

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 112 Session of  
2007

INTRODUCED BY EACHUS, MUNDY AND CALTAGIRONE, JANUARY 30, 2007

SENATOR D. WHITE, BANKING AND INSURANCE, IN SENATE, AS AMENDED,  
MAY 2, 2007

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An  
2 act relating to insurance; amending, revising, and  
3 consolidating the law providing for the incorporation of  
4 insurance companies, and the regulation, supervision, and  
5 protection of home and foreign insurance companies, Lloyds  
6 associations, reciprocal and inter-insurance exchanges, and  
7 fire insurance rating bureaus, and the regulation and  
8 supervision of insurance carried by such companies,  
9 associations, and exchanges, including insurance carried by  
10 the State Workmen's Insurance Fund; providing penalties; and  
11 repealing existing laws," further providing for effect of act  
12 on existing laws and, in insurance holding companies, for  
13 definitions; ~~providing for the Insurance Restructuring~~ <—  
14 ~~Executive Board and for Insurance Restructuring Executive~~  
15 ~~Board approval; further providing,~~ for acquisition of control <—  
16 of or merger with domestic insurer and for acquisitions  
17 involving insurers not otherwise covered; ESTABLISHING THE <—  
18 INSURANCE RESTRUCTURING BOARD; PROVIDING FOR ITS POWERS AND  
19 DUTIES; and making an inconsistent repeal.

20 The General Assembly of the Commonwealth of Pennsylvania

21 hereby enacts as follows:

22 Section 1. Section 108 of the act of May 17, 1921 (P.L.682,  
23 No.284), known as The Insurance Company Law of 1921, is amended  
24 to read:

25 Section 108. Effect of Act on Existing Laws.--The provisions

1 of this act, so far as they are the same as those of existing  
2 laws, shall be construed as a continuation of such laws and not  
3 as new enactments. The repeal by this act of any provision of  
4 law shall not revive any law heretofore repealed or superseded,  
5 nor shall such repeal affect any act done, liability incurred,  
6 or any right accrued or vested, or any suit or prosecution  
7 pending or to be instituted to enforce any right or penalty or  
8 punish any offense under the authority of the repealed laws. The  
9 provisions of this act shall not limit the jurisdiction and  
10 authority of the Office of Attorney General, including, but not  
11 limited to, the jurisdiction and authority granted pursuant to  
12 the act of October 15, 1980 (P.L.950, No.164), known as the  
13 "Commonwealth Attorneys Act."

14 Section 2. The definitions of "insurer" and "person" in  
15 section 1401 of the act, amended December 20, 2000 (P.L.967,  
16 No.132), are amended and the section is amended by adding a  
17 definition to read:

18 Section 1401. Definitions.--As used in this article, and for  
19 the purposes of this article only, the following words and  
20 phrases shall have the meanings given to them in this section:

21 \* \* \*

22 "Insurer." Any health maintenance organization, preferred  
23 provider organization, company, association [or], exchange,  
24 hospital plan corporation subject to 40 Pa.C.S. Ch. 61 (relating  
25 to hospital plan corporations) or professional health services  
26 plan corporation subject to 40 Pa.C.S. Ch. 63 (relating to  
27 professional health services plan corporations), authorized by  
28 the Insurance Commissioner to transact the business of insurance  
29 in this Commonwealth except that the term shall not include:

30 (1) the Commonwealth or any agency or instrumentality

1 thereof;

2 (2) agencies, authorities or instrumentalities of the United  
3 States, its possessions and territories, the Commonwealth of  
4 Puerto Rico, the District of Columbia or a state or political  
5 subdivision; or

6 (3) fraternal benefit societies[; or

7 (4) nonprofit medical and hospital service associations].

8 \* \* \*

9 "Person." An individual, an insurer, a corporation, a  
10 partnership, a limited liability company, an association, a  
11 joint stock company, a trust, an unincorporated organization,  
12 any similar entity or any combination of the foregoing acting in  
13 concert. The term shall not include any joint venture  
14 partnership exclusively engaged in owning, managing, leasing or  
15 developing real or tangible personal property.

16 \* \* \*

17 "Shareholder." A record holder or record owner of shares of  
18 an insurer.

19 (1) The term shall include all of the following:

20 (i) A member of an insurer that is a domestic  
21 nonstock corporation under 15 Pa.C.S. Ch. 21 (relating to  
22 nonstock corporations) or a prior statute.

