
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 112 Session of
2007

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

SENATOR ARMSTRONG, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, MAY 21, 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; ESTABLISHING AN ACCOUNT; PROVIDING FOR HEALTH CARE <—
20 REPORTING; and making an inconsistent repeal.

21 The General Assembly of the Commonwealth of Pennsylvania

22 hereby enacts as follows:

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

1 Section 108. Effect of Act on Existing Laws.--The provisions
2 of this act, so far as they are the same as those of existing
3 laws, shall be construed as a continuation of such laws and not
4 as new enactments. The repeal by this act of any provision of
5 law shall not revive any law heretofore repealed or superseded,
6 nor shall such repeal affect any act done, liability incurred,
7 or any right accrued or vested, or any suit or prosecution
8 pending or to be instituted to enforce any right or penalty or
9 punish any offense under the authority of the repealed laws. The
10 provisions of this act shall not limit the jurisdiction and
11 authority of the Office of Attorney General, including, but not
12 limited to, the jurisdiction and authority granted pursuant to
13 the act of October 15, 1980 (P.L.950, No.164), known as the
14 "Commonwealth Attorneys Act."

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

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

22 * * *

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

1 (1) the Commonwealth or any agency or instrumentality
2 thereof;

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

7 (3) fraternal benefit societies[; or

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

9 * * *

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

17 * * *

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

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

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

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

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

30 (2) The term shall not include any subscriber, insured

1 or customer of:

2 (i) a hospital plan corporation subject to 40
3 Pa.C.S. Ch. 61 (relating to hospital plan corporations);

4 or

5 (ii) a professional health service plan corporation
6 subject to 40 Pa.C.S. Ch. 63 (relating to professional
7 health services plan corporations).

8 * * *

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

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

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

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

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

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

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

1 who have been selected to become directors or executive officers
2 of the person, or who perform or will perform functions
3 appropriate to those positions. This list shall include for each
4 individual the information required by subparagraph (i).

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

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

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

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

1 the method by which the fairness of the proposal was arrived.

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

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

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

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

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

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

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

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

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

1 person learns of such change.

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

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

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

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

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

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

30 (C) the department may condition the approval of the merger,

1 consolidation or other acquisition on the removal of the basis
2 of disapproval within a specified period of time.

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

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

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

17 (vi) The [acquisition] MERGER, CONSOLIDATION OR OTHER ←
18 ACQUISITION OF CONTROL is likely to be hazardous or prejudicial
19 to the insurance buying public.

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

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

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

29 (3) The department may retain at the acquiring person's
30 expense any attorneys, actuaries, accountants and other experts

1 not otherwise a part of the department's staff as may be
2 reasonably necessary to assist the department in reviewing the
3 proposed acquisition of control.

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

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

10 (2) as otherwise not comprehended within the purposes of
11 this section.

12 (h) The following shall constitute a violation of this
13 section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 ~~(2) To make written recommendations to the commissioner.~~

1 ~~Recommendations under this paragraph shall be approved by at~~
2 ~~least six members of the board.~~

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

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

16 Section 5 4. Section 1403(a), (b) and (d), added December <—
17 18, 1992 (P.L.1519, No.178), are amended to read:

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

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

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

1 (b) (1) Except as exempted in paragraph (2), this section
2 applies to any acquisition in which there is a change in control
3 of an insurer authorized to do business in this Commonwealth.

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

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

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

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

28 (iv) The acquisition of already affiliated persons.

29 (v) An acquisition if, as an immediate result of the
30 acquisition:

1 (A) in no market would the combined market share of the
2 involved insurers exceed five per centum (5%) of the total
3 market;

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

5 (C) in no market would:

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

8 (II) the market share increases by more than two per centum
9 (2%) of the total market.

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

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

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

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

27 * * *

28 (d) (1) The department may enter an order under subsection
29 (e)(1) with respect to an acquisition if there is substantial
30 evidence that the effect of the acquisition may be substantially

1 to lessen competition in any line of insurance in this
2 Commonwealth or tend to create a monopoly therein or if the
3 insurer fails to file adequate information in compliance with
4 subsection (c).

