
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1277 Session of
2008

INTRODUCED BY SURRA, NICKOL, DePASQUALE, McCALL, ARGALL, BUXTON,
JOSEPHS, KING, KORTZ, GRUCELA, HARKINS, RAMALEY, SAINATO,
WATSON AND SCAVELLO, SEPTEMBER 15, 2008

REFERRED TO COMMITTEE ON APPROPRIATIONS, SEPTEMBER 15, 2008

AN ACT

1 Establishing the Public School Employees' Benefit Board and
2 providing for its powers and duties; requiring a school
3 employee benefits study and evaluation; providing for a
4 Statewide health benefits program for public school
5 employees, for alternative measures for cost reduction and
6 for a retirement health savings plan; and establishing the
7 Public School Employees' Benefit Trust Fund.

8 TABLE OF CONTENTS

9 Chapter 1. Preliminary Provisions

10 Section 101. Short title.

11 Chapter 3. Administration of Benefits

12 Subchapter A. Definitions

13 Section 301. Definitions.

14 Subchapter B. Public School Employees' Benefit Board

15 Section 311. Public School Employees' Benefit Board.

16 Section 312. Administrative duties of board.

17 Subchapter C. Study and Options Election

18 Section 321. School employee health benefits study and
19 evaluation.

20 Section 323. Plan adoption.

1 Section 322. Board review and election.
2 Subchapter D. Statewide Health Benefits Program
3 Section 331. Health benefits program.
4 Section 332. Mandatory participation and optional membership.
5 Section 333. Continuation of coverage and transfer employees.
6 Section 334. Partnership for stable benefits funding.
7 Section 335. Powers and duties of board.
8 Section 336. Public School Employees' Benefit Trust Fund.
9 Section 337. Misrepresentation, refusal to cooperate and
10 fraud.
11 Section 338. Miscellaneous provisions.

12 Subchapter E. Alternative Measures for Cost Reduction

13 Section 351. Alternative measures program.

14 Subchapter F. Retirement Health Savings Plan

15 Section 361. Retirement health savings plan.

16 Chapter 5. Miscellaneous Provisions

17 Section 501. Feasibility report.

18 Section 502. Effective date.

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

21 CHAPTER 1

22 PRELIMINARY PROVISIONS

23 Section 101. Short title.

24 This act shall be known and may be cited as the Public School
25 Employees' Benefit Act.

26 CHAPTER 3

27 ADMINISTRATION OF BENEFITS

28 SUBCHAPTER A

29 DEFINITIONS

30 Section 301. Definitions.

1 The following words and phrases when used in this chapter
2 shall have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Alternate health care plan." A plan or plan design
5 established by the Public School Employees' Benefit Board
6 pursuant to section 331(f)(2)(ii) which the board in its
7 exclusive authority determines to contain benefits equivalent to
8 the standard benefit package.

9 "Alternative measures program." A program created by the
10 Public School Employees' Benefit Board in accordance with the
11 provisions of Subchapter E.

12 "Annuitant." Any "annuitant" or "disability annuitant" as
13 defined in 24 Pa.C.S. § 8102 (relating to definitions).

14 "Best practices." Standards of criteria, measures and
15 results developed by the Public School Employees' Benefit Board
16 that may be reflective of such standards developed by broadly
17 accepted organizations such as the National Committee for
18 Quality Assurance (NCQA) and the Centers for Medicare and
19 Medicaid Services (CMS), consulting firm benchmarks and medical
20 and industry journals that promote the precisions of efficient
21 delivery and design of employee benefits.

22 "Board." The Public School Employees' Benefit Board created
23 in section 311.

24 "Board member." A person designated or appointed to the
25 Public School Employees' Benefit Board pursuant to section
26 311(a).

27 "Consortium." A coalition of two or more geographically
28 defined public school entities, or a coalition of one or more
29 geographically defined public school entities and one or more
30 political subdivisions as defined by 61 Pa. Code § 315.2

1 (relating to definitions), formed for the purpose of pooling
2 combined purchasing of the individual participants in order to
3 increase bargaining power to obtain health care benefits.

4 "Contribution rate." The rate established by the Public
5 School Employees' Benefit Board in accordance with section
6 334(b) and (c) used to determine contributions by the
7 Commonwealth and public school entities for the funding of the
8 standard benefit package for eligible individuals in each health
9 care region.

10 "Cost-sharing." The fee paid by the member that covers a
11 share of the cost of providing group health benefits under the
12 Statewide health benefits program or the fee paid by a school
13 employee or annuitant that covers a share of the cost of
14 providing health care coverage in a plan sponsored by the public
15 school entity. The term shall not include:

16 (1) any fee paid by the member, school employee or
17 annuitant at the time of service, such as copayments or
18 deductibles, in order to obtain prescription drugs or other
19 specific health care services; or

20 (2) any additional cost paid by the member, school
21 employee or annuitant for optional benefit packages.

22 "Eligible individual." An individual who is a member or the
23 health care dependent of a member.

24 "Employee benefits account." A ledger account of the Public
25 School Employees' Benefit Trust Fund created in section
26 336(a)(1).

27 "Employer contribution account." A ledger account of the
28 Public School Employees' Benefit Trust Fund created in section
29 336(a)(3).

30 "Health care dependent." An individual who is eligible to

1 receive health care coverage under the Statewide health benefits
2 program due to the individual's relation to the member, as
3 determined by the Public School Employees' Benefit Board.

4 "Health care region." The geographic regions determined by
5 the Public School Employees' Benefit Board to be appropriate for
6 providing health benefits for eligible individuals based on the
7 availability of insurance carriers, benefit administrators,
8 health care providers, health care provider networks, costs and
9 any other factors related to health care or the financing of the
10 benefits.

11 "IRC." The Internal Revenue Code of 1986, as designated and
12 referred to in section 2 of the Tax Reform Act of 1986 (Public
13 Law 99-514, 100 Stat. 2085, 2095). A reference in this chapter
14 to "IRC § " shall be deemed to refer to the identically numbered
15 section and subsection or other subdivision of such section in
16 26 U.S.C. (relating to Internal Revenue Code).

17 "Long-term substitute." A school employee who is
18 substituting for an officer, administrator or employee of a
19 public school entity for a qualifying period of time to be
20 determined by the Public School Employees' Benefit Board.

21 "Medicare." The programs established by Title XVIII of the
22 Social Security Act (49 Stat. 620, 42 U.S.C. § 1395 et seq.)
23 which include: Part A, Hospital Insurance Benefits for the Aged
24 and Disabled; Part B, Supplementary Medical Insurance Benefits
25 for the Aged and Disabled; Part C, Medicare+ Choice Program; and
26 Part D, Voluntary Prescription Drug Benefit Program; and
27 including any subsequent changes or additions to those programs.

28 "Member." An eligible individual who is so specified for
29 enrollment in the Statewide health benefits program and in whose
30 name the identification card is issued. A member can be:

- 1 (1) A school employee.
- 2 (2) An annuitant.
- 3 (3) A transfer employee.
- 4 (4) An individual separated from employment with a
5 public school entity who the Public School Employees' Benefit
6 Board determines is eligible to purchase continuation of
7 coverage in the Statewide health benefits program.
- 8 (5) Others as approved by the Public School Employees'
9 Benefit Board.

10 "Optional benefit package." A plan or plan design
11 established by the Public School Employees' Benefit Board
12 pursuant to section 331(f)(2)(iii) which includes specific
13 health care services that are not part of the standard benefit
14 package.

15 "Participant account holder." A school employee
16 participating in a retirement health savings plan or a school
17 employee who retires or otherwise terminates employment with a
18 public school entity and becomes eligible to be reimbursed from
19 the employee's retirement health savings plan account for the
20 I.R.C.-qualified health-related expenses. The term shall also
21 include the health care dependent of a school employee who
22 succeeds in interest to a deceased school employee and becomes
23 eligible to be reimbursed for health-related expenses from the
24 school employee's account.

25 "Phase-in period." The period of program operation in any
26 health care region from the time the Public School Employees'
27 Benefit Board begins implementation of mandatory participation
28 under section 332 until the commencement of the first plan year
29 in which 75% of school districts in that region are
30 participating in the program.

