

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 560 Session of
1993

INTRODUCED BY TRICH, DeWEESE, RICHARDSON, VEON, ITKIN,
STEIGHNER, BELARDI, TANGRETTI, DeLUCA, SCRIMENTI, ROBINSON,
BELFANTI, DALEY, FLICK, JOSEPHS, BLAUM, CARONE, JAROLIN,
MIHALICH, PESCI, TRELLO, CLARK, WOGAN, RITTER, STURLA, MELIO,
STEELMAN, FREEMAN, LaGROTTA, HANNA, D. R. WRIGHT, MUNDY,
CAPPABIANCA, LAUGHLIN, PISTELLA, WILLIAMS, KIRKLAND, WOZNIAK,
HUGHES AND CURRY, MARCH 15, 1993

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, MARCH 15, 1993

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employees in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employees of certain departments, boards and
20 commissions shall be determined," imposing additional powers
21 and duties on the Office of Consumer Advocate relating to
22 rates and proceedings affecting health insurance; requiring
23 health insurers to pay certain assessments; and imposing
24 additional powers and duties on the Insurance Department.

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

Section 1. Section 901-A of the act of April 9, 1929
(P.L.177, No.175), known as The Administrative Code of 1929,
added July 9, 1976 (P.L.903, No.161), is amended to read:

Section 901-A. Definitions.--As used in this article:

"Commission" means the Pennsylvania Public Utility
Commission.

"Consumer" means any person (i) who makes a direct use or is
the ultimate recipient of a product or a service supplied by any
person or public utility subject to the authority of the
commission or (ii) who may be a direct user or ultimate
recipient of a product or service supplied by any person or
public utility subject to the authority of the commission and
may be affected in any way by any action within the authority of
the commission or (iii) who is an individual covered by a health
insurance policy in this Commonwealth. The term "consumer"
includes any "person," "corporation" or "municipal corporation"
as defined in section 2 of the act of May 28, 1937 (P.L.1053,
No.286), known as the "Public Utility Law."

"Department" means the Insurance Department of the
Commonwealth and includes the Insurance Commissioner of the
Commonwealth.

"Health insurance policy" means any health insurance policy,
contract or plan, whether individual or group, which provides
medical coverage on an expense incurred, service or prepaid
basis. The term includes the following:

(1) A health insurance policy or contract issued by a
nonprofit corporation subject to 40 Pa.C.S. Chs. 61 (relating to
hospital plan corporations), 63 (relating to professional health
services plan corporations) and 65 (relating to fraternal
benefit societies).

1 (2) A health service plan operating under the act of
2 December 29, 1972 (P.L.1701, No.364), known as the "Health
3 Maintenance Organization Act."

4 "Health insurer" means any company, association or exchange
5 as such terms are defined in section 101 of the act of May 17,
6 1921 (P.L.789, No.285), known as "The Insurance Department Act
7 of one thousand nine hundred and twenty-one," and any
8 corporation, society or organization or plan that issues a
9 health insurance policy in this Commonwealth.

10 "Public utility" means public utility as defined in section
11 2(17), act of May 28, 1937 (P.L.1053, No.286), known as the
12 "Public Utility Law."

13 Section 2. Section 902-A of the act, added July 9, 1976
14 (P.L.903, No.161) and repealed in part October 15, 1980
15 (P.L.950, No.164), is amended to read:

16 Section 902-A. Office of Consumer Advocate.--(a) There is
17 hereby established within the Department of Justice an Office of
18 Consumer Advocate to represent the interest of consumers before
19 the Pennsylvania Public Utility Commission and the Insurance
20 Department.

21 (b) The Consumer Advocate shall be a person who by reason of
22 training, experience and attainment is qualified to represent
23 the interest of consumers. Compensation shall be set by the
24 Executive Board.

25 (c) No individual who serves as a Consumer Advocate shall,
26 while serving in such position, engage in any business,
27 vocation, other employment, or have other interests,
28 inconsistent with his official responsibilities, nor shall he
29 seek or accept employment nor render beneficial services for
30 compensation with (i) any "person" or "corporation," as defined

1 in section 2 of the act of May 28, 1937 (P.L.1053, No.286),
2 known as the "Public Utility Law," subject to the authority of
3 the commission or (ii) any health insurer subject to the
4 authority of his office during the tenure of the appointment and
5 for a period of two years after the appointment is served or
6 terminated.

7 (d) Any individual who is appointed to the position of
8 Consumer Advocate shall not seek election nor accept appointment
9 to any political office during the tenure as Consumer Advocate
10 and for a period of two years after the appointment is served or
11 terminated.

12 Section 3. Section 904-A(c) of the act, added July 9, 1976
13 (P.L.903, No.161), is amended and the section is amended by
14 adding a subsection to read:

15 Section 904-A. Powers and Duties of the Consumer Advocate.--

16 * * *

17 (a.2) The Office of Consumer Advocate may assess the impact
18 of insurance rates, rules and forms related to health insurance
19 on consumers in Pennsylvania and, in its own name, shall act as
20 an advocate of positions that are most advantageous to a
21 substantial number of health insurance consumers as determined
22 by the Consumer Advocate. The Consumer Advocate is further
23 authorized to represent the interests of individual consumers in
24 such instances where the Consumer Advocate determines that a
25 significant issue of law is raised or that the individual's
26 situation is representative of situations faced by a significant
27 number of insured individuals. The Consumer Advocate may appear
28 or intervene as a matter of right before the Insurance
29 Department or the Insurance Commissioner as a party or otherwise
30 on behalf of individual health insurance consumers or a group of

1 consumers in matters involving rates, rules and forms affecting
2 health insurance.