23 (ii) A member, as defined in 15 Pa.C.S. § 5103  
24 (relating to definitions), of an insurer that is a  
25 domestic nonprofit corporation under 15 Pa.C.S. Ch. 51  
26 (relating to general provisions) or a prior statute.

27 (iii) A subscriber of an insurer that is a domestic  
28 reciprocal exchange under Article X or a prior statute.

29 (2) The term shall not include any subscriber, insured  
30 or customer of:

1           (i) a hospital plan corporation subject to 40  
2           Pa.C.S. Ch. 61 (relating to hospital plan corporations);  
3           or  
4           (ii) a professional health service plan corporation  
5           subject to 40 Pa.C.S. Ch. 63 (relating to professional  
6           health services plan corporations).

7           \* \* \*

8           Section 3. Section 1402 of the act, amended or added  
9           December 18, 1992 (P.L.1519, No.178) and December 21, 1998  
10          (P.L.1108, No.150), is amended to read:

11          Section 1402. Acquisition of Control of or Merger or  
12          Consolidation with Domestic Insurer.--(a) (1) No person other  
13          than the issuer shall make a tender offer for or a request or  
14          invitation for tenders of, or enter into any agreement to  
15          exchange securities or seek to acquire or acquire in the open  
16          market or otherwise, any voting security of a domestic insurer  
17          if, after the consummation thereof, such person would directly  
18          or indirectly or by conversion or by exercise of any right to  
19          acquire, be in control of such insurer, and no person shall  
20          enter into an agreement to merge or consolidate with or  
21          otherwise to acquire control of a domestic insurer or any person  
22          controlling a domestic insurer unless, at the time any such  
23          offer, request or invitation is made or any such agreement is  
24          entered into or prior to the acquisition of such securities if  
25          no offer or agreement is involved, such person has filed with  
26          the department and has sent to such insurer a statement  
27          containing the information required by this section and such  
28          offer, request, invitation, agreement or acquisition has been  
29          approved by the department in the manner hereinafter prescribed.

30          (2) For purposes of this section, a "domestic insurer" shall

1 include any person controlling a domestic insurer unless such  
2 person as determined by the department is either directly or  
3 through its affiliates primarily engaged in business other than  
4 the business of insurance. Such person shall, however, file a  
5 preacquisition notification with the department containing the  
6 information set forth in section 1403(c)(2) thirty (30) days  
7 prior to the proposed effective date of the acquisition. Failure  
8 to file is subject to section 1403(e)(3). For purposes of this  
9 section, "person" shall not include any securities broker  
10 holding, in the usual and customary manner, less than twenty per  
11 centum (20%) of the voting securities of an insurance company or  
12 of any person which controls an insurance company.

13 (b) The statement to be filed with the department under this  
14 section shall be made under oath or affirmation and shall  
15 contain the following information:

16 (1) The name and address of each person by whom or on whose  
17 behalf the merger, consolidation or other acquisition of control  
18 referred to in subsection (a) is to be effected, hereinafter  
19 called "acquiring party," and

20 (i) if such person is an individual, his principal  
21 occupation and all offices and positions held during the past  
22 five (5) years, and any conviction of crimes other than minor  
23 traffic violations during the past ten (10) years; or

24 (ii) if such person is not an individual, a report of the  
25 nature of its business operations during the past five (5) years  
26 or for such lesser period as the person and any predecessors  
27 thereof shall have been in existence; an informative description  
28 of the business intended to be done by the person and the  
29 person's subsidiaries; and a list of all individuals who are or  
30 who have been selected to become directors or executive officers

1 of the person, or who perform or will perform functions  
2 appropriate to those positions. This list shall include for each  
3 individual the information required by subparagraph (i).

4 (2) The source, nature and amount of the consideration used  
5 or to be used in effecting the merger, consolidation or other  
6 acquisition of control, a description of any transaction wherein  
7 funds were or are to be obtained for any such purpose, including  
8 any pledge of the insurer's stock or the stock of any of its  
9 subsidiaries or controlling affiliates, and the identity of  
10 persons furnishing such consideration, provided, however, that  
11 where a source of such consideration is a loan made in the  
12 lender's ordinary course of business, the identity of the lender  
13 shall remain confidential if the person filing such statement so  
14 requests.