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

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

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

13	Insurer A	Insurer B
14	4%	4% or more
15	10%	2% or more
16	15%	1% or more; or

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

19	Insurer A	Insurer B
20	5%	5% or more
21	10%	4% or more
22	15%	3% or more
23	19%	1% or more.

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

1 purpose of this subparagraph, the insurer with the largest share
2 of the market shall be deemed to be insurer A.

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

13 (A) there is a significant trend toward increased
14 concentration in the market;

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

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

20 (iii) For the purposes of this paragraph:

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

23 (B) The term "market" means the relevant product and
24 geographical markets. In determining the relevant product and
25 geographical markets, the department shall give due
26 consideration to, among other things, the definitions or
27 guidelines, if any, promulgated by the NAIC and to information,
28 if any, submitted by parties to the acquisition. In the absence
29 of sufficient information to the contrary, the relevant product
30 market is assumed to be the direct written insurance premium for

1 a line of business, such line being that used in the annual
2 statement required to be filed by insurers doing business in
3 this Commonwealth and the relevant geographical market is
4 assumed to be this Commonwealth.

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

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

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

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

29 (ii) the acquisition will substantially increase the
30 availability of insurance, and the public benefits of such

1 increase exceed the public benefits which would arise from not
2 lessening competition.

3 * * *

4 SECTION 5. THE ACT IS AMENDED BY ADDING ~~A SECTION~~ SECTIONS <—
5 TO READ:

6 SECTION 1404.1. INSURANCE RESTRUCTURING PUBLIC INTEREST <—
7 REVIEW BOARD.--(A) THE INSURANCE RESTRUCTURING PUBLIC INTEREST <—
8 REVIEW BOARD IS ESTABLISHED TO REVIEW THE MERGER, CONSOLIDATION
9 OR OTHER ACQUISITION OF CONTROL OF A HOSPITAL PLAN CORPORATION
10 OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION AS DEFINED IN <—
11 THIS ACT AND IN 40 PA.C.S. CHS. 61 (RELATING TO HOSPITAL PLAN
12 CORPORATIONS) AND 63 (RELATING TO PROFESSIONAL HEALTH SERVICES
13 PLAN CORPORATIONS).

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

15 ~~(1) THE ATTORNEY GENERAL OR A DESIGNEE.~~ <—

16 ~~(2) (1) THE AUDITOR GENERAL OR A DESIGNEE.~~ <—

17 ~~(3) (2) THE SECRETARY OF PUBLIC WELFARE OR A DESIGNEE.~~ <—

18 ~~(4) (3) THE SECRETARY OF HEALTH OR A DESIGNEE.~~ <—

19 ~~(5) (4) THE MAJORITY LEADER OF THE SENATE OR A DESIGNEE.~~ <—

20 ~~(6) (5) THE MINORITY LEADER OF THE SENATE OR A DESIGNEE.~~ <—

21 ~~(7) (6) THE MAJORITY LEADER OF THE HOUSE OF REPRESENTATIVES~~ <—
22 OR A DESIGNEE.

23 ~~(8) (7) THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES~~ <—
24 OR A DESIGNEE.

25 ~~(9) (8) A MEMBER OF THE GENERAL PUBLIC WHO IS A POLICY~~ <—

26 ~~HOLDER OF AN INDIVIDUAL INSURED UNDER A HOSPITAL PLAN~~ <—

27 CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION
28 APPOINTED BY THE GOVERNOR.

29 (9) A PERSON WHO IS CURRENTLY OR WHO HAS BEEN A HEALTH CARE <—

30 PROVIDER PURSUANT TO A CONTRACT WITH A HOSPITAL PLAN CORPORATION

1 OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION.

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

4 (D) THE BOARD SHALL CONVENE WITHIN 45 DAYS AFTER THE ←
5 EFFECTIVE DATE OF THIS SECTION. THE BOARD SHALL MEET AT LEAST
6 FOUR TIMES ANNUALLY. ADDITIONAL MEETINGS SHALL BE HELD AT THE
7 CALL OF THE CHAIRPERSON OR ON THE SUBMISSION OF A REQUEST SIGNED
8 BY A MAJORITY OF THE MEMBERS OF THE BOARD.

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

12 (F) NO MEMBER OF THE BOARD SHALL BE ENTITLED TO COMPENSATION
13 FOR SERVICES PERFORMED AS A MEMBER OF THE BOARD, BUT SHALL BE
14 ENTITLED TO REIMBURSEMENT FOR ALL NECESSARY AND REASONABLE
15 EXPENSES INCURRED IN CONNECTION WITH THE PERFORMANCE OF THE
16 DUTIES AS A MEMBER OF THE BOARD.

