties of the
24 exchange authority.

25 (10) Give reasonable public notice of any policies and
26 procedures the exchange authority may implement to accomplish
27 the operation of the exchange authority.

28 (11) Perform other operational activities necessary or
29 appropriate to further the purposes of this chapter.

30 (12) The board shall consider the advice of the advisory

1 council provided under section 9304(g) (relating to meetings
2 and operation).

3 (b) Programmatic duties.--The exchange authority shall
4 perform all duties necessary or appropriate to advance its
5 purpose, including the following:

6 (1) Educate consumers, including through outreach, a
7 navigator program and postenrollment support.

8 (2) Assist individuals to access income-based assistance
9 for which they may be eligible, including premium tax
10 credits, cost-sharing reductions and government programs.

11 (3) Take into consideration the need for consumer choice
12 in rural, urban and suburban areas across the Commonwealth.

13 (4) Assess and collect fees from on-exchange insurers to
14 support the operation of the exchange under this chapter and
15 the reinsurance program established under section 9502(b)
16 (relating to implementation of waiver and establishment of
17 reinsurance program), except that the exchange authority may
18 not assess or collect any form of obligation other than an
19 exchange user fee on total monthly premiums for on-exchange
20 policies and unless approved by unanimous consent of the
21 board, the fee may not exceed 3% of total monthly premiums
22 for on-exchange policies. IN NO CASE MAY THE FEE EXCEED 3.5%. <--

23 (5) Disburse receipted fees, including to benefit the
24 reinsurance program established under section 9502(b).

25 (c) Enforcement and State sovereignty.--The exchange
26 authority shall ensure that the exchange complies with the
27 Federal acts and rules and regulations that may be imposed by
28 the Federal Government pursuant to the Federal acts in a manner
29 that maintains State sovereignty over the health insurance
30 market in this Commonwealth. Enforcement responsibilities shall

1 be delegated to the appropriate State agency and shall be
2 sufficient to prevent a determination by the United States
3 Secretary of Health and Human Services that the Commonwealth has
4 failed to substantially enforce any provision of the Federal
5 acts.

6 § 9306. Limitations.

7 Except as expressly provided in this chapter, nothing in this
8 chapter shall be construed to limit or supersede the authority
9 vested in a Commonwealth agency, including:

10 (1) The Insurance Department, including the department's
11 authority to regulate the business of insurance within this
12 Commonwealth, including health insurance policies whether
13 offered on or off the exchange.

14 (2) The Department of Human Services, including with
15 respect to the medical assistance program or the Children's
16 Health Insurance Program.

17 (3) The Department of Health.

18 (4) The Office of Attorney General.

19 § 9307. Confidentiality and disclosure.

20 (a) General rule.--Except as provided in this chapter, all
21 working papers, recorded information, documents and copies of
22 working papers, recorded information and documents produced by,
23 obtained by or disclosed to the exchange authority or any other
24 person in the course of the exercise of the exchange authority's
25 powers and duties under this chapter:

26 (1) shall be confidential;

27 (2) shall not be subject to subpoena;

28 (3) shall not be subject to the act of February 14, 2008
29 (P.L.6, No.3), known as the Right-to-Know Law;

30 (4) shall not be subject to discovery or admissible in

1 evidence in any private civil action; and

2 (5) may not be made public by the exchange authority or
3 any other person.

4 (b) Personal health and financial information.--The exchange
5 authority shall protect personally identifiable health and
6 financial information in accordance with all applicable Federal
7 and State laws and regulations, including the Health Insurance
8 Portability and Accountability Act of 1996 (Public Law 104-191,
9 110 Stat. 1936), the Health Information Technology for Economic
10 and Clinical Health Act (Public Law 111-5, 123 Stat. 226-279 and
11 467-496) and implementing regulations.

12 (c) Information disclosure.--Subject to the confidentiality
13 provisions of this section:

14 (1) Information shall be shared, as appropriate, for the
15 purpose of determining and coordinating the eligibility of
16 individuals for the exchange or any government program,
17 including the Children's Health Insurance Program and medical
18 assistance program, or for compliance with Federal law:

19 (i) Among the exchange authority and departments,
20 including:

21 (A) The department.

22 (B) The Department of Aging.

23 (C) The Department of Drug and Alcohol Programs.

24 (D) The Department of Health.

25 (E) The Department of Human Services.

26 (F) The Department of Labor and Industry.

27 (G) The Department of Revenue.

28 (ii) Between the exchange authority and Federal
29 agencies, including:

30 (A) The Centers for Medicare and Medicaid

1 Services.

2 (B) The Treasury Department.

3 (2) Information may be disclosed:

4 (i) As necessary to comply with the audit
5 requirements of section 9310 (relating to audits) and the
6 reporting requirements of section 9311 (relating to
7 reports), only in an aggregated and de-identified form.