15 (3) Fully audited financial information as to the earnings  
16 and financial condition of each acquiring party for the  
17 preceding five (5) fiscal years of each such acquiring party, or  
18 for such lesser period as such acquiring party and any  
19 predecessors thereof shall have been in existence, and similar  
20 unaudited information as of a date not earlier than ninety (90)  
21 days prior to the filing of the statement.

22 (4) Any plans or proposals which each acquiring party may  
23 have to liquidate such insurer, to sell its assets or merge or  
24 consolidate it with any person or to make any other material  
25 change in its business or corporate structure or management.

26 (5) The number of shares of any security referred to in  
27 subsection (a) which each acquiring party proposes to acquire,  
28 and the terms of the offer, request, invitation, agreement or  
29 acquisition referred to in subsection (a), and a statement as to  
30 the method by which the fairness of the proposal was arrived.

1 (6) The amount of each class of any security referred to in  
2 subsection (a) which is beneficially owned or concerning which  
3 there is a right to acquire beneficial ownership by each  
4 acquiring party.

5 (7) A full description of any contracts, arrangements or  
6 understandings with respect to any security referred to in  
7 subsection (a) in which any acquiring party is involved,  
8 including, but not limited to, transfer of any of the  
9 securities, joint ventures, loan or option arrangements, puts or  
10 calls, guarantees of loans, guarantees against loss or  
11 guarantees of profits, division of losses or profits, or the  
12 giving or withholding of proxies. Such description shall  
13 identify the persons with whom such contracts, arrangements or  
14 understandings have been entered into.

15 (8) A description of the purchase of any security referred  
16 to in subsection (a) during the twelve calendar months preceding  
17 the filing of the statement, by any acquiring party, including  
18 the dates of purchase, names of the purchasers and consideration  
19 paid or agreed to be paid therefor.

20 (9) A description of any recommendations to purchase any  
21 security referred to in subsection (a) made during the twelve  
22 calendar months preceding the filing of the statement, by any  
23 acquiring party, or by anyone based upon interviews or at the  
24 suggestion of such acquiring party.

25 (10) Copies of all tender offers for, requests or  
26 invitations for tenders of, exchange offers for and agreements  
27 to acquire or exchange any securities referred to in subsection  
28 (a) and, if distributed, of additional soliciting material  
29 relating thereto.

30 (11) The term of any agreement, contract or understanding

1 made with or proposed to be made with any broker-dealer as to  
2 solicitation of securities referred to in subsection (a) for  
3 tender and the amount of any fees, commissions or other  
4 compensation to be paid to broker-dealers with regard thereto.

5 (12) Such additional information as the department may by  
6 rule or regulation prescribe as necessary or appropriate for the  
7 protection of policyholders of the insurer or in the public  
8 interest.

9 (c) If the person required to file the statement referred to  
10 in subsection (a) is a partnership, limited partnership,  
11 syndicate or other group, the department may require that the  
12 information called for by subsection (b)(1) through (12) shall  
13 be given with respect to each partner of such partnership or  
14 limited partnership, each member of such syndicate or group and  
15 each person who controls such partner or member. If any such  
16 partner, member or person is a corporation or the person  
17 required to file the statement referred to in subsection (a) is  
18 a corporation, the department may require that the information  
19 called for by subsection (b)(1) through (12) shall be given with  
20 respect to such corporation, each officer and director of such  
21 corporation and each person who is directly or indirectly the  
22 beneficial owner of more than ten per centum (10%) of the  
23 outstanding voting securities of such corporation.

24 (d) If any material change occurs in the facts set forth in  
25 the statement filed with the department and sent to such insurer  
26 pursuant to this section, an amendment setting forth such  
27 change, together with copies of all documents and other material  
28 relevant to such change, shall be filed with the department and  
29 sent to such insurer within two (2) business days after the  
30 person learns of such change.

1 (e) If any offer, request, invitation, agreement or  
2 acquisition referred to in subsection (a) is proposed to be made  
3 by means of a registration statement under the Securities Act of  
4 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), or in circumstances  
5 requiring the disclosure of similar information under the  
6 Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a  
7 et seq.), or under a State law requiring similar registration or  
8 disclosure, the person required to file the statement referred  
9 to in subsection (a) may utilize such documents in furnishing  
10 the information called for by that statement.

11 (f) (1) The department shall approve any merger,  
12 consolidation or other acquisition of control referred to in  
13 subsection (a) unless it finds any of the following:

14 (i) After the change of control, the domestic insurer  
15 referred to in subsection (a) would not be able to satisfy the  
16 requirements for the issuance of a license to write the line or  
17 lines of insurance for which it is presently licensed.