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

18 (1) TO RECEIVE AND REVIEW ALL FILINGS SUBMITTED TO THE
19 DEPARTMENT RELATING TO THE MERGER, CONSOLIDATION OR OTHER
20 ACQUISITION OF CONTROL OF A HOSPITAL PLAN CORPORATION OR
21 PROFESSIONAL HEALTH SERVICES PLAN CORPORATION AND ALL
22 ACCOMPANYING DATA OR OTHER INFORMATION. THE DEPARTMENT MAY ←
23 REDACT INFORMATION DETERMINED TO BE A TRADE SECRET. CONFIDENTIAL
24 MATERIAL SHALL BE AVAILABLE FOR REVIEW IN EXECUTIVE SESSION OF
25 THE BOARD. A BOARD MEMBER, FINANCIAL EXPERT OR AUDITOR WHO
26 RELEASES CONFIDENTIAL INFORMATION SHALL BE SUBJECT TO A CIVIL
27 PENALTY NOT TO EXCEED \$1,000 PER VIOLATION.

28 (2) TO HOLD AT LEAST ONE PUBLIC HEARING ON A MERGER,
29 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL OF A HOSPITAL PLAN
30 CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION AT

1 WHICH THE DEPARTMENT SHALL PRESENT FINDINGS RELATING TO THE
2 MERGER, CONSOLIDATION OR OTHER ACQUISITION OF CONTROL.

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

6 ~~(4) TO APPROVE A FINDING OF THE DEPARTMENT UNDER SUBSECTION~~ <—
7 ~~(I).~~

8 (4) TO APPOINT SUCH FINANCIAL EXPERTS OR AUDITORS AS <—
9 NECESSARY TO:

10 (I) REVIEW THE MERGER, CONSOLIDATION OR OTHER ACQUISITION OF
11 CONTROL.

12 (II) DETERMINE THE AMOUNT OF NET ECONOMIC BENEFIT, SAVINGS,
13 PROCEEDS OR OTHER MONEYS THAT WILL BE DERIVED FROM THE MERGER,
14 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL.

15 (III) DETERMINE THE AMOUNT OF RESERVES OF THE HEALTH PLAN
16 CORPORATION AND THE PROFESSIONAL HEALTH SERVICES PLAN
17 CORPORATION AND THE AMOUNT OF THE RESERVES OF THE NEWLY MERGED,
18 CONSOLIDATED OR ACQUIRED ENTITY.

19 (IV) DETERMINE THE AMOUNT CURRENTLY DEDICATED FOR THE
20 HOSPITAL PLAN CORPORATION'S AND THE PROFESSIONAL HEALTH SERVICES
21 PLAN CORPORATION'S SOCIAL MISSION, AS DEFINED IN SECTION 2501,
22 FOR THE PRIOR YEAR AND THE CURRENT YEAR.

23 (V) REVIEW OTHER AMOUNTS THAT WILL BE AVAILABLE FOR THE
24 CORPORATE SOCIAL MISSION, AS DEFINED IN SECTION 2501, FOLLOWING
25 ANY APPROVAL OF THE MERGER, CONSOLIDATION OR OTHER ACQUISITION
26 OF CONTROL.

27 (5) TO CONSIDER THE DEVELOPMENT OF TIMELINES, AND ANY
28 CHANGES THERETO, FOR CONDUCTING AND COMPLETING ACTIVITIES UNDER
29 THIS SUBSECTION.

30 THE COST OF THE FINANCIAL EXPERTS OR AUDITORS SHALL BE PAID FOR

1 BY THE HOSPITAL PLAN CORPORATION OR PROFESSIONAL HEALTH SERVICES
2 PLAN CORPORATION.

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

4 (1) FINDINGS AND RECOMMENDATIONS ON THE MERGER,
5 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL TO THE INSURANCE
6 RESTRUCTURING BOARD, INCLUDING AN ANALYSIS OF WHETHER THE
7 HOSPITAL PLAN CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN
8 CORPORATION HAS MET ALL THE REQUIREMENTS OF SECTIONS 1402 AND
9 1403.