8 (ii) In any circumstance, other than those described
9 in paragraph (1) or subparagraph (i), only if the prior
10 written consent of the company or person to which the
11 information pertains has been obtained.

12 (d) Construction.--Nothing in this section shall be
13 construed to prohibit the exchange authority from accessing the
14 information necessary to carry out its responsibilities in
15 accordance with law.

16 § 9308. Not an entitlement.

17 Nothing in this chapter shall constitute an entitlement
18 derived from the Commonwealth or a claim on any money of the
19 Commonwealth.

20 § 9309. Nonliability.

21 (a) General rule.--Except as provided under subsection (b),
22 there shall be no liability on the part of and no cause of
23 action of any nature may arise against the exchange authority,
24 board or advisory council or members thereof, the commissioner,
25 the department, an insurer, insurance producer or an exchange
26 assister or an authorized representative, agent or employee
27 thereof, for the use of information furnished pertaining to:

28 (1) An application for, inquiry concerning, or
29 enrollment or disenrollment in a health insurance policy or
30 government program, including an inquiry regarding

1 eligibility for enrollment or eligibility for a government
2 program, relevant to health insurance available through an
3 exchange or health care coverage or other benefits through a
4 government program.

5 (2) A charge, assessment or fee imposed on or received
6 from a person or entity relevant to the exchange.

7 (b) Limitation.--Subsection (a) shall apply only insofar as
8 the person or entity is acting within the scope of the person's
9 or entity's duties and responsibilities under this chapter.

10 § 9310. Audits.

11 (a) Annual audit.--The accounts and books of the exchange
12 authority shall be examined and audited annually by an
13 independent certified public accounting firm. The audit shall at
14 a minimum:

15 (1) Assess compliance with the requirements of this
16 chapter.

17 (2) Identify any material weaknesses or significant
18 deficiencies and identify ways to correct the material
19 weaknesses or deficiencies.

20 (b) Sharing of audit.--By December 31 of each year, the
21 exchange authority shall electronically share the audit of the
22 preceding fiscal year required under subsection (a) and related
23 documents by:

24 (1) Posting the following on the exchange authority's
25 publicly accessible Internet website:

26 (i) The audit.

27 (ii) A summary of the audit, including any material
28 weakness or significant deficiency identified and how the
29 exchange authority intends to correct the material
30 weakness or significant deficiency.

1 (2) Providing an electronic link to the posted audit
2 under paragraph (1)(i) to the Secretary of the Senate and the
3 Chief Clerk of the House of Representatives.

4 (3) Providing an electronic link to the posted audit
5 under paragraph (1)(i) to the department.

6 (c) Payment.--The cost of the annual audit required under
7 subsection (a) shall be paid for from money in the exchange
8 fund.

9 § 9311. Reports.

10 (a) Report.--The exchange authority shall prepare an annual
11 report on the activities of the exchange authority for the year
12 and:

13 (1) Electronically transmit the report to:

14 (i) The Governor.

15 (ii) The President pro tempore of the Senate.

16 (iii) The Minority Leader of the Senate.

17 (iv) The Speaker of the House of Representatives.

18 (v) The Minority Leader of the House of

19 Representatives.

20 (vi) The chair and minority chair of:

21 (A) The Appropriations Committee of the Senate.

22 (B) The Appropriations Committee of the House of
23 Representatives.

24 (C) The Banking and Insurance Committee of the
25 Senate.

26 (D) The Insurance Committee of the House of
27 Representatives.

28 (E) The Health and Human Services Committee of
29 the Senate.

30 (F) The Health Committee of the House of

1 Representatives.

2 (2) Post the report on the exchange authority's publicly
3 accessibility ACCESSIBLE Internet website. <--

4 (b) Federal compliance.--The exchange authority shall comply
5 with applicable Federal reporting requirements.

6 (c) Department notification.--The exchange authority shall
7 provide a copy of or electronic link to the report provided
8 under subsection (a) or (b) to the department.

9 § 9312. Exchange fund.

10 (a) Establishment.--The Pennsylvania Health Insurance
11 Exchange Fund is established as a special fund within the State
12 Treasury. The exchange fund shall be administered by the
13 exchange authority for the purposes set forth in this chapter,
14 including the deposit of money that may be received pursuant to
15 and disbursements permitted by this chapter.

16 (b) Deposit and use of money.--The following apply:

17 (1) Money deposited into the exchange fund shall be held
18 for the purposes set forth in this chapter and may not be
19 considered a part of the General Fund.

20 (2) Money in the exchange fund may only be used to
21 effectuate the purposes of this chapter as determined by the
22 exchange authority.

23 (3) All interest earned from the investment or deposit
24 of money in the exchange fund shall be deposited into the
25 exchange fund.