1 "Program." The Statewide health benefits program sponsored
2 by the Public School Employees' Benefit Board in accordance with
3 the provisions of Subchapter D.

4 "Public School Code." The act of March 10, 1949 (P.L.30,
5 No.14), known as the Public School Code of 1949.

6 "Public school entity." A school district of any class,
7 intermediate unit, area vocational-technical school, charter
8 school or other school, as provided for under the act of March
9 10, 1949 (P.L.30, No.14), known as the Public School Code of
10 1949. The term shall also include the Scotland School for
11 Veterans' Children and the Scranton State School for the Deaf.

12 "Qualified majority vote." A vote by the Public School
13 Employees' Benefit Board requiring the support of three-fourths
14 of all the members thereof.

15 "Qualifying event." A change in marital status, death of a
16 member or the change in a health care dependent's status,
17 subsequent to the commencement of coverage under this chapter,
18 or the involuntary termination of health plan coverage that was
19 obtained through a health care dependent.

20 "Reserve account." A ledger account of the Public School
21 Employees' Benefit Trust Fund created in section 336(a)(2).

22 "Retirement system." The Public School Employees' Retirement
23 System of Pennsylvania as established by the act of July 18,
24 1917 (P.L.1043, No.343).

25 "School employee." Any person regularly employed by or in a
26 public school entity for which work the person is receiving
27 regular remuneration as an officer, administrator, employee or
28 long-term substitute. The term excludes any independent
29 contractor, person compensated on a fee basis or, unless
30 otherwise determined by the Public School Employees' Benefit

1 Board, any part-time hourly school employee. The term includes
2 any employee of a public school entity who has a position for
3 which eligibility in a health care plan sponsored by the public
4 school entity is in effect as of the effective date of this
5 chapter.

6 "Standard benefit package." The benefit package established
7 by the Public School Employees' Benefit Board pursuant to
8 section 331(f)(1).

9 "Supplemental benefits." Dental care, vision care and
10 employee assistance program benefits that may be offered in
11 addition to medical and hospital services and prescription drug
12 benefits.

13 "Transfer employee." A person who is not a school employee
14 who is regularly employed at a worksite in a public school
15 entity, regardless of who actually employs the person, if the
16 person is performing services previously performed by a school
17 employee.

18 "Trust fund." The Public School Employees' Benefit Trust
19 Fund established in section 336.

20 SUBCHAPTER B

21 PUBLIC SCHOOL EMPLOYEES' BENEFIT BOARD

22 Section 311. Public School Employees' Benefit Board.

23 (a) Status and membership.--The board shall be an
24 independent administrative board and shall consist of the
25 following board members:

26 (1) The Secretary of the Budget and the Insurance
27 Commissioner, both of whom shall serve ex officio.

28 (2) The President Pro Tempore of the Senate or his
29 designee, the Minority Leader of the Senate or his designee,
30 the Majority Leader of the House of Representatives or his

1 designee and the Minority Leader of the House of
2 Representatives or his designee.

3 (3) Ten persons representing school employees who are
4 covered by the program appointed in the following manner:

5 (i) Eight persons representing school employees who
6 are covered by the program in an approximate proportion
7 to the percentage of professional employees represented
8 in collective bargaining by school employee unions
9 working in public school entities that will be covered by
10 the program when it is fully operational, appointed by
11 the Governor and chosen from a list of candidates
12 submitted by those school employee unions; provided that
13 no less than one person shall be appointed by the
14 Governor from a list of candidates submitted by any
15 school employee union that on the effective date of this
16 chapter represents in collective bargaining more than
17 4,000 professional employees working in public school
18 entities that will be covered by the program when it is
19 fully operational. The proportional calculation of
20 membership under this paragraph shall not include
21 professional employees represented in collective
22 bargaining by school employee unions working in a school
23 district of the first class, as classified pursuant to
24 section 202 of the Public School Code, until such school
25 district opts to participate in the program under the
26 terms provided pursuant to section 332(d).

27 (ii) Two persons representing school employees who
28 are covered by the program represented in collective
29 bargaining by school employee unions other than school
30 employee unions within subparagraph (i) appointed by the

1 Governor and chosen from a list of candidates submitted
2 by those school employee unions other than school
3 employee unions within subparagraph (i).

4 (iii) For purposes of this section "school employee
5 unions" shall include a Statewide affiliate of such
6 school employee unions.

7 (4) Four persons representing public school entity
8 employers appointed by the Governor and chosen from a list of
9 candidates submitted by the Pennsylvania School Boards
10 Association. At least one of the school entity employer
11 representatives initially named to the board shall be a
12 member of a consortium board.

13 The school employee unions and the Pennsylvania School Boards
14 Association shall provide the Governor with their respective
15 lists of candidates within 15 days following the effective date
16 of this section. The Governor shall make his appointments within
17 45 days following receipt of the lists.

18 (b) Terms.--

19 (1) Four board members appointed under subsection
20 (a)(3)(i), as designated by the Governor, shall serve a term
21 of four years, and four board members appointed under
22 subsection (a)(3)(i), as designated by the Governor, shall
23 serve a term of four years.

24 (2) One board member appointed under subsection
25 (a)(3)(ii), as designated by the Governor, shall serve a term
26 of two years, and one board member appointed under subsection
27 (a)(3)(ii), as designated by the Governor, shall serve a term
28 of four years.

29 (3) Two board members appointed under subsection (a)(3),
30 as designated by the Governor, shall serve a term of two

1 years, and two board members appointed under subsection
2 (a)(3), as designated by the Governor, shall serve a term of
3 four years, except that the Pennsylvania School Boards
4 Association shall designate for which initial term the
5 representative who is a member of a consortium board shall
6 serve.

7 (4) Successors for all board members shall be appointed
8 for terms of four years, except as provided in subsection
9 (d). Board members shall be eligible for reappointment.

10 (c) Meetings.--The board shall meet as needed to fulfill its
11 duties, and seven board members shall constitute a quorum. Board
12 members shall elect the chairman of the board. Except in
13 instances where a qualified majority is required under this
14 chapter, a majority of the board members present and voting
15 shall have authority to act upon any matter. The board is
16 authorized to establish rules of its operation, including a
17 provision for the removal of board members for nonattendance.

18 (d) Vacancies.--A vacancy occurring during the term of any
19 board member shall be filled for the unexpired term by a
20 successor appointed in the same manner as his predecessor. The
21 school employee unions and the Pennsylvania School Boards
22 Association shall provide the Governor with their respective
23 lists of candidates within 60 days of the end of a member's term
24 or within 15 days of any other vacancy.

25 (e) Oath of office.--Each board member shall take an oath of
26 office that the member will, so far as it devolves upon the
27 member, diligently and honestly administer the affairs of the
28 board and that the member will not knowingly violate or
29 willfully permit to be violated any of the provisions of law
30 applicable to this chapter. The oath shall be subscribed by the

1 board member making it and certified by the officer before whom
2 it is taken and shall be immediately filed in the office of the
3 Secretary of the Commonwealth.

4 (f) Compensation and expenses.--Board members who are
5 members of the retirement system or the State Employees'
6 Retirement System shall serve without compensation. Board
7 members who are members of the retirement system and who are
8 employed by a public school entity shall not suffer loss of
9 salary or wages through serving on the board. The board, on
10 request of the employer of any board member who is an active
11 professional or nonprofessional member of the retirement system,
12 may reimburse the employer for the salary or wages of the member
13 or for the cost of employing a substitute for the board member
14 while the board member is necessarily absent from employment to
15 execute the duties of the board. The board members who are not
16 members of either the retirement system or the State Employees'
17 Retirement System may be paid \$100 per day when attending
18 meetings, and all board members shall be reimbursed for any
19 necessary expenses. When, however, the duties of the board as
20 mandated are not executed, no compensation or reimbursement for
21 expenses of board members shall be paid or payable during the
22 period in which the duties are not executed.

23 (g) Corporate power and legal advisor.--For the purposes of
24 this chapter, the board shall possess the power and privileges
25 of a corporation. The Office of General Counsel shall be the
26 legal advisor of the board.

27 (h) Duties of the board.--The board shall have the power and
28 authority to carry out the duties established by this chapter,
29 including the design, implementation and administration of the
30 school employee health benefits study pursuant to Subchapter C

1 and either the Statewide health benefits program if approved
2 pursuant to section 323 or the alternative measures program if
3 created pursuant to section 351.