18 (ii) The effect of the merger, consolidation or other  
19 acquisition of control would be to substantially lessen  
20 competition in insurance in this Commonwealth or tend to create  
21 a monopoly therein. In applying the competitive standard in this  
22 subparagraph:

23 (A) the informational requirements of section 1403(c)(2) and  
24 the standards of section 1403(d)(2) shall apply;

25 (B) the merger, consolidation or other acquisition shall not  
26 be disapproved if the department finds that any of the  
27 situations meeting the criteria provided by section 1403(d)(3)  
28 exist; and

29 (C) the department may condition the approval of the merger,  
30 consolidation or other acquisition on the removal of the basis

1 of disapproval within a specified period of time.

2 (iii) The financial condition of any acquiring party is such  
3 as might jeopardize the financial stability of the insurer or  
4 prejudice the interest of its policyholders.

5 (iv) The plans or proposals which the acquiring party has to  
6 liquidate the insurer, sell its assets or consolidate or merge  
7 it with any person, or to make any other material change in its  
8 business or corporate structure or management, are unfair and  
9 unreasonable to policyholders of the insurer and not in the  
10 public interest.

11 (v) The competence, experience and integrity of those  
12 persons who would control the operation of the insurer are such  
13 that it would not be in the interest of policyholders of the  
14 insurer and of the public to permit the merger, consolidation or  
15 other acquisition of control.

16 (vi) The acquisition is likely to be hazardous or  
17 prejudicial to the insurance buying public.

18 (vii) The merger, consolidation or other acquisition of  
19 control is not in compliance with the laws of this Commonwealth,  
20 including Article VIII-A.

21 (2) If the merger, consolidation or other acquisition of  
22 control is approved, the department shall so notify the person  
23 filing the statement and the insurer [whose stock] that is  
24 proposed to be acquired, and such a determination is hereafter  
25 referred to as an approving determination. Notice shall also be  
26 given by the department of any determination which is not an  
27 approving determination. If an approving determination is made  
28 by the department and not otherwise, the proposed offer and  
29 acquisition may thereafter be made and consummated on the terms  
30 and conditions and in the manner described in the statement and

1 subject to such conditions as may be prescribed by the  
2 department as hereinafter provided. An approving determination  
3 by the department shall be deemed to extend to offers or  
4 acquisitions made pursuant thereto within one year following the  
5 date of determination. The department may, as a condition of its  
6 approving determination, require the inclusion in any offer of  
7 provisions requiring the offer to remain open a specified  
8 minimum length of time, permitting withdrawal of shares  
9 deposited prior to the time the offeror becomes bound to  
10 consummate the acquisition and requiring pro rata acceptance of  
11 any shares deposited pursuant to the offer. The department shall  
12 hold a hearing before making the determination required by this  
13 subsection if, within ten (10) days following the filing with  
14 the department of the statement, written request for the holding  
15 of such hearing is made either by the person proposing to make  
16 the acquisition, by the insurer [whose stock] that is proposed  
17 to be acquired or, if [such] the issuer of stock proposed to be  
18 acquired is not an insurer, by the [insurance company] insurer  
19 controlled by such issuer. Otherwise, the department shall  
20 determine in its discretion whether such a hearing shall be  
21 held. Thirty (30) days' notice of any such hearing shall be  
22 given to the person proposing to make the acquisition, to the  
23 issuer whose stock is proposed to be acquired and, if such  
24 issuer is not an insurer, to the insurance company controlled by  
25 such issuer. Notice of any such hearing shall also be given to  
26 such other persons, if any, as the department may determine.

27 (3) The department may retain at the acquiring person's  
28 expense any attorneys, actuaries, accountants and other experts  
29 not otherwise a part of the department's staff as may be  
30 reasonably necessary to assist the department in reviewing the

1 proposed acquisition of control.

2 (g) The provisions of this section shall not apply to any  
3 offer, request, invitation, agreement or acquisition which the  
4 department by order shall exempt therefrom as:

5 (1) not having been made or entered into for the purpose and  
6 not having the effect of changing or influencing the control of  
7 a domestic insurer; or

8 (2) as otherwise not comprehended within the purposes of  
9 this section.