26 (4) All accrued and future earnings from money invested
27 by the exchange authority and other accrued and future
28 earnings from nonappropriated money, including, but not
29 limited to, money obtained from the Federal Government and
30 fees, shall be available to the exchange authority and shall

1 be deposited into the State Treasury and may be utilized at
2 the discretion of the board for carrying out any of the
3 corporate purposes of the exchange authority.

4 (5) Placement of money by the State Treasurer in
5 depositories or investments shall be consistent with
6 guidelines approved by the board.

7 (6) For the purpose of administration, the exchange
8 authority shall be subject to sections 610, 613 and 614 of
9 act of April 9, 1929 (P.L.177, No.175), known as The
10 Administrative Code of 1929.

11 (c) Nonlapsing and revolving fund.--The exchange fund shall
12 be a nonlapsing fund. All money in the exchange fund and
13 interest accrued are appropriated to the exchange authority for
14 expenditure consistent with this chapter.

15 § 9313. Federal guidance.

16 Until the exchange authority promulgates regulations, the
17 exchange authority shall operate the exchange pursuant to:

18 (1) any applicable Federal rules, regulations or
19 guidance; or

20 (2) interim State guidelines consistent with this
21 chapter.

22 § 9314. Expiration.

23 Upon publication of the notice under section 9703(b)
24 (relating to action by commissioner), the exchange authority
25 shall initiate steps to cease operations of the exchange
26 authority and shall cease operations not later than 15 months
27 after publication of the notice.

28 CHAPTER 95

29 REINSURANCE PROGRAM

30 Sec.

- 1 9501. Application.
- 2 9502. Implementation of waiver and establishment of reinsurance
3 program.
- 4 9503. Administration and operation of reinsurance program.
- 5 9504. Reinsurance parameters.
- 6 9505. Insurer eligibility and duties.
- 7 9506. Payment of coverage and administrative costs.
- 8 9507. Not an entitlement.
- 9 9508. Annual audit.
- 10 9509. Annual report of operations.
- 11 9510. Reinsurance Fund.
- 12 9511. Procurements within one year.
- 13 9512. Access to information and records.
- 14 9513. Confidentiality and information disclosure.
- 15 9514. Immunity.
- 16 9515. Regulation of insurers.
- 17 9516. Expiration.
- 18 § 9501. Application.
- 19 (a) Application.--The department is authorized to apply to
20 the United States Secretary of Health and Human Services under
21 section 1332 of the Affordable Care Act for a state innovation
22 waiver to:
- 23 (1) Waive any applicable provisions of the Affordable
24 Care Act with respect to health insurance coverage in this
25 Commonwealth.
- 26 (2) Establish a reinsurance program in accordance with
27 an approved waiver.
- 28 (3) Maximize Federal funding for the reinsurance program
29 for plan years beginning on or after implementation of the
30 program.

1 (b) Public review.--On or before 180 days after the
2 effective date of this section, the department shall make a
3 draft application available for a 30-day public review and
4 comment period. The department shall consider any comments in
5 its final submitted application.

6 (c) Amendment.--The department may amend the waiver
7 application as necessary to carry out the provisions of this
8 chapter.

9 (d) Notification.--The department shall notify the chair and
10 minority chair of the Appropriations Committee of the Senate,
11 the chair and minority chair of the Appropriations Committee of
12 the House of Representatives, the chair and minority chair of
13 the Banking and Insurance Committee of the Senate and the chair
14 and minority chair of the Insurance Committee of the House of
15 Representatives promptly of any amendment to the waiver
16 application and of any Federal actions regarding the waiver
17 application.

18 § 9502. Implementation of waiver and establishment of
19 reinsurance program.

20 (a) Implementation.--Upon approval of the department's
21 application for an innovation waiver by the United States
22 Department of Health and Human Services, the department shall
23 implement a reinsurance program.

24 (b) Establishment.--Contingent upon Federal approval, the
25 Commonwealth Health Insurance Reinsurance Program is established
26 in the department for the purposes of stabilizing the rates and
27 premiums for health insurance policies in the individual market
28 and providing greater financial certainty to consumers of health
29 insurance in this Commonwealth. The reinsurance program shall be
30 considered a reinsurance entity to carry out a reinsurance

1 program under the Federal acts.

2 (c) Operation.--Operation of a reinsurance program shall be
3 contingent on Federal approval of the waiver application
4 submitted pursuant to section 9501 (relating to application).
5 § 9503. Administration and operation of reinsurance program.

6 (a) General rule.--The department shall take all actions
7 necessary to administer the approved reinsurance program in a
8 manner consistent with applicable Federal and State law.

9 (b) Functions.--The department shall perform all functions
10 necessary and appropriate to carry out the operation of the
11 reinsurance program and to effectuate the purposes for which the
12 reinsurance program is organized, in accordance with the
13 approved waiver. The functions include:

14 (1) Establishing procedures for and performing
15 administrative and accounting operations of the reinsurance
16 program.