4 Section 312. Administrative duties of board.

5 (a) Employees.--The compensation of all officers and
6 employees of the board who are not covered by a collective
7 bargaining agreement shall be established by the board
8 consistent with the standards of compensation established by the
9 Executive Board.

10 (b) Secretary.--The board shall select a secretary, who
11 shall not be a board member. The secretary shall act as chief
12 administrative officer for the board. In addition to other
13 powers and duties conferred upon and delegated to the secretary
14 by the board, the secretary shall:

15 (1) Serve as the administrative agent of the board and
16 as liaison between the board and applicable legislative
17 committees.

18 (2) Review and analyze proposed legislation and
19 legislative developments affecting the program and present
20 findings to the board, legislative committees and other
21 interested groups or individuals.

22 (3) Receive inquiries and requests for information
23 concerning the program from the press, Commonwealth
24 officials, public school entities, school employees and the
25 general public and provide information as authorized by the
26 board.

27 (c) Professional personnel.--The board may employ or
28 contract with consultants and other professional personnel as
29 needed to conduct the school employee health benefits study and
30 evaluation pursuant to Subchapter C and to operate the program,

1 including third-party administrators, managed care managers,
2 chief medical examiners, actuaries, investment advisors and
3 managers, legal counsel and other professional personnel as it
4 deems advisable. The board may also contract for the services of
5 any national or State banking corporation or association having
6 trust powers, with respect to carrying out the business and
7 other matters of the program.

8 (d) Expenses.--The board shall, through the Governor, submit
9 to the General Assembly annually a budget covering the
10 administrative expenses of this chapter. The expenses, as
11 approved by the General Assembly in an appropriation bill, shall
12 be paid:

13 (1) from the General Fund; or

14 (2) starting in the first fiscal year after the
15 transition period is complete and every fiscal year
16 thereafter, from reserves and investment earnings of the
17 trust fund.

18 (e) Meetings.--The board shall hold at least four regular
19 meetings annually and other meetings as it may deem necessary.

20 (f) Records.--The board shall keep a record of all its
21 proceedings which shall be open to inspection by the public.

22 (g) Procurement.--The board shall not be subject to 62
23 Pa.C.S. Pt. I (relating to Commonwealth Procurement Code).

24 (h) Temporary regulations.--

25 (1) Notwithstanding any other provision of law to the
26 contrary and in order to facilitate the prompt implementation
27 of this chapter, regulations promulgated by the board during
28 the two years following the effective date of this chapter
29 shall be deemed temporary regulations which shall expire no
30 later than three years following the effective date of this

1 chapter or upon promulgation of regulations as generally
2 provided by law. The temporary regulations shall not be
3 subject to:

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

7 (ii) The act of June 25, 1982 (P.L.633, No.181),
8 known as the Regulatory Review Act.

9 (2) The authority provided to the board to adopt
10 temporary regulations in this subsection shall expire two
11 years from the effect date of this chapter. Regulations
12 adopted after the two-year period shall be promulgated as
13 provided by law.

14 (i) Postretirement benefits study.--The board shall conduct
15 an assessment of public school entity postretirement health care
16 liability in this Commonwealth and publish a report providing
17 generalized data regarding the scope of the liability to be
18 borne by public school entities and measures implemented by
19 public school entities to prepare for this liability. This
20 assessment may be conducted in conjunction with the study
21 required by section 321.

22 SUBCHAPTER C

23 STUDY AND OPTIONS ELECTION

24 Section 321. School employee health benefits study and
25 evaluation.

26 (a) Study.--The board shall conduct a thorough evaluation of
27 existing health care arrangements covering school employees in
28 this Commonwealth, examine future cost forecasts and collect
29 data necessary to determine if the board could construct and
30 sponsor a health care benefit program that would reduce long-

1 term costs or the rate of growth of long-term costs in the
2 aggregate for public school entities while maintaining a
3 comprehensive package of quality health care benefits for school
4 employees. The board shall conduct the study as provided under
5 this section.

6 (b) Data elements.--No later than 60 days after the board is
7 constituted, the board shall determine the information necessary
8 to evaluate the existing health care arrangements covering
9 school employees in this Commonwealth and begin to collect the
10 data, including, but not limited to:

11 (1) The total cost of providing medical/hospital and
12 prescription drug coverage.

13 (2) The types and levels of coverage currently made
14 available to school employees.

15 (3) The nature of health care purchasing arrangements.

16 (4) An explanation and estimate of any financial
17 obligation of or funds owed to a public school entity related
18 to the termination of coverage under a school district-
19 sponsored health benefits plan.

20 (5) An estimate of the amount of and basis for claims
21 which may be outstanding during the transition for public
22 school entities which self-fund their coverage and the status
23 of any reserves established for such outstanding claims.

24 (6) The term and effect of collective bargaining
25 agreements governing health benefits.

26 (7) The amount and basis of any school employee cost-
27 sharing, both individual and in aggregate.

28 (8) The total amount of employer-paid costs in
29 aggregate.

30 (9) An assessment of any postretirement health care

1 benefit liabilities and claims experience data.

2 (c) Data sources.--All entities providing health benefit
3 coverage for eligible individuals or administering coverage for
4 health benefits under this chapter shall provide information on
5 coverage, benefits, plan design, claims data, premiums, cost-
6 sharing and financial arrangements as the board shall specify to
7 meet the requirements of subsection (b). Notwithstanding any law
8 to the contrary, any agency, authority, board, commission,
9 council, department or office under the jurisdiction of the
10 Governor shall cooperate with the board in its collection of
11 health insurance or health care coverage data as specified by
12 the board to effectuate this section in accordance with this
13 section.

14 (d) Public school entities.--The Secretary of Education
15 shall assist the board in obtaining the necessary data for the
16 study from public school entities and consortia. In the event it
17 is necessary to facilitate the collection of data from a
18 noncooperating public school entity or consortium, the Secretary
19 of Education may request the State Treasurer to cause the
20 suspension of any payment of moneys due to the noncooperating
21 public school entity or public school entities that are
22 participants in a noncooperating consortium on account of any
23 appropriation for schools or other purposes until the necessary
24 information is properly provided. A public school entity shall
25 be notified before any payments are suspended and may appeal to
26 the secretary and request an extension of time if there have
27 been extenuating circumstances preventing the timely submission
28 of all necessary information. In considering an appeal, the
29 secretary may grant an extension of time for the public school
30 entity or consortium to provide the necessary information before

1 the suspension is instituted. The board is authorized and shall
2 authorize school entities and consortia to enter into agreements
3 with entities providing or administering coverage for health
4 care benefits under this chapter for the purpose of carrying out
5 the provisions of this section.

6 (e) Health benefit entities.--

7 (1) An entity providing or administering health
8 insurance or health care coverage for public school
9 employees, with the exception of public school entities or
10 consortia as provided for in subsection (d), shall, upon the
11 written request of the board, public school entities,
12 consortium or insured, provide claims and loss information
13 within 60 days of the request or sooner, if so determined by
14 the board.

15 (2) The Insurance Commissioner, the Department of Health
16 and any other agency, authority, board, commission, council,
17 department or office under the jurisdiction of the Governor
18 having regulatory authority over any entity charged under
19 paragraph (1), hereafter known as "regulating authority,"
20 shall cooperate with the board, if necessary, to obtain
21 information from any insurance company, third-party
22 administrator or other administrator or provider of health
23 insurance benefits for school employees, other than a public
24 school entity or consortium. Following notice and hearing,
25 the board may impose an order assessing a penalty of up to
26 \$1,000 per day upon any entity, other than a public school
27 entity or consortium, that willfully fails to comply with the
28 obligations imposed by this section. If the entity does not
29 comply with the obligations imposed by this section within 15
30 days of an order being imposed, the board shall notify the

1 regulating authority of the failure of an entity under its
2 jurisdiction to provide data as set forth in this section.
3 Upon notification, the regulating authority shall suspend or
4 revoke the license of the entity or otherwise suspend or
5 revoke the entity's ability to operate until such time as the
6 board notifies the regulating authority that the entity is in
7 compliance. The board shall have standing to petition the
8 Commonwealth Court to seek enforcement of the order.