10 (h) The following shall constitute a violation of this  
11 section:

12 (1) the failure to file any statement, amendment or other  
13 material required to be filed pursuant to subsection (a) or (b);

14 (2) the effectuation or any attempt to effectuate an  
15 acquisition of control of or merger or consolidation with a  
16 domestic insurer unless the department has given its approval  
17 thereto; or

18 (3) a violation of section 819-A.

19 (i) The department shall, within seventy-two hours of  
20 receiving a statement filed under this section, provide  
21 notification to the Office of Attorney General that the filing  
22 was received.

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

24 ~~Section 1402.1. Insurance Restructuring Executive Board.~~

25 ~~(a) The Insurance Restructuring Executive Board is established~~  
26 ~~and shall be composed of the following members:~~

27 ~~(1) The Attorney General or a designee.~~

28 ~~(2) The Governor or a designee.~~

29 ~~(3) The Secretary of Health or a designee.~~

30 ~~(4) The Secretary of Public Welfare or a designee.~~

~~(5) The Majority Leader of the Senate or a designee.~~

~~(6) The Minority Leader of the Senate or a designee.~~

~~(7) The Majority Leader of the House of Representatives or a designee.~~

~~(8) The Minority Leader of the House of Representatives or a designee.~~

~~(b) The members shall select from among themselves a chairperson and such officers as they shall determine.~~

~~(c) The board shall meet at the call of the chairperson.~~

~~(d) Three quarters of the members of the board shall constitute a quorum. All business of the board shall be conducted by a quorum of the board, except as provided under subsection (g)(2).~~

~~(e) The members of the board shall be entitled to no compensation for their services as members of the board but shall be entitled to reimbursement for all necessary and reasonable expenses incurred in connection with the performance of their duties as members of the board.~~

~~(f) The members of the board shall stand in a fiduciary relationship with the Commonwealth.~~

~~(g) The board shall have the following powers and duties:~~

~~(1) To hold at least one public hearing on the merger, consolidation or other acquisition of control of a hospital plan corporation or professional health services plan corporation at which the commissioner shall present the commissioner's findings concerning the merger, consolidation or other acquisition of control to the executive board.~~

~~(2) To make written recommendations to the commissioner. Recommendations under this paragraph shall be approved by at least six members of the board.~~

1 ~~Section 1402.2. Insurance Restructuring Executive Board~~  
2 ~~Approval. (a) On or after the effective date of this section,~~  
3 ~~the commissioner shall, prior to approving the merger,~~  
4 ~~consolidation or other acquisition of control of a hospital plan~~  
5 ~~corporation or professional health services plan corporation,~~  
6 ~~present findings and recommendations on the merger,~~  
7 ~~consolidation or other acquisition of control to the Insurance~~  
8 ~~Restructuring Executive Board.~~

9 ~~(b) The commissioner shall not approve the merger,~~  
10 ~~consolidation or other acquisition of control of a hospital plan~~  
11 ~~corporation or professional health services plan corporation~~  
12 ~~without a prior written recommendation of the board authorizing~~  
13 ~~approval by the commissioner.~~

14 Section 5 4. Section 1403(a), (b) and (d), added December ←  
15 18, 1992 (P.L.1519, No.178), are amended to read:

16 Section 1403. Acquisitions Involving Insurers not Otherwise  
17 Covered.--(a) As used in this section the following words and  
18 phrases shall have the meanings given to them in this  
19 subsection:

20 "Acquisition." Any agreement, arrangement or activity the  
21 consummation of which results in a person acquiring, directly or  
22 indirectly, the control of another person and includes, but is  
23 not limited to, the acquisition of voting securities, the  
24 acquisition of assets, bulk reinsurance [and], mergers and  
25 consolidations.

26 "Involved insurer." Includes an insurer which either  
27 acquires or is acquired, is affiliated with an acquirer or  
28 acquired or is the result of a merger or consolidation.

29 (b) (1) Except as exempted in paragraph (2), this section  
30 applies to any acquisition in which there is a change in control

1 of an insurer authorized to do business in this Commonwealth.

2 (2) This section shall not apply to any of the following:

3 (i) An acquisition subject to approval or disapproval by the  
4 department pursuant to section 1402.