17 (2) Seeking and receiving funding for the reinsurance
18 program and to maximize Federal funding for the reinsurance
19 program, including from:

20 (i) The exchange authority.

21 (ii) Federal funding that is or becomes available to
22 states to support administration and implementation of
23 state-based reinsurance programs.

24 (iii) Other available sources.

25 (3) Collecting data submissions and reinsurance payment
26 requests by eligible insurers.

27 (4) Making reinsurance payments to eligible insurers.

28 (5) Resolving disputes related to the amount of
29 reinsurance payments.

30 (6) Suing or being sued, including taking any legal

1 action necessary or proper for the recovery of money for
2 reinsurance payments.

3 (7) Submitting invoices or other requests for money as
4 may be necessary and appropriate under the innovation waiver.

5 (c) Delegation.--Except as prohibited by applicable Federal
6 law and regulation, and as may be necessary or appropriate to
7 carry out department duties, the department may administer the
8 reinsurance program directly or through:

9 (1) Other Federal agencies, Commonwealth agencies or
10 other states' agencies.

11 (2) Contracted persons or entities, including with
12 legal, actuarial, economic, third-party administrator or
13 other persons or entities, as the department deems
14 appropriate, to provide consultation services and technical
15 assistance in operating the reinsurance program. Contracted
16 persons or entities shall submit regular reports to the
17 department regarding the person's or entity's performance,
18 the frequency, content and form of which shall be determined
19 by the department.

20 (d) Coordination with exchange authority.--The department
21 shall coordinate with the exchange authority as may be necessary
22 to fund and operate the reinsurance program.

23 § 9504. Reinsurance parameters.

24 (a) Adoption of reinsurance terms.--The department shall,
25 after consultation with all insurers then currently
26 participating in the exchange, and not less than 60 days before
27 final rates for health insurance policies are required to be
28 submitted each year, determine and adopt the attachment point,
29 reinsurance cap and coinsurance rate applicable to the
30 reinsurance program for the following year.

1 (b) Parameters.--In determining the attachment point,
2 reinsurance cap and coinsurance rate applicable to the
3 reinsurance program for the following year, the department shall
4 seek to:

5 (1) Manage the program within the amount of total
6 program funding available to the department.

7 (2) With respect to the individual market:

8 (i) Mitigate the impact of high-cost claims on
9 premium rates.

10 (ii) Stabilize or reduce premium rates.

11 (iii) Increase participation.

12 (c) Publication and notice.--The department shall transmit
13 notice of the adopted attachment point, reinsurance cap and
14 coinsurance rate to the Legislative Reference Bureau for
15 publication in the Pennsylvania Bulletin and shall:

16 (1) Post notice on the department's publicly accessible
17 Internet website.

18 (2) Electronically send notice to the chair and minority
19 chair of the Banking and Insurance Committee of the Senate
20 and the chair and minority chair of the Insurance Committee
21 of the House of Representatives.

22 (3) Electronically send notice to each participating
23 insurer via a contact person or electronic mailing address,
24 as identified by the insurer.

25 (d) Limitation.--After the department adopts the attachment
26 point, reinsurance cap and coinsurance rate for the next year,
27 the department may not, before or during that benefit year,
28 change the attachment point, reinsurance cap or coinsurance rate
29 in a manner less favorable to the insurers participating in the
30 exchange at the time of adoption.

1 § 9505. Insurer eligibility and duties.

2 (a) Eligibility for payment.--An insurer shall be eligible
3 for a reinsurance payment if:

4 (1) The claims costs for a reinsurance-eligible
5 enrollee's covered benefits in a benefit year exceed the
6 attachment point.

7 (2) The eligible insurer has implemented and documented
8 reasonable care management practices for enrollees who are
9 the subject of reinsurance claims through the reinsurance
10 program.

11 (3) The eligible insurer makes its requests for
12 reinsurance payments in accordance with any requirements
13 established by the department including requirements related
14 to the format, structure and timing for submission of claims
15 for reinsurance payments.

16 (4) The eligible insurer participated in the exchange,
17 or is affiliated with an entity that participated in the
18 exchange, in the benefit year in which the claims costs for
19 which a reinsurance payment is sought were incurred.

20 (b) Reporting requirement.--An insurer that seeks
21 reinsurance payments under this chapter must report to the
22 department, in the form and manner prescribed by the department,
23 information about reinsurance-eligible enrollees insured by the
24 insurer as necessary for the department to calculate reinsurance
25 payments.

26 (c) Confidentiality.--Reinsurance claims submitted under
27 this section are confidential and are not subject to public
28 disclosure, except as provided under section 9514 (relating to
29 immunity).

