AN ACT

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

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

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

PART V

HEALTH INSURANCE MARKETS OVERSIGHT

Chapter 91. Preliminary Provisions
§ 9101. Scope of part.

This part relates to health insurance markets oversight.

§ 9102. Purpose and intent.

The General Assembly finds and declares as follows:

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

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

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

§ 9103. Definitions.

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have the meanings given to them in this
section unless the context clearly indicates otherwise:


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

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

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

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

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

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Department." The Insurance Department of the Commonwealth.

"Eligible insurer." An insurer offering reinsurance-eligible health insurance CARE plans to consumers in this Commonwealth.

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

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

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

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

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

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

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

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

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

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

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

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

(6) The Children's Health Insurance Program.

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

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

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

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

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

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

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

 (1) An accident only policy.

 (2) A credit only policy.

 (3) A long-term care or disability income policy.
(4) A specified disease policy.

(5) A Medicare supplement policy.

(6) A fixed indemnity policy.

(7) An adult-only dental only policy.

(8) A vision only policy.

(9) A workers' compensation policy.

(10) An automobile medical payment policy.

(11) A policy under which benefits are provided by the Federal Government to active or former military personnel and their dependents.

(12) Any other similar policies providing for limited benefits.

"Hospital plan corporation." An entity organized and operating under Chapter 61 (relating to hospital plan corporations).

"Individual market." The market for health insurance coverage offered to individuals other than in connection with a group.

"Innovation waiver." A waiver applied for pursuant to section 1332 of the Affordable Care Act (42 U.S.C. §18052).

"Insurance producer." The term has the meaning given to it in section 601-A of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

"Insurer." An entity that offers, issues or renews an individual or group health, accident or sickness insurance policy, contract or plan, and that is governed under any of the following:

(1) Chapter 61.

(2) Chapter 63 (relating to professional health services plan corporations).
(3) The Insurance Company Law of 1921, including section 630 and Article XXIV.


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

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

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

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

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

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

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

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

"Reinsurance program." The Commonwealth Health Insurance Reinsurance Program established under section 9502(b) (relating to implementation of waiver and establishment of reinsurance.
"Small group market." The market for health insurance for coverage offered through a group health insurance policy for a group of at least two individuals, one employee, and up to 50 individuals, exclusive of dependents.

CHAPTER 93
STATE-BASED EXCHANGE

Sec.

9301. Scope of chapter.
9302. Pennsylvania Health Insurance Exchange Authority.
9303. Advisory council.
9304. Meetings and operation.
9305. Powers and duties of exchange authority.
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§ 9301. Scope of chapter.
This chapter relates to the Pennsylvania Health Insurance Exchange Authority.

§ 9302. Pennsylvania Health Insurance Exchange Authority.
(a) Establishment.--The Pennsylvania Health Insurance Exchange Authority is established as a State-affiliated entity. The powers and duties of the exchange authority shall be vested in and exercised by a board, which shall have the sole power
under section 9305 (relating to powers and duties of exchange
authority) to employ staff, including an executive director.

Individuals employed by the exchange authority shall be
employees of the Commonwealth. The exchange authority may
contract with persons or entities, including legal counsel,
consultants or service providers, as deemed necessary in the
exchange authority's discretion.

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

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

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

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

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

(i) The commissioner, ex-officio.

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

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

(2) Four voting members appointed by the Governor:

(i) One member from among the insurers that offer
health insurance policies through the exchange that are a
hospital plan corporation, a professional health services
plan corporation or a parent, affiliate, subsidiary or
other associated entity or successor of a hospital plan corporation or a professional health services plan.

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

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

(iv) One member who is a consumer representative.

(3) Four voting members appointed by the General Assembly each with relevant experience in health benefits administration, health care finance, health care plan purchasing, health care delivery system administration, public health or health policy related to the individual and small group markets and the uninsured:

(i) One member appointed by the President pro tempore of the Senate.

(ii) One member appointed by the Minority Leader of the Senate.

(iii) One member appointed by the Speaker of the House of Representatives.

(iv) One member appointed by the Minority Leader of the House of Representatives.

(4) The executive director shall attend meetings of the board but shall not be a member, may not vote and may not be
counted for purposes of establishing a quorum.

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

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

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

(1) A board member appointed under subsection (c)(2)(C) who:

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

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

(2) A board member appointed under subsection (c)(3)(C) shall serve a term of four years, not to exceed more than two full consecutive four-year terms, except that the following shall apply:

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

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

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

(h) Formation.--The exchange authority shall be formed within 60 days of the effective date of this section. Prior to
formation of the exchange authority, the commissioner may take
action necessary to effect a timely transition from a federally
administered exchange to the Pennsylvania Health Insurance
Exchange.