5 (ii) A purchase of securities solely for investment purposes  
6 so long as such securities are not used by voting or otherwise  
7 to cause or attempt to cause the substantial lessening of  
8 competition in any insurance market in this Commonwealth. If a  
9 purchase of securities results in a presumption of control as  
10 described in the definition of "control" in section [1301] 1401,  
11 it is not solely for investment purposes unless the insurance  
12 department of the insurer's state of domicile accepts a  
13 disclaimer of control or affirmatively finds that control does  
14 not exist and such disclaimer action or affirmative finding is  
15 communicated by the domiciliary insurance department to the  
16 Insurance Department of the Commonwealth.

17 (iii) The acquisition of a person by another person when  
18 both persons are neither directly nor through affiliates  
19 primarily engaged in the business of insurance, if  
20 preacquisition notification is filed with the department in  
21 accordance with subsection (c)(2) thirty (30) days prior to the  
22 proposed effective date of the acquisition. However, such  
23 preacquisition notification is not required for exclusion from  
24 this section if the acquisition would otherwise be excluded from  
25 this section by this paragraph.

26 (iv) The acquisition of already affiliated persons.

27 (v) An acquisition if, as an immediate result of the  
28 acquisition:

29 (A) in no market would the combined market share of the  
30 involved insurers exceed five per centum (5%) of the total

1 market;

2 (B) there would be no increase in any market share; or

3 (C) in no market would:

4 (I) the combined market share of the involved insurers  
5 exceeds twelve per centum (12%) of the total market; and

6 (II) the market share increases by more than two per centum  
7 (2%) of the total market.

8 For the purpose of this subparagraph, a market means direct  
9 written insurance premium in this Commonwealth for a line of  
10 business as contained in the annual statement required to be  
11 filed by insurers licensed to do business in this Commonwealth.

12 (vi) An acquisition for which a preacquisition notification  
13 would be required pursuant to this section due solely to the  
14 resulting effect on the ocean marine insurance line of business.

15 (vii) An acquisition of an insurer whose domiciliary  
16 insurance department affirmatively finds that such insurer is in  
17 failing condition; there is a lack of feasible alternative to  
18 improving such condition; the public benefits of improving such  
19 insurer's condition through the acquisition exceed the public  
20 benefits that would arise from not lessening competition; and  
21 such findings are communicated by the domiciliary insurance  
22 department to the Insurance Department of the Commonwealth.

23 (3) Sections 1409(b) and (c) and 1411 shall not apply to  
24 acquisitions provided for in this subsection.

25 \* \* \*

26 (d) (1) The department may enter an order under subsection  
27 (e)(1) with respect to an acquisition if there is substantial  
28 evidence that the effect of the acquisition may be substantially  
29 to lessen competition in any line of insurance in this  
30 Commonwealth or tend to create a monopoly therein or if the

1 insurer fails to file adequate information in compliance with  
2 subsection (c).

3 (2) In determining whether a proposed acquisition would  
4 violate the competitive standard of paragraph (1), the  
5 department shall consider the following:

6 (i) Any acquisition covered under subsection (b) involving  
7 two or more insurers competing in the same market is prima facie  
8 evidence of violation of the competitive standards as follows:

9 (A) if the market is highly concentrated and the involved  
10 insurers possess the following shares of the market:

11	Insurer A	Insurer B
12	4%	4% or more
13	10%	2% or more
14	15%	1% or more; or

15 (B) if the market is not highly concentrated and the  
16 involved insurers possess the following shares of the market:

17	Insurer A	Insurer B
18	5%	5% or more
19	10%	4% or more
20	15%	3% or more
21	19%	1% or more.

22 A highly concentrated market is one in which the share of the  
23 four largest insurers is seventy-five per centum (75%) or more  
24 of the market. Percentages not shown in the tables are  
25 interpolated proportionately to the percentages that are shown.  
26 If more than two insurers are involved, exceeding the total of  
27 the two columns in the table is prima facie evidence of  
28 violation of the competitive standard in paragraph (1). For the  
29 purpose of this subparagraph, the insurer with the largest share  
30 of the market shall be deemed to be insurer A.

1 (ii) There is a significant trend toward increased  
2 concentration when the aggregate market share of any grouping of  
3 the largest insurers in the market, from the two largest to the  
4 eight largest, has increased by seven per centum (7%) or more of  
5 the market over a period of time extending from any base year  
6 five (5) to ten (10) years prior to the acquisition up to the  
7 time of the acquisition. Any acquisition [or merger], merger or  
8 consolidation covered under subsection (b) involving two or more  
9 insurers competing in the same market is prima facie evidence of  
10 violation of the competitive standard in paragraph (1) if:

11 (A) there is a significant trend toward increased  
12 concentration in the market;

13 (B) one of the insurers involved is one of the insurers in a  
14 grouping of such large insurers showing the requisite increase  
15 in the market share; and

16 (C) another involved insurer's market is two per centum (2%)  
17 or more.

