
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

1 to read:

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6 law shall not revive any law heretofore repealed or superseded,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10 punish any offense under the authority of the repealed laws.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

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

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

23 * * *

24 "Insurer." Any health maintenance organization, preferred
25 provider organization, company, association [or], exchange,
26 hospital plan corporation subject to 40 Pa.C.S. Ch. 61 (relating
27 to hospital plan corporations) or professional health services
28 plan corporation subject to 40 Pa.C.S. Ch. 63 (relating to
29 professional health services plan corporations), authorized by
30 the Insurance Commissioner to transact the business of insurance

1 in this Commonwealth except that the term shall not include:

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

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

8 (3) fraternal benefit societies[; or

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

10 * * *

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

18 * * *

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

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

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

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

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

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

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

5 or

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

9 * * *

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

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

1 approved by the department in the manner hereinafter prescribed.

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

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

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

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

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

1 person's subsidiaries; and a list of all individuals who are or
2 who have been selected to become directors or executive officers
3 of the person, or who perform or will perform functions
4 appropriate to those positions. This list shall include for each
5 individual the information required by subparagraph (i).

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

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

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

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

1 acquisition referred to in subsection (a), and a statement as to
2 the method by which the fairness of the proposal was arrived.

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

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

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

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

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

1 relating thereto.

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

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

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

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

1 sent to such insurer within two (2) business days after the
2 person learns of such change.

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

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

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

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

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

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

1 (C) the department may condition the approval of the merger,
2 consolidation or other acquisition on the removal of the basis
3 of disapproval within a specified period of time.

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

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

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

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

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

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

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

30 (3) The department may retain at the acquiring person's

1 expense any attorneys, actuaries, accountants and other experts
2 not otherwise a part of the department's staff as may be
3 reasonably necessary to assist the department in reviewing the
4 proposed acquisition of control.

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~(2) The Governor or a designee.~~
2 ~~(3) The Secretary of Health or a designee.~~
3 ~~(4) The Secretary of Public Welfare or a designee.~~
4 ~~(5) The Majority Leader of the Senate or a designee.~~
5 ~~(6) The Minority Leader of the Senate or a designee.~~
6 ~~(7) The Majority Leader of the House of Representatives or a~~
7 ~~designee.~~
8 ~~(8) The Minority Leader of the House of Representatives or a~~
9 ~~designee.~~
10 ~~(b) The members shall select from among themselves a~~
11 ~~chairperson and such officers as they shall determine.~~
12 ~~(c) The board shall meet at the call of the chairperson.~~
13 ~~(d) Three quarters of the members of the board shall~~
14 ~~constitute a quorum. All business of the board shall be~~
15 ~~conducted by a quorum of the board, except as provided under~~
16 ~~subsection (g)(2).~~
17 ~~(e) The members of the board shall be entitled to no~~
18 ~~compensation for their services as members of the board but~~
19 ~~shall be entitled to reimbursement for all necessary and~~
20 ~~reasonable expenses incurred in connection with the performance~~
21 ~~of their duties as members of the board.~~
22 ~~(f) The members of the board shall stand in a fiduciary~~
23 ~~relationship with the Commonwealth.~~
24 ~~(g) The board shall have the following powers and duties:~~
25 ~~(1) To hold at least one public hearing on the merger,~~
26 ~~consolidation or other acquisition of control of a hospital plan~~
27 ~~corporation or professional health services plan corporation at~~
28 ~~which the commissioner shall present the commissioner's findings~~
29 ~~concerning the merger, consolidation or other acquisition of~~
30 ~~control to the executive board.~~

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

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

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

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

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

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

29 "Involved insurer." Includes an insurer which either
30 acquires or is acquired, is affiliated with an acquirer or

1 acquired or is the result of a merger or consolidation.

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

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

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

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

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

29 (iv) The acquisition of already affiliated persons.

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

1 acquisition:

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

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

6 (C) in no market would:

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

9 (II) the market share increases by more than two per centum
10 (2%) of the total market.

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

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

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

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

28 * * *

29 (d) (1) The department may enter an order under subsection
30 (e)(1) with respect to an acquisition if there is substantial

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

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

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

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

14	Insurer A	Insurer B
15	4%	4% or more
16	10%	2% or more
17	15%	1% or more; or

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

20	Insurer A	Insurer B
21	5%	5% or more
22	10%	4% or more
23	15%	3% or more
24	19%	1% or more.

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

1 violation of the competitive standard in paragraph (1). For the
2 purpose of this subparagraph, the insurer with the largest share
3 of the market shall be deemed to be insurer A.