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

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

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

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

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

(ii) A non-State employee board member may not engage in
conduct that, if that member were a State employee, would
constitute a conflict of interest under 65 Pa.C.S. Ch. 11.

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

§ 9303. Advisory council.

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

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

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

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

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

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

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

§ 9304. Meetings and operation.

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

(b) Terms of members.--Each member's term shall be four years, not to exceed more than two full consecutive four-year terms, except that:
(1) Initial appointments shall be staggered to ensure less than 50% of the membership expire each year.

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

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

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

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

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

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

(5) All action taken by the advisory council shall be taken in open public session and may not be taken except upon a majority vote of the members present at a meeting at which a quorum is present.
(d) Compensation.--The members of the advisory council shall not be entitled to any compensation for their services as members, except that, subject to the availability of money, the members of the advisory council shall be entitled to reimbursement for actual and necessary travel expenses. The expenses shall be paid for by the exchange fund.

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

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

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

   (1) Initial operational decisions.
   
   (2) Ongoing financing decisions.
   
   (3) Other decisions as the exchange authority may deem appropriate.

§ 9305. Powers and duties of exchange authority.

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

   (1) Adopt bylaws.
   
   (2) Employ staff.
   
   (3) Make, execute and deliver contracts.
   
   (4) Apply for, solicit and receive money from any source consistent with the purpose of this chapter.

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

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

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

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

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

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

(12) The board shall consider the advice of the advisory council provided under section 9304(g) (relating to meetings and operation).
(b) Programmatic duties.--The exchange authority shall perform all duties necessary or appropriate to advance its purpose, including the following:

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

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

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

(4) Assess and collect fees from on-exchange insurers to support the operation of the exchange under this chapter and the reinsurance program established under section 9502(b) (relating to implementation of waiver and establishment of reinsurance program), except that the exchange authority may not assess or collect any form of obligation other than an exchange user fee on total monthly premiums for on-exchange policies and unless approved by unanimous consent of the board, the fee may not exceed 3% of total monthly premiums for on-exchange policies.

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

(c) Enforcement and State sovereignty.--The exchange authority shall ensure that the exchange complies with the Federal acts and rules and regulations that may be imposed by the Federal Government pursuant to the Federal acts in a manner that maintains State sovereignty over the health insurance market in this Commonwealth. Enforcement responsibilities shall be delegated to the appropriate State agency and shall be sufficient to prevent a determination by the United States
Secretary of Health and Human Services that the Commonwealth has
failed to substantially enforce any provision of the Federal
acts.

§ 9306. Limitations.

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

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

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

(3) The Department of Health.

(4) The Office of Attorney General.

§ 9307. Confidentiality and disclosure.

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

(1) shall be confidential;

(2) shall not be subject to subpoena;

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

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

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

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

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

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

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

(A) The department.

(B) The Department of Aging.

(C) The Department of Drug and Alcohol Programs.

(D) The Department of Health.

(E) The Department of Human Services.

(F) The Department of Labor and Industry.

(G) The Department of Revenue.

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

(A) The Centers for Medicare and Medicaid Services.

(B) The Treasury Department.
(2) Information may be disclosed:

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

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

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

§ 9308. Not an entitlement.

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

§ 9309. Nonliability.

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

   (1) An application for, inquiry concerning, or enrollment or disenrollment in a health insurance policy or government program, including an inquiry regarding eligibility for enrollment or eligibility for a government program, relevant to health insurance available through an
exchange or health care coverage or other benefits through a government program.

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

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

§ 9310. Audits.

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

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

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

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

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

(i) The audit.

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

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

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

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

§ 9311. Reports.

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

(1) Electronically transmit the report to:

(i) The Governor.

(ii) The President pro tempore of the Senate.

(iii) The Minority Leader of the Senate.

(iv) The Speaker of the House of Representatives.

(v) The Minority Leader of the House of Representatives.

(vi) The chair and minority chair of:

(A) The Appropriations Committee of the Senate.

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

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

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

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

(F) The Health Committee of the House of Representatives.

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

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

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

§ 9312. Exchange fund.

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

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

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

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

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

(4) All accrued and future earnings from money invested by the exchange authority and other accrued and future earnings from nonappropriated money, including, but not limited to, money obtained from the Federal Government and fees, shall be available to the exchange authority and shall be deposited into the State Treasury and may be utilized at the discretion of the board for carrying out any of the
corporate purposes of the exchange authority.