18 (iii) For the purposes of this paragraph:

19 (A) The term "insurer" includes any company or group of  
20 companies under common management, ownership or control.

21 (B) The term "market" means the relevant product and  
22 geographical markets. In determining the relevant product and  
23 geographical markets, the department shall give due  
24 consideration to, among other things, the definitions or  
25 guidelines, if any, promulgated by the NAIC and to information,  
26 if any, submitted by parties to the acquisition. In the absence  
27 of sufficient information to the contrary, the relevant product  
28 market is assumed to be the direct written insurance premium for  
29 a line of business, such line being that used in the annual  
30 statement required to be filed by insurers doing business in

1 this Commonwealth and the relevant geographical market is  
2 assumed to be this Commonwealth.

3 (C) The burden of showing prima facie evidence of violation  
4 of the competitive standard rests upon the commissioner.

5 (iv) Even though an acquisition is not prima facie violative  
6 of the competitive standard under subparagraphs (i) and (ii),  
7 the department may establish the requisite anticompetitive  
8 effect based upon other substantial evidence. Even though an  
9 acquisition is prima facie violative of the competitive standard  
10 under subparagraphs (i) and (ii), a party may establish the  
11 absence of the requisite anticompetitive effect based upon other  
12 substantial evidence. Relevant factors in making a determination  
13 under this paragraph include, but are not limited to, the  
14 following: market shares, volatility of ranking of market  
15 leaders, number of competitors, concentration, trend of  
16 concentration in the industry and ease of entry and exit into  
17 the market.

18 (3) [An] EXCEPT FOR A MERGER, CONSOLIDATION OR ACQUISITION ←  
19 OF CONTROL INVOLVING A HOSPITAL PLAN CORPORATION OR PROFESSIONAL  
20 HEALTH SERVICES PLAN CORPORATION, AN order may not be entered  
21 under subsection (e)(1) if:

22 (i) the acquisition will yield substantial economies of  
23 scale or economies in resource utilization that cannot be  
24 feasibly achieved in any other way, and the public benefits  
25 which would arise from such economies exceed the public benefits  
26 which would arise from not lessening competition; or

27 (ii) the acquisition will substantially increase the  
28 availability of insurance, and the public benefits of such  
29 increase exceed the public benefits which would arise from not  
30 lessening competition.

1 \* \* \*

2 SECTION 5. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <—

3 SECTION 1404.1. INSURANCE RESTRUCTURING BOARD.--(A) THE  
4 INSURANCE RESTRUCTURING BOARD IS ESTABLISHED TO REVIEW THE  
5 MERGER, CONSOLIDATION OR OTHER ACQUISITION OF CONTROL OF A  
6 HOSPITAL PLAN CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN  
7 CORPORATION.

8 (B) THE BOARD SHALL CONSIST OF THE FOLLOWING MEMBERS:

9 (1) THE ATTORNEY GENERAL OR A DESIGNEE.

10 (2) THE AUDITOR GENERAL OR A DESIGNEE.

11 (3) THE SECRETARY OF PUBLIC WELFARE OR A DESIGNEE.

12 (4) THE SECRETARY OF HEALTH OR A DESIGNEE.

13 (5) THE MAJORITY LEADER OF THE SENATE OR A DESIGNEE.

14 (6) THE MINORITY LEADER OF THE SENATE OR A DESIGNEE.

15 (7) THE MAJORITY LEADER OF THE HOUSE OF REPRESENTATIVES OR A  
16 DESIGNEE.

17 (8) THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES OR A  
18 DESIGNEE.

19 (9) A MEMBER OF THE GENERAL PUBLIC WHO IS A POLICY HOLDER OF  
20 A HOSPITAL PLAN CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN  
21 CORPORATION APPOINTED BY THE GOVERNOR.

22 (C) A MAJORITY OF THE MEMBERS OF THE BOARD SHALL SELECT A  
23 CHAIRPERSON AND OTHER OFFICERS AS THEY SHALL DETERMINE.