9 (3) This subsection shall apply to every entity
10 providing or administering group health coverage in
11 connection with providing health care benefits to school
12 employees within this Commonwealth, including plans,
13 policies, contracts or certificates issued by:

14 (i) A stock insurance company incorporated for any
15 of the purposes set forth in section 202(c) of the act of
16 May 17, 1921 (P.L.682, No.284), known as The Insurance
17 Company Law of 1921.

18 (ii) A mutual insurance company incorporated for any
19 of the purposes set forth in section 202(d) of The
20 Insurance Company Law of 1921.

21 (iii) A professional health services plan
22 corporation as defined in 40 Pa.C.S. Ch. 63 (relating to
23 professional health services plan corporations).

24 (iv) A health maintenance organization as defined in
25 the act of December 29, 1972 (P.L.1701, No.364), known as
26 the Health Maintenance Organization Act.

27 (v) A fraternal benefit society as defined in
28 section 2403 of The Insurance Company Law of 1921.

29 (vi) A hospital plan corporation as defined in 40
30 Pa.C.S. Ch. 61 (relating to hospital plan corporations).

1 (vii) Health care plans subject to the Employee
2 Retirement Income Security Act of 1974 (Public Law 93-
3 406, 88 Stat. 829), to the maximum extent permitted by
4 Federal law.

5 (viii) An administrator as defined in section 1002
6 of the act of May 17, 1921 (P.L.789, No.285), known as
7 The Insurance Department Act of 1921.

8 (ix) A person licensed pursuant to Article VI-A of
9 The Insurance Department Act of 1921.

10 (x) Any other person providing or administering
11 group health care coverage on behalf of a public school
12 entity, or accepting charges or premiums from a public
13 school entity, in connection with providing health care
14 coverage for school employees, including, but not limited
15 to, multiple employer welfare arrangements, self-insured
16 public school entities and third-party administrators.

17 (f) Confidentiality.--Any data requested by or provided to
18 the board pursuant to this section shall comply with the
19 standards for privacy established pursuant to the Health
20 Insurance Portability and Accountability Act of 1996 (Public Law
21 104-191, 110 Stat. 1936).

22 (g) Prepared materials.--Any documents, materials or
23 information solely prepared or created for the purpose of
24 implementation of subsection (b) are confidential and shall not
25 be discoverable or admissible as evidence in any civil or
26 administrative action or proceeding. Any documents, materials,
27 records or information that would otherwise be available from
28 original sources shall not be construed as immune from discovery
29 or use in any civil or administrative action or proceeding
30 merely because they were presented to the board. Nothing in this

1 subsection shall be construed to prevent publication or
2 dissemination of the aggregate study findings.

3 (h) Received materials.--Any documents, materials or
4 information received by the board or by a department under the
5 jurisdiction of the Governor on the board's behalf for the
6 purpose of implementation of subsection (b) shall not be
7 discoverable from the board, any department or the submitting
8 entity, nor shall they be admissible as evidence in any civil or
9 administrative action or proceeding. Any documents, materials,
10 records or information that would otherwise be available from
11 original sources shall not be construed as immune from discovery
12 or use in any civil or administrative action or proceeding
13 merely because they were received by the board or any
14 department.

15 (i) Document review.--No current or former member or
16 employee of the board or any department shall be allowed to
17 testify as to any matters by reason of the member's or
18 employee's review of documents, materials, records or
19 information submitted to the board by the entity providing
20 health insurance or health care coverage pursuant to subsection
21 (b). The enjoinder of testimony does not apply to findings or
22 actions by the board or any department that are public records.

23 (j) Original source document.--In the event an original
24 source document as set forth in subsection (g) is determined by
25 a court of competent jurisdiction to be unavailable from the
26 entity providing health insurance or health care coverage in a
27 civil action or proceeding, then, in that circumstance alone,
28 the board may be required pursuant to a court order to release
29 that original source document to the party identified in the
30 court order.

1 (k) Right-to-know requests.--Any documents, materials or
2 information made confidential by subsection (f) shall not be
3 subject to requests under the act of June 21, 1957 (P.L.390,
4 No.212), referred to as the Right-to-Know Law, or any successor
5 statute.

6 (l) Liability.--Notwithstanding any other provision of law,
7 no person or entity providing any documents, materials or
8 information to the board, any department or other entity on the
9 board's behalf shall be held by reason of having provided the
10 documents, materials or information to have violated any
11 criminal law, or to be civilly liable under any law, unless the
12 information is false and the person providing the information
13 knew or had reason to believe that the information was false and
14 was motivated by malice toward any person directly affected by
15 the action.

16 Section 322. Board review and election.

17 (a) Options assessment.--Upon collection of the necessary
18 information, the board shall evaluate existing public school
19 entity health care arrangements, examine options that would
20 aggregate, either Statewide or regionally, health care coverage
21 for public school employees, assess possible cost-management
22 improvements and solicit input from public school entities and
23 consortia identified with best practice standards. The board
24 shall investigate the creation of a Statewide health benefits
25 program as provided for in section 331 with the goal of
26 improving the overall affordability of providing health care
27 coverage for public school employees. The cost projections shall
28 be predicated on a plan that provides quality health care
29 benefits at a level consistent with those now provided to most
30 school employees through existing collective bargaining

1 contracts and offers coverage to school employees and other
2 eligible individuals.

3 (b) Election to proceed with program.--No later than ten
4 months after the board is constituted, unless a request by the
5 board for an extension is granted by the Governor, the board
6 shall decide whether to implement a Statewide health benefits
7 program, as provided for in section 331, or to implement an
8 alternative measures program, as provided for in section 351, to
9 reduce health coverage costs for public school entities. The
10 board's election to implement a Statewide health benefits
11 program or to implement an alternative measures program shall
12 require approval by a qualified majority vote. Upon election to
13 proceed with a Statewide health benefits program, the board
14 shall develop a plan for adoption, pursuant to section 323.

15 (c) Alternative election.--If the board decides that a
16 Statewide health benefits program cannot be created in
17 accordance with subsection (a), or the board fails to achieve
18 agreement and approve a plan for implementing a Statewide health
19 benefits program, the board will proceed with consideration of
20 an alternative measures program that will reduce long-term costs
21 or the rate of growth of such costs in the aggregate for public
22 school entities in accordance with Subchapter E.

23 Section 323. Plan adoption.

24 (a) Statewide health benefits program adoption.--Within
25 three months of electing to proceed with the Statewide health
26 benefits program, pursuant to section 322(b), the board shall
27 verify that implementation of a Statewide health care program
28 will result in reduction in the Statewide aggregate cost of the
29 purchase of benefits or the rate of growth of such costs and
30 adopt a proposed plan for the implementation of the program. The

1 proposed plan shall be in writing and shall include a detailed
2 description of the program and the transition procedures
3 necessary to phase in and implement the program. The board's
4 adoption of a proposed plan shall require approval by a
5 qualified majority vote.

6 (b) Parameters of program.--The description of the Statewide
7 health benefits program shall at minimum include:

8 (1) The eligibility requirements for a school employee
9 and the employee's health care dependents to qualify for
10 participation in the program.

11 (2) The identification of the benefits to be included as
12 part of the standard benefit package.

13 (3) Disclosure of any member cost-sharing contributions,
14 whether expressed as a target percentage of overall program
15 costs or individually determined as a percentage of salary
16 and whether the cost-sharing is uniform on a Statewide basis
17 or varies by health care region.

18 (4) The designation of health care regions.

19 (5) The design of the Statewide pool or regional pools
20 that would be established to aggregate public school entities
21 for the purpose of purchasing services and managing health
22 insurance risks.

23 (6) The requirements for electronic eligibility
24 transmission between the board and other participating
25 entities, including public school entities, consortia and the
26 retirement system.

27 (7) Financial and accounting plans, including the
28 establishment of any necessary reserves or escrow accounts
29 with carriers.

30 (c) Transition procedures.--The description of the steps to

1 phase in and implement the Statewide health benefits program
2 shall at minimum include:

3 (1) A determination of when the standard benefit package
4 shall become the mandatory program offering for eligible
5 individuals in a public school entity as health care benefits
6 for school employees are normalized on a Statewide basis.