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

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

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

§ 9313. Federal guidance.

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

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

(2) interim State guidelines consistent with this chapter.

§ 9314. Expiration.

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

CHAPTER 95
REINSURANCE PROGRAM

Sec.

9501. Application.

9502. Implementation of waiver and establishment of reinsurance

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§ 9501. Application.

(a) Application.--The department is authorized to apply to the United States Secretary of Health and Human Services under section 1332 of the Affordable Care Act for a state innovation waiver to:

(1) Waive any applicable provisions of the Affordable Care Act with respect to health insurance coverage in this Commonwealth.

(2) Establish a reinsurance program in accordance with an approved waiver.

(3) Maximize Federal funding for the reinsurance program for plan years beginning on or after implementation of the program.

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

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

(d) Notification.--The department shall notify the chair and minority chair of the Appropriations Committee of the Senate, the chair and minority chair of the Appropriations Committee of the House of Representatives, the chair and minority chair of the Banking and Insurance Committee of the Senate and the chair and minority chair of the Insurance Committee of the House of Representatives promptly of any amendment to the waiver application and of any Federal actions regarding the waiver application.

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

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

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

(c) Operation.--Operation of a reinsurance program shall be
contingent on Federal approval of the waiver application
submitted pursuant to section 9501 (relating to application).
§ 9503. Administration and operation of reinsurance program.
   (a) General rule.--The department shall take all actions
necessary to administer the approved reinsurance program in a
manner consistent with applicable Federal and State law.
   (b) Functions.--The department shall perform all functions
necessary and appropriate to carry out the operation of the
reinsurance program and to effectuate the purposes for which the
reinsurance program is organized, in accordance with the
approved waiver. The functions include:
      (1) Establishing procedures for and performing
administrative and accounting operations of the reinsurance
program.
      (2) Seeking and receiving funding for the reinsurance
program and to maximize Federal funding for the reinsurance
program, including from:
         (i) The exchange authority.
         (ii) Federal funding that is or becomes available to
states to support administration and implementation of
state-based reinsurance programs.
         (iii) Other available sources.
      (3) Collecting data submissions and reinsurance payment
requests by eligible insurers.
      (4) Making reinsurance payments to eligible insurers.
      (5) Resolving disputes related to the amount of
reinsurance payments.
      (6) Suing or being sued, including taking any legal
action necessary or proper for the recovery of money for
reinsurance payments.
(7) Submitting invoices or other requests for money as may be necessary and appropriate under the innovation waiver.

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

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

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

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

§ 9504. Reinsurance parameters.

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

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

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

(2) With respect to the individual market:

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

(ii) Stabilize or reduce premium rates.

(iii) Increase participation.

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

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

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

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

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

§ 9505. Insurer eligibility and duties.

(a) Eligibility for payment.—An insurer shall be eligible
for a reinsurance payment if:

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

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

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

(4) THE ELIGIBLE INSURER PARTICIPATED IN THE EXCHANGE, OR IS AFFILIATED WITH AN ENTITY THAT PARTICIPATED IN THE EXCHANGE, IN THE BENEFIT YEAR IN WHICH THE CLAIMS COSTS FOR WHICH A REINSURANCE PAYMENT IS SOUGHT WERE INCURRED.

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

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

(d) Consideration for rate filings.--In a rate filing for a health insurance policy to be offered through the exchange, the impact of reinsurance payments under this chapter shall be
identified.

    (e) Limitation.--The calculation of reinsurance payments due
to an eligible insurer shall be net of all other available
insurance payments applicable to a claim, including insurance
accessible through subrogation or coordination of benefits.

§ 9506. Payment of coverage and administrative costs.

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

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

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

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

    (c) Request for review.--An insurer that is aggrieved by a
determination of the department relating to the amount of
reinsurance payments due to the insurer may file a request for
administrative review of the decision. The procedures and
requirements of 2 Pa.C.S. Ch. 5 Subch. A (relating to practice
and procedure of Commonwealth agencies) shall apply to requests
for review filed under this section. Notwithstanding otherwise
applicable time limitations, in order to permit timely
finalization of rates for the open enrollment period for the
exchange, a challenge to the department's determination of the
attachment point, reinsurance cap and coinsurance rate published
in the Pennsylvania Bulletin under section 9504(c) (relating to
reinsurance parameters) must be made within 10 business days of
§ 9507. Not an entitlement.