24 (D) THE BOARD SHALL MEET AT LEAST FOUR TIMES ANNUALLY.  
25 ADDITIONAL MEETINGS SHALL BE HELD AT THE CALL OF THE CHAIRPERSON  
26 OR ON THE SUBMISSION OF A REQUEST SIGNED BY A MAJORITY OF THE  
27 MEMBERS OF THE BOARD.

28 (E) A MAJORITY OF THE MEMBERS OF THE BOARD SHALL CONSTITUTE  
29 A QUORUM. EXCEPT AS PROVIDED IN SUBSECTION (G) OR (H), ALL  
30 BUSINESS OF THE BOARD SHALL BE CONDUCTED BY A QUORUM.

1       (F) NO MEMBER OF THE BOARD SHALL BE ENTITLED TO COMPENSATION  
2 FOR SERVICES PERFORMED AS A MEMBER OF THE BOARD, BUT SHALL BE  
3 ENTITLED TO REIMBURSEMENT FOR ALL NECESSARY AND REASONABLE  
4 EXPENSES INCURRED IN CONNECTION WITH THE PERFORMANCE OF THE  
5 DUTIES AS A MEMBER OF THE BOARD.

6       (G) THE BOARD SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

7       (1) TO RECEIVE AND REVIEW ALL FILINGS SUBMITTED TO THE  
8 DEPARTMENT RELATING TO THE MERGER, CONSOLIDATION OR OTHER  
9 ACQUISITION OF CONTROL OF A HOSPITAL PLAN CORPORATION OR  
10 PROFESSIONAL HEALTH SERVICES PLAN CORPORATION AND ALL  
11 ACCOMPANYING DATA OR OTHER INFORMATION.

12       (2) TO HOLD AT LEAST ONE PUBLIC HEARING ON A MERGER,  
13 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL OF A HOSPITAL PLAN  
14 CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION AT  
15 WHICH THE DEPARTMENT SHALL PRESENT FINDINGS RELATING TO THE  
16 MERGER, CONSOLIDATION OR OTHER ACQUISITION OF CONTROL.

17       (3) TO MAKE WRITTEN RECOMMENDATIONS TO THE DEPARTMENT.  
18 RECOMMENDATIONS UNDER THIS PARAGRAPH MUST BE APPROVED BY AT  
19 LEAST SEVEN MEMBERS OF THE BOARD.

20       (4) TO APPROVE A FINDING OF THE DEPARTMENT UNDER SUBSECTION  
21 (I).

22       (H) THE DEPARTMENT SHALL PRESENT THE FOLLOWING TO THE BOARD:

23       (1) FINDINGS AND RECOMMENDATIONS ON THE MERGER,  
24 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL TO THE INSURANCE  
25 RESTRUCTURING BOARD, INCLUDING AN ANALYSIS OF WHETHER THE  
26 HOSPITAL PLAN CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN  
27 CORPORATION HAS MET ALL THE REQUIREMENTS OF SECTIONS 1402 AND  
28 1403.

29       (2) A WRITTEN DETERMINATION THAT THE MERGER, CONSOLIDATION  
30 OR OTHER ACQUISITION OF CONTROL IS CONSISTENT WITH THE PUBLIC

1 INTEREST.

2 (I) THE DEPARTMENT SHALL NOT APPROVE THE MERGER,  
3 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL OF A HOSPITAL PLAN  
4 CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION  
5 UNLESS THE BOARD HAS APPROVED THE WRITTEN DETERMINATION OF THE  
6 DEPARTMENT UNDER SUBSECTION (H)(2). THE WRITTEN DETERMINATION  
7 MUST BE APPROVED BY AT LEAST SEVEN MEMBERS OF THE BOARD.

8 Section 6. The act of December 19, 1990 (P.L.834, No.198),  
9 known as the GAA Amendments Act of 1990, is repealed insofar as  
10 it is inconsistent with this act.

11 Section 7. This act shall not apply to any merger,  
12 consolidation or other acquisition of control ~~made~~ COMPLETED or ←  
13 consummated prior to the effective date of this section and, if  
14 required, following the issuance of an approving determination.

15 SECTION 8. THIS ACT SHALL APPLY TO ANY APPLICATION, ←  
16 STATEMENT OR OTHER PLAN OR PROPOSAL RELATING TO A MERGER,  
17 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL FILED WITH THE  
18 INSURANCE DEPARTMENT ON OR AFTER JANUARY 1, 2007.

19 Section & 9. This act shall take effect immediately. ←