7 (2) A determination, based on the size and structure of
8 any risk pool established within a health care region, as to
9 when the program would be phased in within that region.

10 (3) The interim steps to aggregate public school
11 entities into a Statewide pool or regional pools, including
12 any best practice standards and benchmarks to be applied to
13 new or existing consortia, or public school entities, or in
14 any selection process to build a Statewide or regional pool.

15 (4) Transition rules on member cost-sharing
16 responsibility until any member cost-sharing is required for
17 all members Statewide, or within any region.

18 (5) Transition rules to limit any negative financial
19 impact on a public school entity required to purchase health
20 care coverage through a Statewide or regional pool and to
21 normalize contribution rates for all participating public
22 school entities within the same health care region.

23 (d) Alternative measures program adoption.--Within three
24 months of proceeding with consideration of an alternative
25 measures program pursuant to section 322(c), the board shall
26 adopt a proposed plan for the implementation of an alternative
27 measures program, pursuant to Subchapter E, that will result in
28 reduction in the Statewide aggregate cost of the purchase of
29 benefits or the rate of growth of such costs. The proposed plan
30 shall be in writing and shall include a detailed description and

1 the transition procedures necessary to phase in and implement
2 the alternative measures program. The board's adoption of a
3 proposed plan for implementation of an alternative measures
4 program shall require approval by a qualified majority vote.

5 (e) Legislative and public review.--

6 (1) The board shall publish the provisions of any
7 proposed plan adopted pursuant to this section in the
8 Pennsylvania Bulletin and make it available on the board's
9 Internet website. Following publication, the board shall
10 schedule at least eight public hearings to solicit public
11 input on the plan. The hearings shall be conducted in
12 Philadelphia County; Allegheny County; and the Northeast,
13 Northwest, Southeast, Southwest, North Central and South
14 Central regions of this Commonwealth.

15 (2) The board shall submit the provisions of any
16 proposed plan adopted pursuant to this section to the
17 chairman and minority chairman of the Education Committee of
18 the Senate and the chairman and minority chairman of the
19 Education Committee of the House of Representatives. The
20 committees shall have 45 days to review the proposed plan and
21 submit comments to the board.

22 (f) Final plan adoption.--Upon completion of the public
23 hearings pursuant to subsection (e)(1) and expiration of the
24 committee review pursuant to subsection (e)(2), the board shall
25 review all the testimony and comments received regarding the
26 proposed plan. The board may, subject to a qualified majority
27 vote, make changes and adjustments to the plan to effectuate
28 this chapter. Within 90 days of publishing the proposed plan,
29 pursuant to subsection (e)(1), the board shall publish the final
30 plan, as adopted by the board, in the Pennsylvania Bulletin and

1 on the Internet website of the Department of Education.

2 (g) Legislative oversight.--The board shall proceed with
3 implementation unless a resolution to the contrary has been
4 adopted within 45 days after publication of the plan, in
5 accordance with this subsection. Upon publication of the final
6 adopted plan in the Pennsylvania Bulletin, the board shall
7 submit the plan to the Education Committee of the Senate and the
8 Education Committee of the House of Representatives. Either
9 committee may recommend to its respective chamber whether the
10 board shall be prevented from implementing the plan. If the
11 committee recommends the plan not be implemented, the Secretary
12 of the Senate or the Chief Clerk of the House of Representatives
13 shall place on the calendar for the next legislative day the
14 question, in the form of a resolution, of whether the board
15 shall proceed with implementation. If the resolution is adopted
16 in either chamber, it shall be referred to the Education
17 Committee in the opposite chamber which may recommend the board
18 not implement the plan. Upon the recommendation, the resolution
19 shall be placed on the calendar of the chamber. If a majority of
20 the members elected to each House approve the resolution, the
21 resolution shall be presented to the Governor for approval or
22 disapproval in accordance with section 9 of Article III of the
23 Constitution of Pennsylvania.

24 (h) Failure to reach consensus.--If the board fails to
25 achieve agreement and approve a plan for implementing a
26 Statewide health benefits program by a qualified majority vote
27 or if the board fails to achieve agreement and approve a plan
28 for implementing an alternative measures program by a qualified
29 majority vote, the board shall report as to its findings and
30 reasons preventing agreement on a plan to the Governor, the

1 President pro tempore of the Senate and the Speaker of the House
2 of Representatives.

3 SUBCHAPTER D

4 STATEWIDE HEALTH BENEFITS PROGRAM

5 Section 331. Health benefits program.

6 (a) Creation.--Upon adoption of a Statewide health plan
7 under section 323(f), the board shall proceed to initiate and
8 sponsor an employee benefits program for eligible individuals.

9 (b) Program design.--The board shall design a program which
10 follows the parameters of the plan and transition procedures as
11 established in section 323. The board may develop and administer
12 the program itself or operate through any legal entity
13 authorized by law to do so, including consortia, and the program
14 may be developed and administered differently within each health
15 care region as long as a standard benefit package that is
16 substantially equivalent in coverage, as determined by the
17 board, is available to eligible individuals. The program may
18 also be administered in whole or in part on a fully insured or
19 self-funded basis at the board's sole discretion.

20 (c) Implementation.--The board may:

21 (1) Establish pools for selected areas of coverage, such
22 as pharmacy services, transplants, stop-loss insurance,
23 health care management or other possible areas that in the
24 board's judgment can be offered Statewide or regionally on a
25 more stable and cost-effective basis. The board may offer
26 separate plans to public school entities and consortia prior
27 to the phase-in of the standard benefit package.

28 (2) Make the program available in some health care
29 regions before it is made available within all regions.

30 (d) Eligibility requirements.--The board shall have full

1 authority to determine eligibility requirements for benefits and
2 to adopt rules and regulations setting forth the same which will
3 be binding on all eligible individuals. No coverage shall be
4 provided for eligible individuals without payment being made,
5 except under circumstances as may be established by the board
6 under reasonable guidelines.

7 (e) Coverage and plan selection.--The board shall have full
8 authority to select and contract with insurance carriers, health
9 maintenance organizations, pharmacy benefit managers, third-
10 party administrators, reinsurers and any other entities
11 necessary to provide a range of benefit packages to eligible
12 individuals through the program. The board shall have full
13 authority to determine the nature, amount and duration and
14 discontinuation of coverage to be provided.

15 (f) Standard and optional benefits.--

16 (1) A standard benefit package shall be established by
17 the board that shall include coverage for medical and
18 hospital services, prescription drugs and may include
19 supplemental and other benefits in amounts to be determined
20 by the board.

21 (2) Within each health care region, the board shall
22 approve and make available to each eligible individual
23 affiliated with a public school entity which is participating
24 in the program the following:

25 (i) A health care plan that includes coverage the
26 board determines to be the equivalent of the standard
27 benefit package established in paragraph (1).

28 (ii) One or more alternate health care plans or plan
29 designs which in the board's judgment contain benefits
30 equivalent to the standard benefit package in paragraph

1 (1). The deductibles and copayments for each alternate
2 health care plan shall be set and annually adjusted so
3 that the cost of providing the coverage for the
4 Commonwealth and a public school entity is no greater
5 than the cost incurred for the health plan in
6 subparagraph (i).

7 (iii) One or more optional benefit plans, as
8 approved by the board, which allow an eligible individual
9 to purchase coverage that is not included in the standard
10 benefit package, provided that any cost over and above
11 the cost of the health care plan in subparagraph (i) is
12 to be paid by the member except as otherwise provided in
13 section 338(f)(1)(ii).

14 (3) The detailed basis on which payment of benefits is
15 to be made shall be specified in writing. The benefits
16 provided in this chapter are subject to change or
17 modification by the board from time to time as the board, in
18 its discretion, may determine. All changes or modifications
19 shall be specified in writing and communicated to members
20 within a reasonable period of time.

21 Section 332. Mandatory participation and optional membership.

22 (a) Mandatory participation.--The board shall have the
23 authority to require public school entities to participate in
24 the program on a Statewide basis or may phase in and require
25 participation on a regional basis. Except as provided under
26 subsections (c), (d), (e) and (f), public school entities in any
27 health care region designated by the board shall be required to
28 participate in the program.

