

INSURANCE DEPARTMENT ACT OF 1921 - OMNIBUS AMENDMENTS

Act of Jun. 22, 2018, P.L. 273, No. 41

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Session of 2018

No. 2018-41

HB 1851

AN ACT

Amending the act of May 17, 1921 (P.L.789, No.285), entitled "An act relating to insurance; establishing an insurance department; and amending, revising, and consolidating the law relating to the licensing, qualification, regulation, examination, suspension, and dissolution of insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and certain societies and orders, the examination and regulation of fire insurance rating bureaus, and the licensing and regulation of insurance agents and brokers; the service of legal process upon foreign insurance companies, associations or exchanges; providing penalties, and repealing existing laws," in examinations, further providing for purpose and for definitions and providing for scheduling conference, for budget estimate and revisions, for billing invoices and for annual examination and analysis report and for the Pennsylvania Professional Liability Joint Underwriting Association; and making a related repeal.

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

Section 1. Sections 901 and 902 of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, are amended to read:

Section 901. Purpose.--The purpose of this article is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this Commonwealth and all persons otherwise subject to the jurisdiction of the department. The provisions of this article are intended to enable the department to adopt a flexible system of examinations which directs resources as may be deemed appropriate and necessary for the administration of the insurance and insurance related laws of this Commonwealth. **This article recognizes the commitment of the department to work with the insurance industry to utilize the most efficient means to conduct examinations, minimize costs, facilitate cooperation and communication between insurers and the department, increase transparency and increase efficiencies to the greatest extent possible.**

Section 902. Definitions.--The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Commissioner" means the Insurance Commissioner of the Commonwealth.

"Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative or regulatory authority of the Insurance Department. **The term includes the Pennsylvania Professional Liability Joint Underwriting**

Association established in section 731 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act .

"Department" means the Insurance Department of the Commonwealth.

"Examiner" means any individual or firm having been authorized by the Insurance Department to conduct an examination under this article.

"Insurer" means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, beneficial association and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters and also means health care plans as defined in 40 Pa.C.S. Chs. 61 (relating to hospital plan corporations), 63 (relating to professional health services plan corporations), 65 (relating to fraternal benefit societies) and 67 (relating to beneficial societies) and the act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act." For purposes of this article, health care plans, fraternal benefit societies and beneficial societies shall be deemed to be engaged in the business of insurance.

"NAIC" means the National Association of Insurance Commissioners.

"Person" means any individual, aggregation of individuals, trust, association, partnership or corporation or any affiliate thereof. The term shall exclude agents.

Section 2. The act is amended by adding sections to read:

Section 904.1. Scheduling Conference.--Prior to commencing examination field work under this article, the department shall hold a scheduling conference with a company to discuss the following:

- (1) The purpose and scope of the examination.
- (2) The estimated costs for the examination.
- (3) The types of information that the company will be asked to produce.
- (4) The most efficient means of conducting the examination.
- (5) Any alternative approaches in conducting the examination that would be more convenient, less burdensome or less expensive for the company while still providing for an effective examination by the department.

Section 904.2. Budget Estimate and Revisions.--(a) No more than thirty days after the scheduling conference under section 904.1 has been conducted, the department shall provide the company with a detailed written budget estimate for the examination that must, for each forthcoming phase of the examination, as appropriate:

- (1) Identify the individuals or firms performing the examination and their daily or hourly rates.
- (2) Provide an estimate of travel, lodging, meal and other administrative or supply costs.
- (3) Estimate the length of time to conduct on-site and off-site examination activities.
- (b) Within fifteen days of receipt of a budget estimate under subsection (a), the company and the department shall have an additional discussion regarding the most efficient means of conducting the examination and producing information. If necessary, revisions of the budget estimate shall be made.

(c) The time periods under subsections (a) and (b) may be extended if the company and the department mutually agree to the extension.

(d) At any time during the examination, the department shall hold another scheduling conference with the company in accordance with section 904.1 and provide a revised budget estimate as set forth in subsection (a) if:

(1) the department determines that the cost of the examination will exceed the budget estimate by more than ten per centum; or

(2) there is a material change in staffing assignments.

Section 904.3. Billing Invoices.--(a) The following shall apply for each billing invoice submitted to a company regarding examination work:

(1) An invoice which is submitted by a contractor of the department must contain an itemized and detailed description of charges on a quarterly hour basis by the examiner, including the applicable billing rates and a per charge description of related travel or other expenses.

(2) An invoice which is submitted by the department directly must contain instructions on how a company may obtain an itemized and detailed description of the charges.

(3) An invoice shall be submitted to a company on a monthly basis as soon as practicable but no later than sixty days after the date on which the billed activity was performed.