30 (d) Consideration for rate filings.--In a rate filing for a

1 health insurance policy to be offered through the exchange, the
2 impact of reinsurance payments under this chapter shall be
3 identified.

4 (e) Limitation.--The calculation of reinsurance payments due
5 to an eligible insurer shall be net of all other available
6 insurance payments applicable to a claim, including insurance
7 accessible through subrogation or coordination of benefits.
8 § 9506. Payment of coverage and administrative costs.

9 (a) General rule.--Consistent with Federal requirements, the
10 department shall pay the following from the Reinsurance Fund:

11 (1) Administrative expenses of the reinsurance program,
12 including the annual audit required under section 9508
13 (relating to annual audit).

14 (2) Reinsurance payments for coverage of reinsurance-
15 eligible enrollees.

16 (b) Operations.--The department may promulgate regulations
17 necessary and appropriate to establish processes for the
18 settlement of reinsurance coverage claims and disbursement of
19 reinsurance money.

20 (c) Request for review.--An insurer that is aggrieved by a
21 determination of the department relating to the amount of
22 reinsurance payments due to the insurer may file a request for
23 administrative review of the decision. The procedures and
24 requirements of 2 Pa.C.S. Ch. 5 Subch. A (relating to practice
25 and procedure of Commonwealth agencies) shall apply to requests
26 for review filed under this section. Notwithstanding otherwise
27 applicable time limitations, in order to permit timely
28 finalization of rates for the open enrollment period for the
29 exchange, a challenge to the department's determination of the
30 attachment point, reinsurance cap and coinsurance rate published

1 in the Pennsylvania Bulletin under section 9504(c) (relating to
2 reinsurance parameters) must be made within 10 business days of
3 the date of publication.

4 § 9507. Not an entitlement.

5 (a) No entitlement.--The provision of reinsurance program
6 money or benefits accrued through the Reinsurance Fund may not
7 constitute an entitlement derived from the Commonwealth or a
8 claim on any other money of the Commonwealth.

9 (b) Contingency with respect to Federal money.--
10 Notwithstanding any provision of this chapter, the department
11 shall have no responsibility to pay reinsurance amounts that
12 would be payable out of Federal money if the Federal Government
13 does not transmit sufficient money for the Reinsurance Fund to
14 fully recompense those actions.

15 § 9508. Annual audit.

16 (a) Annual audit.--The reinsurance program shall be examined
17 and audited annually by an independent certified public
18 accounting firm. The audit shall, at a minimum:

19 (1) Assess compliance with the requirements of this
20 chapter.

21 (2) Identify any material weaknesses or significant
22 deficiencies and identify and implement solutions to correct
23 the the material weaknesses or deficiencies.

24 (b) Sharing of audit.--By December 31 of each year, the
25 department shall electronically share the audit of the preceding
26 fiscal year required under subsection (a) and related documents
27 by:

28 (1) Posting the following on the department's publicly
29 accessible Internet website:

30 (i) The audit.

1 (ii) A summary of the audit, including any material
2 weakness or significant deficiency identified and how the
3 department intends to correct the material weakness or
4 significant deficiency.

5 (2) Providing an electronic link to the posted audit
6 under paragraph (1)(i) to the Secretary of the Senate and the
7 Chief Clerk of the House of Representatives.

8 (c) Payment.--The cost of the annual audit required under
9 subsection (a) shall be paid for from money in the Reinsurance
10 Fund.

11 § 9509. Annual report of operations.

12 (a) Report.--No later than November 1 of the year following
13 the applicable benefit year or 60 calendar days following the
14 final disbursement of reinsurance payments for the applicable
15 benefit year, whichever is later, the department shall prepare a
16 financial report for the applicable benefit year. The report
17 must include, at a minimum, the following information for the
18 benefit year that is the subject of the report:

19 (1) Money deposited into the Reinsurance Fund.

20 (2) Requests for reinsurance payments received from
21 eligible insurers.

22 (3) Reinsurance payments made to eligible insurers.

23 (4) Administrative and operational expenses incurred for
24 the reinsurance program.

25 (B) COMPARATIVE REPORT.--NO LATER THAN 60 DAYS AFTER <--
26 INDIVIDUAL MARKET HEALTH INSURANCE RATES ARE FINAL, THE
27 DEPARTMENT SHALL PREPARE A REPORT SUMMARIZING THE QUANTIFIABLE
28 IMPACT OF THE REINSURANCE PROGRAM ON INDIVIDUAL MARKET HEALTH
29 INSURANCE RATES FOR THE FOLLOWING PLAN YEAR.

30 ~~(b)~~ (C) Distribution of ~~report~~ REPORTS.--The department <--

1 shall:

2 (1) Electronically transmit the ~~report under subsection~~ <--

3 ~~(a) to:~~ REPORTS UNDER THIS SECTION TO: <--

4 (i) The President pro tempore of the Senate.