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

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

§ 9508. Annual audit.

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

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

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

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

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

(i) The audit.

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

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

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

§ 9509. Annual report of operations.

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

(1) Money deposited into the Reinsurance Fund.

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

(3) Reinsurance payments made to eligible insurers.

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

(b) Distribution of report.--The department shall:

(1) Electronically transmit the report under subsection (a) to:

(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.
(v) The chair and minority chair of the
Appropriations Committee of the Senate and the chair and
minority chair of the Appropriations Committee of the
House of Representatives.

(vi) The chair and minority chair of the Banking and
Insurance Committee of the Senate and the chair and
minority chair of the Insurance Committee of the House of
Representatives.

(2) Post the report under subsection (a) on the
department's publicly accessible Internet website.

§ 9510. Reinsurance Fund.

(a) Establishment and administration of Reinsurance Fund.--
The Reinsurance Fund is established as a special fund within the
State Treasury. The Reinsurance Fund shall be administered by
the department for the purposes set forth in this chapter,
including the deposit of Federal money and all other money
received pursuant to and disbursements permitted by this
chapter.

(b) Exclusive purpose.--The Reinsurance Fund shall be
dedicated exclusively for the reinsurance program established
under section 9502(b) (relating to implementation of waiver and
establishment of reinsurance program).

(c) Use.--The following apply:

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

(i) Implement and operate the reinsurance program.

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

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

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

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

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

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

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

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

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

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

§ 9511. Procurements within one year.

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

§ 9512. Access to information and records.

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

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

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

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

(4) Monitor costs and revenues associated with the reinsurance program.

(5) Administer the reinsurance program.

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

(b) Time period.--The information and records requested under subsection (a) shall be provided to the department within 30 days of receipt by an insurer of the written request, unless required at an earlier date for department compliance with a request from a Federal or other State agency.
(c) Use.--Information and records provided to the department under subsection (a) may only be used for the purposes specified in subsection (a).

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

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


§ 9513. Confidentiality and information disclosure.

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

(1) shall be confidential;

(2) shall not be subject to subpoena;

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

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

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

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

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

(1) Information shall be shared as follows:

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

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

(iii) Between the department and the exchange
authority.

(2) Information may be disclosed as follows:

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

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

(d) Construction.--Nothing in this section shall be
construed to prohibit the department from accessing the
information reasonably required to carry out its
responsibilities in accordance with law.
(a) General rule.--Except as provided in subsection (b), the department, a Commonwealth agency or person or entity under contract with the department for the reinsurance program, or an authorized representative, agent or employee of any of them may not be subject to civil or criminal liability and no cause of action of any nature shall arise for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under this chapter, or for the reasonable and good faith use of any information pertaining to the reinsurance program.

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

§ 9515. Regulation of insurers.
Nothing in this chapter shall be construed to limit or supersede the regulatory authority vested with the department to regulate the business of insurance within this Commonwealth, including health insurance policies offered on or off the exchange.

§ 9516. Expiration.
Upon publication of the notice under section 9703(b) (relating to action by commissioner), the department shall initiate steps to cease operation of the reinsurance program and shall cease operation of the reinsurance program no later than 15 months after publication of the notice.
§ 9701. Regulations.

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

(b) Temporary regulations.--The following apply:

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

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

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


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

§ 9702. Enforcement.
(a) General rule.--Upon satisfactory evidence of a violation of this part by an insurer or other person, one or more of the following penalties may be imposed at the commissioner's discretion:

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

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

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

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

(b) Limitation.--

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

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

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

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


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

§ 9703. Action by commissioner.

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

(1) The Congress of the United States repeals or defunds, in whole or in part, the Affordable Care Act in a manner that renders impossible to perform the duties of the exchange authority established under Chapter 93 (relating to State-based Exchange) or the reinsurance program established under Chapter 95 (relating to reinsurance program).

(2) A court of the United States with competent jurisdiction invalidates, in whole or in part, the Affordable Care Act in a manner that renders impossible to perform the duties of the exchange authority established under Chapter 93 or the reinsurance program established under Chapter 95.

(3) The Executive Branch of the United States repeals or defunds, in whole or in part, the Affordable Care Act and its subsequent regulations in a manner that renders impossible to perform the duties of the exchange authority established under Chapter 93 or the reinsurance program established under Chapter 95.

(b) Notice.--If this part sunsets pursuant to subsection (a), the commissioner shall transmit notice of that action to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.
Section 2. This act shall take effect immediately.