(4) An invoice must provide a due date of no fewer than thirty days after the bill is submitted to the company.

(5) An invoice must contain an explanation of the invoicing process and the procedure for resolving billing disputes.

(b) To the extent possible, the department shall follow the procedures under subsection (a) for billing invoices submitted by third-party consultants retained as described under section 905.1(a)(2), (3), (4), (5) or (6).

Section 905.1. Annual Examination and Analysis Report.--(a) Within thirty days of the end of each fiscal year, the department shall publish a report setting forth, for the immediately prior fiscal year, the total amount of money billed to companies by the department and its contractors retained in each of the following categories:

(1) Financial examinations conducted under section 904.

(2) Market conduct examinations conducted under section 904.

(3) Examinations conducted under section 1406 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

(4) The review of transactions under any of the following sections of The Insurance Company Law of 1921:

(i) Section 803-A.

(ii) Section 807-A.

(iii) Section 1402.

(iv) Section 1405.

(5) The solvency monitoring of companies under any of the following:

(i) Section 507-A.

(ii) Section 506-B.

(iii) Section 2607 of The Insurance Company Law of 1921.

(6) Other subsequently enacted statutory provisions that provide for the retention of third-party consultants.

(b) The report under this section must:

(1) separately list the identity of each contractor retained by the department and the amount of money billed by the contractor to companies;

(2) disclose the total amount of deposits into the Insurance Regulation and Oversight Fund under section 4(a)(3) of the act of July 2, 2013 (P.L.255, No.46), known as the Insurance

Regulation and Oversight Fund Act, as a result of financial and market regulation activities for which regulated entities are responsible to pay; and

(3) include an analysis of the effectiveness of the procedures under this article and recommendations to further improve the efficiency and transparency of the examination processes.

Section 3. The act is amended by adding an article to read:

ARTICLE IX-A
PENNSYLVANIA PROFESSIONAL LIABILITY JOINT
UNDERWRITING ASSOCIATION
SUBARTICLE A
PRELIMINARY PROVISIONS

Section 901-A. Declaration of policy.

The General Assembly finds and declares as follows:

(1) The commissioner's review of the association's plan of operation and rate filings has identified a decrease in the number of claim payments and the decline in the need in this Commonwealth for the types of medical professional liability insurance policies offered by the association under Chapter 7 of the Mcare Act. The review has identified a need to modernize the association in order to produce needed economical and administrative efficiencies.

(2) Ensuring the future availability of and access to quality health care is a fundamental government goal, and it is essential to the public health, safety and welfare of all residents of this Commonwealth that access to a full spectrum of hospital services and to highly trained physicians in all specialties is available.

(3) In order to accomplish the goals under paragraph (2), medical professional liability insurance must continue to be obtainable at an affordable and reasonable cost in every geographic region of this Commonwealth. Placing the association within the department will give the commissioner more oversight of expenditures and ensure better efficiencies in the operation of the association.

Section 902-A. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Association." The Pennsylvania Professional Liability Joint Underwriting Association established in section 731 of the Mcare Act.

"Board." The Joint Underwriting Association Board described in section 912-A(a).

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Department." The Insurance Department of the Commonwealth.

"Health care provider." As defined in section 702 of the Mcare Act.

"Mcare Act." The act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

"Plan." A plan of operation submitted to and approved by the commissioner under section 731(b)(1) of the Mcare Act or this article.

SUBARTICLE B
OVERSIGHT AND DUTIES

Section 911-A. Association oversight and additional duties.

(a) Oversight.--The association shall continue as an instrumentality of the Commonwealth and shall operate under the control, direction and oversight of the department.

(b) Additional duties.--In addition to the duties described under Subchapter C of Chapter 7 of the Mcare Act, the association shall do all of the following:

(1) Submit monthly reports to the commissioner of premiums collected and claims paid during the immediately preceding month.

(2) Provide to the commissioner additional documents and information regarding the association's operations as the commissioner may request.

(3) Within 60 days following the effective date of this section, prepare and submit a new plan for approval by the commissioner under section 731(b)(1) of the Mcare Act. The new plan shall contain provisions not inconsistent with this article. The plan may be amended at the direction of the board or the commissioner.

(4) Submit to examinations under Article IX.

(c) Claims.--The following shall apply:

(1) No member of the association or any health care provider insured by a policy provided by the association shall have a claim against the current or future funds, profits, investments or losses of the association, including upon dissolution.

(2) A claim against or a liability of the association under a policy provided by the association under the Mcare Act shall be considered a liability of the Commonwealth.

Section 912-A. Board.