5 (ii) The Minority Leader of the Senate.

6 (iii) The Speaker of the House of Representatives.

7 (iv) The Minority Leader of the House of

8 Representatives.

9 (v) The chair and minority chair of the

10 Appropriations Committee of the Senate and the chair and

11 minority chair of the Appropriations Committee of the

12 House of Representatives.

13 (vi) The chair and minority chair of the Banking and

14 Insurance Committee of the Senate and the chair and

15 minority chair of the Insurance Committee of the House of

16 Representatives.

17 (2) Post the ~~report under subsection (a)~~ REPORTS UNDER <--

18 THIS SECTION on the department's publicly accessible Internet

19 website.

20 § 9510. Reinsurance Fund.

21 (a) Establishment and administration of Reinsurance Fund.--

22 The Reinsurance Fund is established as a special fund within the

23 State Treasury. The Reinsurance Fund shall be administered by

24 the department for the purposes set forth in this chapter,

25 including the deposit of Federal money and all other money

26 received pursuant to and disbursements permitted by this

27 chapter.

28 (b) Exclusive purpose.--The Reinsurance Fund shall be

29 dedicated exclusively for the reinsurance program established

30 under section 9502(b) (relating to implementation of waiver and

1 establishment of reinsurance program).

2 (c) Use.--The following apply:

3 (1) Expenditures from the Reinsurance Fund shall be used
4 to:

5 (i) Implement and operate the reinsurance program.

6 (ii) Make reinsurance payments to eligible insurers
7 under the reinsurance program. Payments to insurers shall
8 be calculated and made on a pro rata basis.

9 (2) In making expenditures from the Reinsurance Fund,
10 available Federal money must be expended first.

11 (3) Pending disbursement, money in the Reinsurance Fund
12 shall be invested or reinvested in the same manner as money
13 in the custody of the State Treasurer. All earnings received
14 from the investment or reinvestment of money shall be
15 credited to the Reinsurance Fund.

16 (d) Expenses.--All costs and expenses of the reinsurance
17 program shall be paid from the Reinsurance Fund, including
18 compensation of employees and any independent contractors or
19 consultants hired by the department.

20 (e) Nonlapsing and revolving fund.--The following apply:

21 (1) The Reinsurance Fund shall be a nonlapsing fund. All
22 money placed in the Reinsurance Fund and interest accrued are
23 appropriated to the department for expenditure consistent
24 with the provisions of this chapter.

25 (2) Nothing in this section shall prevent money in the
26 Reinsurance Fund from being used as a revolving fund to cover
27 necessary expenditures if Federal money is requested and
28 committed but not yet received or if other money is committed
29 but not yet received.

30 (f) Limitations.--The following limitations apply:

1 (1) In each fiscal year, the total amount of annual
2 expenditures from the Reinsurance Fund, including
3 administrative and consulting expenses, may not exceed the
4 amount of expected Federal and other money budgeted for
5 deposit in the Reinsurance Fund in that fiscal year.

6 (2) Notwithstanding any general or specific powers
7 granted to the department under this chapter, whether express
8 or implied, the department may not pledge, in favor of the
9 reinsurance program, the credit or taxing power of the
10 Commonwealth or any political subdivision.

11 § 9511. Procurements within one year.

12 Notwithstanding any other provision of law and for the
13 limited purpose of fulfilling the requirements under this
14 chapter, procurement of contracts and agreements for the
15 implementation and operation of the reinsurance program
16 initiated within one year of the effective date of this section
17 shall not be subject to the provisions of 62 Pa.C.S. (relating
18 to procurement). No contract or agreement entered into under
19 this section may exceed a term of five years.

20 § 9512. Access to information and records.

21 (a) Reports and access.--An insurer shall, without charge,
22 report information and provide access to and furnish records as
23 the department requests in order for the department to:

24 (1) Prepare the State innovation waiver application
25 submitted under section 9501(a) (relating to application).

26 (2) Determine reinsurance parameters under section 9504
27 (relating to reinsurance parameters).

28 (3) Determine the reinsurance payments due to each
29 insurer.

30 (4) Monitor costs and revenues associated with the

1 reinsurance program.

2 (5) Administer the reinsurance program.

3 (6) Assure compliance with applicable Federal and State
4 law.

5 (b) Time period.--The information and records requested
6 under subsection (a) shall be provided to the department within
7 30 days of receipt by an insurer of the written request, unless
8 required at an earlier date for department compliance with a
9 request from a Federal or other State agency.

10 (c) Use.--Information and records provided to the department
11 under subsection (a) may only be used for the purposes specified
12 in subsection (a).