29 (b) Transition plan.--When the board determines pursuant to
30 subsection (a) that a public school entity shall be required to

1 participate in the program, the public school entity or
2 consortium in which the public school entity is a participant
3 shall, within a reasonable period of time as determined by the
4 board, present to the board a transition plan with a schedule
5 for the eventual migration of school employees into the program.
6 The board shall review the transition plan with the public
7 school entity or consortium and make any necessary modifications
8 before granting approval of the plan. A public school entity or
9 consortium shall be subject to adherence to the transition plan
10 approved by the board.

11 (c) Extensions of time.--The board shall give due
12 consideration to a transition plan submitted pursuant to
13 subsection (b) that includes a request for an extension of time.
14 Requests may be submitted by, but shall not be limited to, any
15 of the following:

16 (1) A public school entity that participates in a
17 consortium where an extension of time is necessary for the
18 rundown and proper termination of the consortium's health
19 care program.

20 (2) A public school entity that participates in a
21 consortium where the withdrawal of the public school entity
22 may undermine the financial stability of the consortium.

23 (3) A public school entity or a consortium which will
24 incur a significant financial penalty under terms of a
25 contract with an insurance carrier or other provider of
26 health care coverage for a contract in existence on or before
27 January 1, 2008.

28 (4) A public school entity or consortium which will
29 incur a significant financial cost, including fees, penalties
30 or other contractual financial obligations, related to the

1 termination of coverage under a contract of insurance or, in
2 the case of a public school entity that self-insures,
3 insufficient reserves to pay claims incurred during the
4 previous coverage year, if the obligation relates to a plan
5 of coverage that was in existence on or before January 1,
6 2008, and the public school entity or consortium provides the
7 board with a financial plan for meeting these obligations.

8 (d) Optional membership.--No school district of the first
9 class, as classified pursuant to section 202 of the Public
10 School Code, shall be required to participate in the program,
11 except as may be agreed upon under terms of a collective
12 bargaining agreement covering a majority of employees of a
13 school district of the first class. Upon a school district of
14 the first class entering participation in the program pursuant
15 to a collective bargaining agreement, continued participation in
16 the program shall become mandatory.

17 (e) Prohibited membership.--A public school entity that, on
18 the effective date of this chapter, participates in the
19 Pennsylvania Employees' Benefit Trust Fund shall be prohibited
20 from participating in the program, and employees of the public
21 school entity shall not have the right to elect membership in
22 the program.

23 (f) Transition of employees.--A public school entity that
24 provides some or all of its employees with health benefits
25 through another health care plan by virtue of one or more
26 collective bargaining agreements, entered into prior to the
27 effective date of this chapter, shall not be required to join
28 the program until expiration of the collective bargaining
29 agreements. The public school entity and some or all of its
30 employees or bargaining representatives of its employees may by

1 mutual agreement and approval of the board join the program at
2 an earlier date. Renewal or extension of a collective bargaining
3 agreement shall constitute its expiration for the purpose of
4 this subsection.

5 Section 333. Continuation of coverage and transfer employees.

6 (a) Annuitants.--Upon retirement, an annuitant eligible
7 under paragraph (1) or (2) shall have the option to elect
8 coverage in the program, including coverage for any eligible
9 health care dependent. The annuitant shall be responsible to pay
10 the full cost of the coverage, unless a public school entity has
11 agreed, separate from any requirements of the program, to pay
12 toward the coverage pursuant to an award of health benefits
13 under a written policy or agreement collectively bargained or
14 otherwise entered into by the public school entity. The board
15 shall annually determine the cost of coverage as follows:

16 (1) For an annuitant who is enrolled in the program
17 pursuant to section 513 of the Public School Code or an
18 annuitant who pursuant to any award of health benefits for
19 annuitants under a written policy or agreement collectively
20 bargained or otherwise entered into by the public school
21 entity prior to the effective date of this section, payments
22 shall be based on the total contribution rate established
23 pursuant to section 334(b) and (c) for a school employee in
24 the same health care region, plus a 2% administrative fee.

25 (2) For an annuitant, other than an annuitant qualified
26 for coverage under paragraph (1), payments shall be made on
27 the same basis as an annuitant qualified for coverage under
28 paragraph (1), except as determined as follows:

29 (i) The board shall periodically have the actuary
30 review and determine the separate cost of providing

1 continuation of coverage to annuitants under this
2 paragraph, along with an assessment of its impact on the
3 cost of providing coverage to members who are school
4 employees and annuitants qualified for coverage under
5 paragraph (1). The review and assessment shall first
6 occur as part of the school employee health benefits
7 study and evaluation conducted pursuant to section 321
8 and its results shall be considered in the development of
9 parameters under section 323(b).

10 (ii) The board shall consider the findings of the
11 actuary in subparagraph (i) to determine if there is a
12 substantial impact on the cost of providing coverage to
13 members who are school employees and annuitants qualified
14 for coverage under paragraph (1). If there is a
15 substantial cost impact, the board shall require payments
16 for an annuitant qualified to elect coverage in the
17 program under this paragraph to be separately determined
18 and the contribution rate to be based on the
19 disaggregated cost of providing the coverage, plus a 2%
20 administrative fee.

21 (b) Separation from service.--The board shall determine the
22 eligibility of members, other than annuitants covered by
23 subsection (a), to elect continuation of coverage in the program
24 upon separation from service as a school employee. The member
25 shall be responsible to pay the full cost of the coverage in the
26 member's health care region, plus an administrative fee to be
27 set by the board. The board shall, at minimum, provide
28 continuation of coverage eligibility that meets the requirements
29 of Title X of the Employee Retirement Income Security Act of
30 1974 (Public Law 99-272, 29 U.S.C. § 1161 et seq.) and provide

1 the continuation of coverage options required pursuant to 51
2 Pa.C.S. § 7309 (relating to employment discrimination for
3 military membership or duty) for members on military leave.

4 (c) Transfer employees.--The board may, in its discretion,
5 approve the participation of transfer employees in the program,
6 provided that any position for which a transfer employee who is
7 provided health benefits in a health care plan sponsored by a
8 public school entity through an agreement that was in existence
9 on or before January 1, 2008, with the transfer employee's
10 employer shall be allowed to participate in the program. The
11 board shall set the terms and conditions necessary for
12 participation in the program, including the cost of coverage to
13 be paid by the third-party entity which shall be based on the
14 full cost of coverage in the health care region as determined by
15 the board, plus an administrative fee. The sponsoring public
16 school entity shall be responsible to the board for the
17 collection of the payments for transfer employees from the
18 third-party entity.

19 Section 334. Partnership for stable benefits funding.

20 (a) Basis of partnership.--In recognition that the long-term
21 viability and stability of the program will require public
22 school entity employers, members and the Commonwealth to be
23 partners both in sustaining the health benefits program as well
24 as managing the costs of a reasonable and appropriate standard
25 benefit package, the board shall determine for each plan year
26 and in each region the payments due from public school entities,
27 from members and from the Commonwealth.

28 (b) Determination of contribution rate.--The board shall
29 determine for each plan year the total amount of the
30 contributions by the Commonwealth, public school entities and

1 school employees required to provide projected benefits for that
2 plan year under the standard benefit package on behalf of each
3 school employee member and the employee's eligible health care
4 dependents. The contribution rate shall consist of the amount
5 required to provide the standard benefit package, including
6 appropriate reserves and administrative expenses, and shall be
7 adjusted for each health care region to reflect the cost of
8 benefits in that region. The contribution rates may
9 differentiate between single coverage for members only and types
10 of family coverage, as determined by the board.

11 (c) Certification of rate.--The board shall certify the
12 contribution rate for each health care region to the
13 Commonwealth and public school entities, including the payments
14 that shall be due from public school entities, from members and
15 from the Commonwealth. The certifications shall be regarded as
16 final and not subject to modification by the Secretary of the
17 Budget.

18 (d) Commonwealth cost share.--The Commonwealth shall make a
19 contribution to offset a portion of the cost increase consistent
20 with subsections (e) and (f) for any plan year in which the
21 board determines that the aggregate cost of providing the
22 standard benefit package on behalf of members who are school
23 employees and their eligible health care dependents exceeds the
24 sum of:

25 (1) the projected carry-over balance for the plan year
26 in the employer contribution account after all required
27 transfers have been made to the employee benefits account for
28 the prior year; and

29 (2) any employee cost-sharing for the plan year.