10 ~~(2) A WRITTEN DETERMINATION THAT THE MERGER, CONSOLIDATION~~ <—
11 ~~OR OTHER ACQUISITION OF CONTROL IS CONSISTENT WITH THE PUBLIC~~
12 ~~INTEREST.~~

13 (2) A WRITTEN RESPONSE TO EACH RECOMMENDATION SUBMITTED BY <—
14 THE BOARD UNDER SUBSECTION (G)(3), INCLUDING A DETAILED WRITTEN
15 EXPLANATION OF THE REASON THE RECOMMENDATION WILL OR WILL NOT BE
16 ADOPTED.

17 (3) A WRITTEN DETERMINATION THAT THE MERGER, CONSOLIDATION
18 OR OTHER ACQUISITION OF CONTROL WILL RESULT IN A SUSTAINED
19 REDUCTION IN HEALTH CARE PREMIUMS FOR PENNSYLVANIA POLICYHOLDERS
20 AND A WRITTEN FINDING THAT DESCRIBES THE REASON OR REASONS THE
21 DEPARTMENT BELIEVES THE MERGER, CONSOLIDATION OR OTHER
22 ACQUISITION OF CONTROL IS CONSISTENT WITH PUBLIC INTEREST.

23 (I) THE BOARD SHALL HAVE 30 DAYS TO REVIEW AND RESPOND TO <—
24 THE WRITTEN RESPONSES TO RECOMMENDATIONS PROVIDED UNDER
25 SUBSECTION (H). THE DEPARTMENT SHALL NOT APPROVE THE MERGER,
26 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL OF A HOSPITAL PLAN
27 CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION
28 ~~UNLESS THE BOARD HAS APPROVED THE WRITTEN DETERMINATION OF THE~~ <—
29 ~~DEPARTMENT UNDER SUBSECTION (H)(2). THE WRITTEN DETERMINATION~~
30 ~~MUST BE APPROVED BY AT LEAST SEVEN MEMBERS OF THE BOARD. FOR 60~~ <—

1 DAYS AFTER IT HAS FULLY COMPLIED WITH SUBSECTION (H).

2 SECTION 1404.2. ACCOUNT.--(A) THERE IS HEREBY ESTABLISHED
3 IN THE STATE TREASURY A RESTRICTED RECEIPT ACCOUNT FOR THE
4 DEPOSIT OF FUNDS UNDER THIS SECTION.

5 (B) ANY NET ECONOMIC BENEFITS, INCLUDING PROCEEDS, SAVINGS,
6 FUNDS OR MONEYS DERIVED FROM THE MERGER, CONSOLIDATION OR OTHER
7 ACQUISITION OF CONTROL OF A HOSPITAL PLAN CORPORATION OR
8 PROFESSIONAL HEALTH SERVICES PLAN CORPORATION WHICH ARE TO BE
9 USED TO FUND ANY PORTION OF A HEALTH CARE OR HEALTH CARE RELATED
10 PROGRAM OF, OR TO BE ADMINISTERED BY, THE COMMONWEALTH SHALL BE
11 DEPOSITED INTO THE RESTRICTED RECEIPT ACCOUNT UNDER SUBSECTION
12 (A) IN THE STATE TREASURY.

13 (C) NO CONTRACTS OR WRITTEN AGREEMENTS BETWEEN THE
14 COMMONWEALTH AND THE HOSPITAL PLAN CORPORATION OR PROFESSIONAL
15 HEALTH SERVICES PLAN CORPORATION MAY BE ENTERED INTO RELATING TO
16 THE DISBURSEMENT OR SPENDING OF THE ECONOMIC BENEFITS, PROCEEDS,
17 SAVINGS, FUNDS OR MONEYS RESULTING FROM THE MERGER,
18 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL OF A HOSPITAL PLAN
19 CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION
20 UNTIL THE FUNDS ARE APPROPRIATED PURSUANT TO SUBSECTION (D).

21 (D) NO MONEYS MAY BE TRANSFERRED OR PAID FROM THE ACCOUNT
22 UNLESS APPROPRIATED BY THE GENERAL ASSEMBLY FOR HEALTH-RELATED
23 PURPOSES.