13 (d) Exemptions.--Any instructions, forms or reports issued
14 by the department and required to be completed by an insurer
15 under this section shall not be subject to:

16 (1) The act of July 31, 1968 (P.L.769, No.240), referred
17 to as the Commonwealth Documents Law.

18 (2) The act of October 15, 1980 (P.L.950, No.164), known
19 as the Commonwealth Attorneys Act.

20 (3) The act of June 25, 1982 (P.L.633, No.181), known as
21 the Regulatory Review Act.

22 § 9513. Confidentiality and information disclosure.

23 (a) General rule.--Except as provided for in this section,
24 all working papers, recorded information, documents and copies
25 of working papers, recorded information and documents produced
26 by, obtained by or disclosed to the department or any other
27 person in the course of exercising the department's powers and
28 duties under this chapter:

29 (1) shall be confidential;

30 (2) shall not be subject to subpoena;

1 (3) shall not be subject to the act of February 14, 2008
2 (P.L.6, No.3), known as the Right-to-Know Law;

3 (4) shall not be subject to discovery or admissible in
4 evidence in any private civil action; and

5 (5) may not be made public by the department or any
6 other person.

7 (b) Personal health and financial information.--The
8 department shall protect personally identifiable health and
9 financial information in accordance with Federal and State laws
10 and regulations, including the Health Insurance Portability and
11 Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936),
12 the Health Information Technology for Economic and Clinical
13 Health Act (Public Law 111-5, 123 Stat. 226-279 and 467-496) and
14 implementing regulations.

15 (c) Information disclosure.--Subject to the confidentiality
16 provisions of this section:

17 (1) Information shall be shared as follows:

18 (i) Between the department and the Centers for
19 Medicare and Medicaid Services for purposes of compliance
20 with the Federal acts.

21 (ii) Between the department and each insurer
22 participating in the reinsurance program.

23 (iii) Between the department and the exchange
24 authority.

25 (2) Information may be disclosed as follows:

26 (i) As necessary to comply with the audit
27 requirements of section 9508 (relating to annual audit)
28 and the reporting requirements of section 9509 (relating
29 to annual report of operations), only in an aggregated
30 and de-identified form.

1 (ii) In any circumstance other than as described in
2 paragraph (1) or subparagraph (i), only if the prior
3 written consent of the company or person to which the
4 information pertains is obtained.

5 (d) Construction.--Nothing in this section shall be
6 construed to prohibit the department from accessing the
7 information reasonably required to carry out its
8 responsibilities in accordance with law.

9 § 9514. Immunity.

10 (a) General rule.--Except as provided in subsection (b), the
11 department, a Commonwealth agency or person or entity under
12 contract with the department for the reinsurance program, or an
13 authorized representative, agent or employee of any of them may
14 not be subject to civil or criminal liability and no cause of
15 action of any nature shall arise for any action taken or not
16 taken, including any discretionary decision or failure to make a
17 discretionary decision, when the action or inaction is done in
18 good faith and in the performance of the powers and duties under
19 this chapter, or for the reasonable and good faith use of any
20 information pertaining to the reinsurance program.

21 (b) Exception.--This section shall not prohibit legal
22 actions against the reinsurance program to enforce the
23 reinsurance program's statutory or contractual duties or
24 obligations.

25 § 9515. Regulation of insurers.

26 Nothing in this chapter shall be construed to limit or
27 supersede the regulatory authority vested with the department to
28 regulate the business of insurance within this Commonwealth,
29 including health insurance policies offered on or off the
30 exchange.

1 § 9516. Expiration.

2 Upon publication of the notice under section 9703(b)
3 (relating to action by commissioner), the department shall
4 initiate steps to cease operation of the reinsurance program and
5 shall cease operation of the reinsurance program no later than
6 15 months after publication of the notice.

7 CHAPTER 97

8 MISCELLANEOUS PROVISIONS

9 Sec.

10 9701. Regulations.

11 9702. Enforcement.

12 9703. Action by commissioner.

13 § 9701. Regulations.

14 (a) Authority to promulgate.--The department and the
15 exchange authority may promulgate regulations as may be
16 necessary and appropriate to carry out the provisions of this
17 part.

18 ~~(b) Temporary regulations. The following apply:~~ <--

19 ~~(1) Notwithstanding any other provision of law, in order~~
20 ~~to facilitate the prompt implementation of this part, the~~
21 ~~department and the exchange authority may issue temporary~~
22 ~~regulations which shall expire no later than two years~~
23 ~~following publication of the temporary regulations in the~~
24 ~~Pennsylvania Bulletin. The temporary regulations shall be~~
25 ~~exempt from the following:~~

26 ~~(i) Sections 201, 202, 203, 204 and 205 of the act~~
27 ~~of July 31, 1968 (P.L.769, No.240), referred to as the~~
28 ~~Commonwealth Documents Law.~~

29 ~~(ii) Sections 204(b) and 310(10) of the act of~~
30 ~~October 15, 1980 (P.L.950, No.164), known as the~~

1 Commonwealth Attorneys Act.

2 (iii) The act of June 25, 1982 (P.L.633, No.181),
3 known as the Regulatory Review Act.