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

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

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

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

21 (iii) For the purposes of this paragraph:

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

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

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

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

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

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

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

30 (ii) the acquisition will substantially increase the

1 availability of insurance, and the public benefits of such
2 increase exceed the public benefits which would arise from not
3 lessening competition.

4 * * *

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

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

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

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

17 ~~(2) (1) THE AUDITOR GENERAL OR A DESIGNEE.~~ <—

18 ~~(3) (2) THE SECRETARY OF PUBLIC WELFARE OR A DESIGNEE.~~ <—

19 ~~(4) (3) THE SECRETARY OF HEALTH OR A DESIGNEE.~~ <—

20 ~~(5) (4) THE MAJORITY LEADER OF THE SENATE OR A DESIGNEE.~~ <—

21 ~~(6) (5) THE MINORITY LEADER OF THE SENATE OR A DESIGNEE.~~ <—

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

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

26 ~~(9) (8) A MEMBER OF THE GENERAL PUBLIC WHO IS A POLICY~~ <—

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

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

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

1 PROVIDER PURSUANT TO A CONTRACT WITH A HOSPITAL PLAN CORPORATION
2 OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION APPOINTED BY
3 THE GOVERNOR.

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

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

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

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

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

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

30 (2) TO HOLD AT LEAST ONE PUBLIC HEARING ON A MERGER,

1 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL OF A HOSPITAL PLAN
2 CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN CORPORATION AT
3 WHICH THE DEPARTMENT SHALL PRESENT FINDINGS RELATING TO THE
4 MERGER, CONSOLIDATION OR OTHER ACQUISITION OF CONTROL.

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

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

10 (4) TO APPOINT SUCH FINANCIAL EXPERTS OR AUDITORS AS <—
11 NECESSARY TO:

12 (I) REVIEW THE MERGER, CONSOLIDATION OR OTHER ACQUISITION OF
13 CONTROL.

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

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

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

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

29 (5) TO CONSIDER THE DEVELOPMENT OF TIMELINES, AND ANY
30 CHANGES THERETO, FOR CONDUCTING AND COMPLETING ACTIVITIES UNDER

1 THIS SUBSECTION.

2 THE COST OF THE FINANCIAL EXPERTS OR AUDITORS SHALL BE PAID FOR
3 BY THE HOSPITAL PLAN CORPORATION OR PROFESSIONAL HEALTH SERVICES
4 PLAN CORPORATION.

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

6 (1) FINDINGS AND RECOMMENDATIONS ON THE MERGER,
7 CONSOLIDATION OR OTHER ACQUISITION OF CONTROL TO THE INSURANCE
8 RESTRUCTURING BOARD, INCLUDING AN ANALYSIS OF WHETHER THE
9 HOSPITAL PLAN CORPORATION OR PROFESSIONAL HEALTH SERVICES PLAN
10 CORPORATION HAS MET ALL THE REQUIREMENTS OF SECTIONS 1402 AND
11 1403.

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

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

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

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

1 ~~DEPARTMENT UNDER SUBSECTION (H)(2). THE WRITTEN DETERMINATION~~
2 ~~MUST BE APPROVED BY AT LEAST SEVEN MEMBERS OF THE BOARD. FOR 60~~ ←
3 ~~DAYS AFTER IT HAS FULLY COMPLIED WITH SUBSECTION (H).~~

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

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

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

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

26 SECTION 5.1. THE ACT IS AMENDED BY ADDING AN ARTICLE TO
27 READ:

28 ARTICLE XXV

29 HEALTH CARE REPORTING

30 SECTION 2501. DEFINITIONS.

1 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
2 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
3 CONTEXT CLEARLY INDICATES OTHERWISE:

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

9 SECTION 2502. HOSPITAL PLAN CORPORATION.

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

24 SECTION 2503. PROFESSIONAL HEALTH SERVICES PLAN CORPORATION.

25 EACH PROFESSIONAL HEALTH SERVICES PLAN CORPORATION SUBJECT TO
26 40 PA.C.S. CH. 63 (RELATING TO PROFESSIONAL HEALTH SERVICE PLAN
27 CORPORATIONS) SHALL ANNUALLY PROVIDE TO THE DEPARTMENT, THE
28 CHAIRMAN AND MINORITY CHAIRMAN OF THE BANKING AND INSURANCE
29 COMMITTEE OF THE SENATE AND THE CHAIRMAN AND MINORITY CHAIRMAN
30 OF THE INSURANCE COMMITTEE OF THE HOUSE OF REPRESENTATIVES A

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

10 SECTION 2504. RETROACTIVITY.

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

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

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

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

25 Section 8 9. This act shall take effect immediately. <—