24 SECTION 5.1. THE ACT IS AMENDED BY ADDING AN ARTICLE TO
25 READ:

26 ARTICLE XXV

27 HEALTH CARE REPORTING

28 SECTION 2501. DEFINITIONS.

29 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
30 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE

1 CONTEXT CLEARLY INDICATES OTHERWISE:

2 "SOCIAL MISSION." SERVICES, PROJECTS AND COMMUNITY
3 ACTIVITIES, INCLUDING ACTIVITIES TO IMPROVE HEALTH CARE OR MAKE
4 HEALTH CARE MORE AFFORDABLE AND ACCESSIBLE IN THE SERVICE AREA,
5 AND ALL OTHER CHARITABLE AND BENEVOLENT ACTIVITIES OF A HOSPITAL
6 PLAN CORPORATION OR HEALTH SERVICES PLAN CORPORATION.

7 SECTION 2502. HOSPITAL PLAN CORPORATION.

8 EACH HOSPITAL PLAN CORPORATION SUBJECT TO 40 PA.C.S. CH. 61
9 (RELATING TO HOSPITAL PLAN CORPORATIONS) SHALL ANNUALLY PROVIDE
10 TO THE DEPARTMENT, THE CHAIRMAN AND MINORITY CHAIRMAN OF THE
11 BANKING AND INSURANCE COMMITTEE OF THE SENATE AND THE CHAIRMAN
12 AND MINORITY CHAIRMAN OF THE INSURANCE COMMITTEE OF THE HOUSE OF
13 REPRESENTATIVES A LIST, INCLUDING A DESCRIPTION AND COST, OF ALL
14 ADVERTISING CONTRACTS AND ALL CONTRACTS ENTERED INTO AND
15 EXPENDITURES MADE DURING THAT CALENDAR YEAR RELATING TO THE
16 SOCIAL MISSION OF THE HEALTH PLAN CORPORATION. THE INFORMATION
17 SHALL BE PROVIDED BY DECEMBER 1 OF EACH YEAR. THE HOSPITAL PLAN
18 CORPORATION SHALL ALSO PROVIDE A LIST AND DESCRIPTION OF ALL
19 CONTRACTS AND EXPENDITURES RELATING TO THE HEALTH PLAN
20 CORPORATION'S SOCIAL MISSION PLANNED FOR THE UPCOMING CALENDAR
21 YEAR.

22 SECTION 2503. PROFESSIONAL HEALTH SERVICES PLAN CORPORATION.

23 EACH PROFESSIONAL HEALTH SERVICES PLAN CORPORATION SUBJECT TO
24 40 PA.C.S. CH. 63 (RELATING TO PROFESSIONAL HEALTH SERVICE PLAN
25 CORPORATIONS) SHALL ANNUALLY PROVIDE TO THE DEPARTMENT, THE
26 CHAIRMAN AND MINORITY CHAIRMAN OF THE BANKING AND INSURANCE
27 COMMITTEE OF THE SENATE AND THE CHAIRMAN AND MINORITY CHAIRMAN
28 OF THE INSURANCE COMMITTEE OF THE HOUSE OF REPRESENTATIVES A
29 LIST, INCLUDING A DESCRIPTION AND COST, OF ALL ADVERTISING
30 CONTRACTS AND ALL CONTRACTS ENTERED INTO AND EXPENDITURES MADE

1 DURING THE CALENDAR YEAR RELATING TO THE SOCIAL MISSION OF THE
2 PROFESSIONAL HEALTH SERVICES PLAN CORPORATION. THE INFORMATION
3 SHALL BE PROVIDED BY DECEMBER 1 OF EACH YEAR. THE PROFESSIONAL
4 HEALTH SERVICES PLAN CORPORATION SHALL ALSO PROVIDE A LIST AND
5 DESCRIPTION OF ALL CONTRACTS AND EXPENDITURES RELATING TO THE
6 HEALTH SERVICES PLAN CORPORATION'S SOCIAL MISSION PLANNED FOR
7 THE UPCOMING CALENDAR YEAR.

8 SECTION 2504. RETROACTIVITY.

9 THE PROVISIONS OF SECTIONS 2502 AND 2503 SHALL BE RETROACTIVE
10 TO JANUARY 1, 2005. REPORTS FOR THE YEARS 2005 AND 2006 SHALL BE
11 SUBMITTED WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THIS SECTION.

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

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

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

23 Section 8 9. This act shall take effect immediately. ←