30 (e) Budget submission and appropriation.--If the board

1 determines that the requirements of subsection (d) have been
2 met, all of the following shall occur:

3 (1) The board shall submit to the Secretary of the
4 Budget an itemized budget specifying the amount necessary to
5 be appropriated by the Commonwealth consistent with
6 subsection (f). The budget submission shall be on a form and
7 in a manner determined by the Secretary of the Budget and
8 shall occur no later than November 1 of the fiscal year
9 preceding the plan year for which funds are requested.

10 (2) Upon appropriation by the General Assembly to
11 provide for the obligations of the Commonwealth, the amount
12 shall be paid by the State Treasurer through the Department
13 of Revenue into the employer contribution account within 30
14 days of receipt of the requisition presented each month by
15 the board.

16 (f) Limitation on Commonwealth contribution.--

17 (1) The Commonwealth shall not be obligated to pay any
18 amount beyond that which is appropriated by the General
19 Assembly. The amount requested by the board pursuant to
20 subsection (e)(1) shall not exceed the sum of any amount paid
21 by the Commonwealth for the fiscal year preceding the plan
22 year for which funds are requested and the lesser of:

23 (i) 50% of the amount that the board determines is
24 necessary to meet the increase in the contribution rate
25 on behalf of members who are school employees determined
26 pursuant to subsection (b); and

27 (ii) the product of the total revenue transferred in
28 the prior plan year from the employer contribution
29 account to the employee benefits account and the most
30 recent annual percent change in the per enrollee private

1 health insurance premium for all benefits, as defined in
2 the National Health Expenditure Data published by the
3 Centers for Medicare and Medicaid Services, Department of
4 Health and Human Services.

5 (2) If any excess revenue in the employer contribution
6 account is to be applied to payments for the plan year, then
7 the excess revenue shall be used to reduce the calculation
8 under this subsection in proportion to the Commonwealth's
9 share of the total increase in the contribution rate on
10 behalf of active members for the plan year.

11 (g) Additional optional contribution.--Notwithstanding the
12 limitation in subsection (f), the General Assembly may
13 appropriate additional revenue to the employer contribution
14 account in any fiscal year.

15 (h) Allocation of Commonwealth contribution.--Any
16 contribution made by the Commonwealth under this section shall
17 be used to offset an increase in the contribution rate paid in a
18 health care region by public school entities on behalf of
19 members who are school employees and their eligible health care
20 dependents and to maintain any offset that was paid in a prior
21 year. The Commonwealth contribution shall be allocated to offset
22 a portion of each participating public school entity's cost of
23 coverage on a per-member basis, for members who are school
24 employees and their eligible health care dependents, based on
25 the public school entity's market value/income aid ratio using
26 the most recent data provided by the Department of Education.
27 For any public school entity that is not assigned a market
28 value/income aid ratio by the Department of Education, the
29 Commonwealth contribution shall not be adjusted based on a
30 market value/income aid ratio. For the purpose of this

1 subsection, "market value/income aid ratio" shall have the same
2 meaning given to it in the Public School Code.

3 (i) Contributions on behalf of school employees.--Consistent
4 with any transition procedure pursuant to section 323(c)(5),
5 each public school entity shall be required to make payments to
6 the trust fund on behalf of members who are school employees and
7 their eligible health care dependents based on the contribution
8 rate certified by the board in subsection (c). The increase in
9 payments made from one year to the next by public school
10 entities on behalf of school employees shall be equal to or
11 greater than the increase in payment from one year to the next
12 made pursuant to subsection (d), excluding any additional
13 optional contribution made by the Commonwealth pursuant to
14 subsection (g).

15 (j) Deduction from appropriations.--In the event a public
16 school entity does not make the required payment in the time
17 allotted, as determined by the board, the Secretary of Education
18 and the State Treasurer shall cause to be deducted and paid into
19 the trust fund from the amount of any moneys due to any public
20 school entity on account of any appropriation for schools or
21 other purposes the amount due to the trust fund as certified by
22 the board and as remains unpaid on the date such appropriations
23 would otherwise be paid to the public school entity by the
24 Department of Education, and the amount shall be credited to the
25 public school entity's account in the trust fund.

26 (k) Transition.--Until any transition pursuant to section
27 323(c)(5) has been completed, the payments made by each public
28 school entity shall be no less than the total amount paid by the
29 public school entity to provide, purchase and administer health
30 care benefits to members who are school employees and their

1 eligible health care dependents in the year before
2 implementation of the program. Any contributions received by the
3 public school entity from school employees in the form of cost-
4 sharing payments for health care coverage shall be excluded from
5 the amount.

6 (1) Referendum exception.--

7 (1) In addition to the exceptions provided for in
8 section 333(f) of the act of June 27, 2006 (1st Sp.Sess.,
9 P.L.1873, No.1), known as the Taxpayer Relief Act, the costs
10 specified in paragraph (2) shall constitute an exception to
11 the referendum requirements of section 333(c) of the Taxpayer
12 Relief Act subject to department approval pursuant to section
13 333(j) of the Taxpayer Relief Act.

14 (2) Costs incurred by a school district in providing
15 health care-related benefits which are attributable to the
16 school district's participation in the program shall
17 constitute an expenditure for purposes of section 333(f)(1)
18 and (2) of the Taxpayer Relief Act to the extent the
19 anticipated increase in such costs between the current year
20 and the upcoming year is greater than the index established
21 for the school district pursuant to section 313(1)(ii) of the
22 Taxpayer Relief Act. The dollar amount of this exception
23 shall be equal to the portion of the increase which exceeds
24 the index established for the school district pursuant to
25 section 313(1)(ii) of the Taxpayer Relief Act.

26 Section 335. Powers and duties of board.

27 (a) Powers.--In addition to the powers granted by other
28 provisions of this chapter, the board shall have the powers
29 necessary or convenient to carry out this subchapter, including,
30 but not limited to, the power to:

1 (1) Determine appropriate geographic health care regions
2 for the administration of the program and make changes to the
3 regions as necessary.

4 (2) Formulate and establish the conditions of
5 eligibility, including eligibility for health care dependent
6 coverage for members, to include consideration if a member or
7 health care dependent is covered, or eligible for coverage,
8 under another employer-sponsored group health insurance plan;
9 provisions for payment of benefits; and all other provisions
10 that may be required or necessary to carry out the intent and
11 purpose of the program.

12 (3) Determine and make necessary changes to the standard
13 benefit package and benefit structure of the program.

14 (4) Establish copayments, annual deductibles,
15 coinsurance levels, exclusions, formularies and other
16 coverage limitations and payment responsibilities of members
17 incurred at the time of service.

18 (5) Set and adjust member cost-sharing contributions to
19 be expressed as a target percentage of overall program costs
20 or individually determined as a percentage of salary. The
21 board shall determine whether member cost-sharing shall be
22 uniform on a Statewide basis or shall vary by health care
23 region.

24 (6) Impose and collect necessary fees and charges.

25 (7) Determine enrollment procedures.

26 (8) Establish procedures for coordination of benefits
27 with other plans and third-party payers, including
28 coordinating benefits or contracting directly with Medicare.

29 (9) Establish a plan with the retirement system to
30 coordinate health care coverage for annuitants between the

1 program established by this chapter and the group health
2 insurance program sponsored by the retirement system under
3 the provisions of 24 Pa.C.S. Ch. 89 (relating to group health
4 insurance program) and to coordinate the sharing of
5 information pertaining to premium assistance payment
6 transfers.

7 (10) Set and adjust contribution rates sufficient to
8 maintain the adequacy of any reserves established by this
9 chapter and to fully fund the benefits offered by and to pay
10 for the administrative expenses related to the program.

11 (11) Set and adjust costs for members electing to
12 continue coverage upon retirement or separation from
13 employment. The board may establish different cost rates to
14 be charged for different categories of members electing to
15 continue coverage.

16 (12) Purchase insurance or employ self-insurance, alone
17 or in combination, to provide benefits as shall be determined
18 by the board.

19 (13) Establish appropriate reserves based on generally
20 accepted standards as applied by Federal and State regulators
21 to similar types of plans.

22 (14) Issue self-liquidating debt or borrow against
23 contributions, payments or other accounts receivable for the
24 purposes of prepaying any health benefits, establishing
25 reserves or otherwise lowering the cost of coverage.