(a) Membership and purpose.--The membership of the Joint Underwriting Association Board is statutorily established. The board shall govern the operations of the association and shall consist of the following members:

(1) Three members appointed by the Governor.

(2) One member appointed by each of the following:

(i) The President pro tempore of the Senate.

(ii) The Minority Leader of the Senate.

(iii) The Speaker of the House of Representatives.

(iv) The Minority Leader of the House of

Representatives.

(b) Chair.--The Governor shall appoint the chair of the board from among the board members.

(c) Term and vacancy.--A member of the board shall serve at the will of the member's appointing authority for a term of four years or until the member's successor has been appointed and is qualified. A vacancy on the board shall be filled by the same appointing authority as the outgoing member.

(d) Quorum.--A majority of the members of the board shall constitute a quorum. The vote of a majority of the members attending a meeting of the board shall be required for all actions of the board.

(e) Compensation.--Members of the board shall not be compensated for service as board members but shall be entitled to reimbursement of expenses under rules governing the reimbursement of expenses to Commonwealth executive agency personnel.

(f) Executive director and administrative support.--The day-to-day operations of the board shall be managed by an executive director hired by the commissioner whose annual salary and other benefits of employment shall be determined by the commissioner. The department shall provide the board with other administrative support as the department, in consultation with the executive director, deems necessary and appropriate. The executive director and other staff hired to support the work of the board shall be considered Commonwealth employees.

(g) Powers and duties.--The board shall administer the plan, decide all matters of policy and have authority to exercise all reasonable and necessary powers relating to the operation of the association. In furtherance of the board's powers and duties, the board may do all of the following:

- (1) Adopt bylaws and guidelines.
- (2) Appoint committees and retain experts and advisors, consultants and agents to render services as the board deems necessary to carry out the operations of the board and the association.
- (3) Enter into agreements and contracts as may be necessary for the administration of the plan and consistent with this act and the applicable provisions of the Mcare Act.
- (4) Develop rates, rating plans, rating and underwriting rules and standards, rate classifications, rate territories, policy forms and riders in accordance with applicable laws and subject to the commissioner's approval under sections 712(f) and 731(b)(2) and (4) of the Mcare Act.
- (5) Invest, borrow and disburse funds, budget expenses, levy assessments, receive contributions, reinsure liabilities of the association and perform all other duties necessary or incidental to the proper administration of the plan.
- (6) If the board deems it to be in the best interests of the policy holders and the Commonwealth, subject to the commissioner's approval, place a portion of the funds of the association in a restricted receipt account in the Treasury Department. The State Treasurer shall create a restricted receipt account at the request of the board. Money in the account is appropriated for the purposes required in the Mcare Act, this article and as may otherwise be directed by the board.
- (7) Authorize the executive director to participate in the scheduling conferences and other provisions of Article IX on behalf of the board.

Section 913-A. Dissolution.

- (a) General.--The association may be dissolved as follows:
 - (1) At the request of a majority of the members of the association and as approved by the commissioner.
 - (2) By act of the General Assembly.
- (b) Distribution of assets.--Upon dissolution of the association under this section, all assets of the association, from whatever source, shall be distributed as the board may determine, subject to the approval of the commissioner.

SUBARTICLE C

MISCELLANEOUS PROVISIONS

Section 921-A. Administration and construction.

The following shall apply:

- (1) Within 30 days following the effective date of this section, all paper and electronic documents and files and other assets of the association in the possession of the association, its executive director and employees shall be transferred to the department.
- (2) Within 30 days following the effective date of this section, authority to act on behalf of the board shall be transferred to the executive director hired by the commissioner under section 912-A(f). The commissioner may appoint an acting executive director to act until an executive director has been hired.

Section 4. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of section 911-A(c)(2) of the act.

(2) Section 731(c) of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act, is repealed.
Section 5. The following shall apply:

(1) Orders, regulations, rules and decisions which were issued, promulgated or made by the Pennsylvania Professional Liability Joint Underwriting Association under the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act, in connection with Subchapter C of Chapter 7 of the Mcare Act, and which are in effect on the effective date of this section, shall remain applicable and in full force and effect until modified or terminated.

(2) The following shall apply to administration and construction:

(i) Activities initiated under Subchapter C of Chapter 7 of the Mcare Act shall continue and remain in full force and effect.

(ii) Insurance policies issued and contracts entered into by the Pennsylvania Professional Liability Joint Underwriting Association prior to the effective date of this section are not affected nor impaired by this article.

Section 6. The provisions of sections 904.1, 904.2, 904.3 and 905.1 of the act shall apply to examinations commencing at least 30 days after the effective date of this section.

Section 7. This act shall take effect in 30 days.

APPROVED--The 22nd day of June, A.D. 2018.

TOM WOLF