4 (2) The authority of the department and the exchange
5 authority to issue temporary regulations under this
6 subsection shall expire two years from the effective date of
7 this section. Regulations adopted after the two year period
8 shall be promulgated as provided by statute.

9 (B) OMISSION OF PROPOSED RULEMAKING.--THE GENERAL ASSEMBLY <--
10 FINDS AND DECLARES AS FOLLOWS:

11 (1) THIS PART IS ESSENTIAL TO:

12 (I) THE PROVISION OF HEALTH CARE FOR THE CITIZENS OF
13 THIS COMMONWEALTH; AND

14 (II) THE FINANCIAL VIABILITY OF THE HEALTH CARE
15 SYSTEM IN THIS COMMONWEALTH.

16 (2) THE FINDING AND DECLARATION UNDER PARAGRAPH (1)
17 CONSTITUTES GOOD CAUSE FOR THE OMISSION OF NOTICE OF PROPOSED
18 RULEMAKING UNDER SECTION 204(3) OF THE ACT OF JULY 31, 1968
19 (P.L.769, NO.240), REFERRED TO AS THE COMMONWEALTH DOCUMENTS
20 LAW.

21 § 9702. Enforcement.

22 (a) General rule.--Upon satisfactory evidence of a violation
23 of this part by an insurer or other person, one or more of the
24 following penalties may be imposed at the commissioner's
25 discretion:

26 (1) Suspension or revocation of the license of the
27 insurer or other person.

28 (2) Refusal, for a period not to exceed one year, to
29 issue a new license to the insurer or other person.

30 (3) A fine of not more than \$5,000 for each violation.

1 (4) A fine of not more than \$10,000 for each willful
2 violation.

3 (b) Limitation.--

4 (1) Fines imposed against an individual insurer under
5 this part may not exceed \$500,000 in the aggregate during a
6 single calendar year.

7 (2) Fines imposed against any other person under this
8 part may not exceed \$100,000 in the aggregate during a single
9 calendar year.

10 (c) Additional remedies.--The enforcement remedies imposed
11 under this subsection are in addition to any other remedies or
12 penalties that may be imposed under any other applicable law of
13 this Commonwealth, including:

14 (1) The act of July 22, 1974 (P.L.589, No.205), known as
15 the Unfair Insurance Practices Act. Violations of this part
16 shall be deemed to be an unfair method of competition and an
17 unfair or deceptive act or practice under the Unfair
18 Insurance Practices Act.

19 (2) The act of June 25, 1997 (P.L.295, No.29), known as
20 the Pennsylvania Health Care Insurance Portability Act.

21 (d) Administrative procedure.--The administrative provisions
22 of this section shall be subject to 2 Pa.C.S. Ch. 5 Subch. A
23 (relating to practice and procedure of Commonwealth agencies). A
24 party against whom penalties are assessed in an administrative
25 action may appeal to Commonwealth Court as provided in 2 Pa.C.S.
26 Ch. 7 Subch. A (relating to judicial review of Commonwealth
27 agency action).

28 § 9703. Action by commissioner.

29 (a) Sunset.--This act PART shall sunset immediately if any <--
30 of the following occur:

1 (1) The Congress of the United States repeals or
2 defunds, in whole or in part, THOSE PROVISIONS OF the <--
3 Affordable Care Act in a manner that renders impossible to <--
4 perform the duties of INTEGRAL TO the exchange authority <--
5 established under Chapter 93 (relating to State-based
6 Exchange) or the reinsurance program established under
7 Chapter 95 (relating to reinsurance program).

8 (2) A court of the United States with competent
9 jurisdiction invalidates, in whole or in part, THE PROVISIONS <--
10 OF the Affordable Care Act in a manner that renders <--
11 impossible to perform INTEGRAL TO the duties of the exchange <--
12 authority established under Chapter 93 or the reinsurance
13 program established under Chapter 95.

14 (3) The Executive Branch of the United States repeals or
15 defunds, in whole or in part, THE PROVISIONS OF the <--
16 Affordable Care Act and its subsequent regulations in a <--
17 manner that renders impossible to perform INTEGRAL TO the <--
18 duties of the exchange authority established under Chapter 93
19 or the reinsurance program established under Chapter 95.

20 (b) Notice.--If this part sunsets pursuant to subsection
21 (a), the commissioner shall transmit notice of that action to
22 the Legislative Reference Bureau for publication in the
23 Pennsylvania Bulletin.

24 Section 2. This act shall take effect immediately.