3 * * *

4 (c) In addition to any other authority conferred upon him by
5 this act, the Consumer Advocate is authorized to represent an
6 interest of consumers which is presented to him for his
7 consideration upon petition in writing by a substantial number
8 of persons, who make direct use or are ultimate recipients of a
9 product or service supplied by a person, corporation, or
10 municipal corporation subject to regulation by the commission.
11 The Consumer Advocate is further authorized to represent an
12 interest of consumers which is presented to him for his
13 consideration upon petition in writing by a substantial number
14 of persons covered by a health insurance policy in this
15 Commonwealth. The Consumer Advocate shall notify the principal
16 sponsors of any such petition within a reasonable time after
17 receipt of any such petition of the action taken or intended to
18 be taken by him with respect to the interest of consumers
19 presented in such petition. If the Consumer Advocate declines or
20 is unable to represent such interest, he shall notify such
21 sponsors and shall state his reasons therefor.

22 * * *

23 Section 4. The act is amended by adding sections to read:

24 Section 904-A.2. Assessments upon Health Insurers.--(a)

25 Definitions.--As used in this section:

26 "Doing business" means the performance of any of the
27 following acts:

28 (1) the issuance or delivery of contracts of health
29 insurance to persons resident in this Commonwealth;

30 (2) the solicitation of applications for contracts of health

insurance or other negotiations preliminary to execution of these contracts;

(3) the collection of premiums, membership fees, assessments or other consideration for these contracts; or

(4) the transaction of matters subsequent to execution of these contracts and arising out of them.

"Gross premiums" means premiums, premium deposits or assessments received by any insurance company, whether received in money or in the form of notes, credits or any other substitutes for money, and whether collected in this Commonwealth or elsewhere. Gross premiums shall not include (i) amounts returned on policies canceled or not taken or (ii) premiums received for reinsurance.

(b) For the purpose of providing additional funds necessary to carry out the powers of the Consumer Advocate with regard to health insurance, every health insurer doing business in this Commonwealth shall pay annually into the restricted revenue account of the Office of Consumer Advocate within the Office of Attorney General their allocated proportion so that the amount contributed from all health insurers totals two hundred fifty thousand dollars (\$250,000). To determine the amount each health insurer shall provide to reach this total, the following procedure shall be used:

(1) By April 1 of each year, the Insurance Department shall determine the cumulative amount of health insurance policy gross premiums of all health insurers doing business in this Commonwealth during the previous calendar year. The Insurance Department shall then compute the percentage that each health insurer's health insurance policy gross premiums bear to the Statewide total and transmit that data to the Department of

1 Revenue. Before April 30 of each year, the Department of Revenue
2 shall assess each health insurer that percentage of two hundred
3 fifty thousand dollars (\$250,000) to fund this act.

4 (2) The amount of each assessment shall become due within
5 thirty (30) days after receipt by the health insurer of notice
6 given by registered or certified mail and after the due date
7 shall accrue interest, which shall be the average rate of
8 interest specified for residential mortgage lending by the
9 Secretary of Banking pursuant to the act of January 30, 1974
10 (P.L.13, No.6), referred to as the Loan Interest and Protection
11 Law.

12 (3) Within fifteen (15) days after receipt of the notice,
13 the health insurer against which the assessment has been made
14 may file with the Insurance Department objections setting out in
15 detail the grounds upon which the health insurer regards the
16 assessment to be excessive, erroneous, unlawful or invalid.

17 (4) The Insurance Department, after notice to the health
18 insurer and the Consumer Advocate, shall hold a hearing upon the
19 objections, at which representatives of both the health insurer
20 and the Consumer Advocate may appear. After the hearing, the
21 Insurance Department shall record its findings on the objections
22 and shall transmit to both the health insurer and the Consumer
23 Advocate, by registered or certified mail, notice of the amount,
24 if any, charged against the health insurer in accordance with
25 the findings which amount then due shall be paid by the health
26 insurer within ten (10) days after receipt of the findings of
27 the Insurance Commissioner with respect to the objections.

28 (c) If any payment prescribed by this section is not made,
29 the Insurance Commissioner may suspend or revoke the license of
30 the offending health insurer, and the Consumer Advocate may

1 institute an appropriate action at law for the amount lawfully
2 assessed plus interest from the due date, which shall be the
3 average rate of interest specified for residential mortgage
4 lending by the Secretary of Banking, pursuant to the Loan
5 Interest and Protection Law, together with any additional costs
6 incurred by the Consumer Advocate or by virtue of the failure to
7 pay.

8 Section 905-A.1. Duties of the Department.--In dealing with
9 any proposed action which may substantially affect the interest
10 of consumers, including, but not limited to, a proposed change
11 of rates and the adoption of rules and forms affecting health
12 insurance, the department shall:

13 (1) Notify the Consumer Advocate when notice of the proposed
14 action is given to the public or at a time fixed by agreement
15 between the Consumer Advocate and the department in a manner to
16 assure the Consumer Advocate reasonable notice and adequate time
17 to determine whether to intervene in the matter.

18 (2) Consistent with its other statutory responsibilities,
19 take the action with due consideration to the interest of
20 consumers.

21 Section 905-A.2. Duties of the Health Insurer.--(a) It
22 shall be the responsibility of the health insurer to provide
23 copies of all documents filed with the department to the Office
24 of Consumer Advocate. The department shall not accept a document
25 as timely filed unless the document has also been filed with the
26 Office of Consumer Advocate.

27 (b) Nothing contained in this article shall be construed to
28 impair the statutory authority or responsibility of the
29 department to regulate health insurers in the public interest.

30 Section 5. This act shall take effect in 60 days.