26 (15) Establish procedures to verify the accuracy of
27 statements and information submitted by eligible individuals
28 on enrollment forms, claim forms or other forms.

29 (16) Receive and collect all contributions due and
30 payable to the accounts or delegate to a public school entity

1 or claims processor the right to receive contributions,
2 payments or perform ministerial functions required to assert
3 the board's rights. In so doing, the board shall have the
4 right to:

5 (i) maintain any and all actions and legal
6 proceedings necessary for the collection of
7 contributions; and

8 (ii) prosecute, defend, compound, compromise,
9 settle, abandon or adjust any actions, suits,
10 proceedings, disputes, claims, details and things related
11 to the accounts and program.

12 (17) Establish procedures to hear and determine any
13 claims and controversies under this chapter.

14 (18) Promulgate rules and regulations regarding the
15 administration of the program, including the establishment of
16 the plan year.

17 (19) Ensure that a public school entity provides
18 detailed information about the program to eligible employees
19 at least 90 days before program coverage begins to be offered
20 to school employees.

21 (20) Seek and take all necessary steps to retain
22 eligibility for the members, public school entities and the
23 Commonwealth to receive tax-preferred or tax-free treatment
24 under the IRC for contributions to and earnings of the trust
25 fund.

26 (21) Enter into agreements with entities providing or
27 administering coverage for health benefits under this chapter
28 for the electronic exchange of data between the parties at a
29 frequency as determined by the board.

30 (22) Perform and do any and all such actions and things

1 that may be properly incidental to the exercising of powers,
2 rights, duties and responsibilities of the board.

3 (23) Determine best practice standards and benchmarks
4 for consortia in any selection process to build a Statewide
5 pool or regional pools, including the power to require a
6 consortium to merge with another consortium. The board shall
7 have the power to require consortia, as a condition of
8 continued participation in the program, to accept any public
9 school entity applying to join and participate in a
10 consortium.

11 (24) Enter into agreements with any public school entity
12 or consortium to implement the program developed pursuant to
13 this chapter and delegate powers necessary to administer
14 coverage for health benefits.

15 (b) Administrative duties of board.--In addition to other
16 duties of the board provided in this chapter, the following
17 duties shall be afforded to the board for the implementation of
18 this section.

19 (c) Regulations and procedures.--The board shall, with the
20 advice of the Office of General Counsel and the actuary, adopt
21 and promulgate rules and regulations for the uniform
22 administration of the program. The actuary shall approve in
23 writing all computational procedures used in the calculation of
24 contributions and the cost of benefits, and the board shall by
25 resolution adopt the computational procedures prior to their
26 application by the board. The rules, regulations and
27 computational procedures as so adopted from time to time and as
28 in force and effect at any time, together with tables that are
29 adopted as necessary for the calculation of contributions and
30 the cost of benefits, shall be effective as if fully set forth

1 in this chapter.

2 (d) Data.--The board shall keep in electronic format records
3 of claims, eligibility and other data as are stipulated by the
4 actuary in order that an annual contribution rate determination
5 for each health care region and various program options can be
6 completed within six months of the close of each plan year. The
7 board shall have final authority over the means by which data is
8 collected, maintained and stored and in so doing shall protect
9 the rights of its membership as to privacy and confidentiality.

10 (e) Annual financial statement.--The board shall prepare and
11 have published within six months following the end of each plan
12 year a financial statement showing the condition of the trust
13 fund as of the end of the previous plan year. The board shall
14 submit said financial statement to the Governor and shall make
15 copies available to public school entities for the use of the
16 school employees and the public.

17 (f) Independent audit.--The board shall provide for an
18 annual audit of the trust fund by an independent certified
19 public accounting firm.

20 (g) Manual of regulations.--The board shall, with the advice
21 of the Office of General Counsel and the actuary, prepare within
22 six months of the commencement of a program adopted under this
23 chapter a manual incorporating rules and regulations consistent
24 with the provisions of this chapter for each participating
25 public school entity that shall make information contained in
26 the manual available to school employees. The board shall
27 thereafter advise public school entities within 90 days of any
28 changes in rules and regulations due to changes in the law or
29 due to changes in administrative policies.

30 (h) Annual budget.--The board shall establish an annual

1 budget for the program and make disbursements from the trust
2 fund that are consistent with the budget.

3 (i) Program assistance.--The board may solicit and accept
4 grants, loans and other aid from any person, corporation or
5 other legal entity or from the Federal, State or local
6 government and participate in any Federal, State or local
7 government program if necessary for prudent management of the
8 program.

9 (j) Functions.--The board shall perform other functions as
10 are required for the execution of this chapter and shall have
11 the right to inspect employment records of public school
12 entities.

13 (k) Qualified majority voting provision.--A qualified
14 majority vote shall be required on any matter voted upon by the
15 board affecting the development of or any change in:

16 (1) The plan to implement the program adopted pursuant
17 to section 323(f).

18 (2) The standard benefit package, benefit options or
19 plan design offered by the program to covered employees.

20 (3) Membership eligibility criteria.

21 (4) The addition, deletion or significant change in
22 status of an insurance carrier, benefits administrator or
23 other major contractor in the administration of benefits, or
24 the addition, deletion or significant change in status of a
25 health care provider network.

26 (5) Any determination on the use of excess fund
27 payments.

28 (6) The overall per-employee cost of the standard
29 benefit package to the trust fund and any public school
30 entity funding and member cost-sharing responsibilities.

1 (7) Cost containment measures such as managed care,
2 wellness centers and large case management.

3 (8) Contracts valued at more than \$25,000,000.

4 (9) Changes in trust document, bylaws or any major
5 internal operating policies or procedures, such as claims
6 appeal procedures, not to include routine ministerial
7 functions.

8 (10) The alternative measures program created pursuant
9 to section 351(a).

10 (11) Approve employment of and contracts with
11 consultants and professional personnel.

12 (1) Duties conferred upon secretary.--The secretary of the
13 board shall supervise a staff of administrative, technical and
14 clerical employees engaged in recordkeeping and clerical
15 processing activities in maintaining files of members,
16 accounting for contributions, processing payments, preparing
17 required reports and counseling.

18 Section 336. Public School Employees' Benefit Trust Fund.

19 (a) Establishment of trust fund.--The Public School
20 Employees' Benefit Trust Fund is established in the State
21 Treasury. The moneys of the trust fund are appropriated on a
22 continuing basis and shall be used exclusively for the purposes
23 set forth in this chapter. All of the assets of the trust fund
24 shall be maintained and accounted for, separate from all other
25 funds and moneys of the Commonwealth. The Treasury Department
26 shall credit to the trust fund all moneys received from the
27 Department of Revenue arising from the contributions required
28 under this chapter and all earnings from investments or moneys
29 of the trust fund. There shall be established and maintained by
30 the board the several ledger accounts, including:

1 (1) The employee benefits account shall be the ledger
2 account to which shall be credited the payments from section
3 333(a),(b) and (c), payments from members for cost sharing
4 and any additional member-paid cost associated with optional
5 benefit packages elected by members and transfers from the
6 employer contribution account as provided in paragraph (3).
7 All earnings derived from investment of the assets of the
8 employee benefits account shall be credited to this account.
9 The board is authorized to separately invest the amounts in
10 the employee benefits account in a prudent manner intended to
11 maximize the safety of the capital contained in the employee
12 benefits account. Payments for member health care benefits
13 and the direct administrative expenses of the board related
14 to the administration of the employee benefits program, as
15 provided in section 312(d), shall be charged to this account.

16 (2) Reserve account.

17 (i) A restricted reserve account, or more than one
18 account if the board determines it necessary to have
19 segregated accounts, is established within the trust fund
20 for the purpose of establishing and maintaining a reserve
21 or separate reserves sufficient:

22 (A) to pay the expected claims experience of the
23 program in the event the board elects to self-fund
24 all or a portion of the program for any plan years;

25 (B) to prefund the accrued liability for any
26 postretirement health care benefits earned by
27 employees enrolled in the program pursuant to section
28 333(a)(1) as the benefit is earned by the employees;
29 and

30 (C) to amortize the unfunded actuarial accrued

1 liability for postretirement health care benefits
2 already earned by employees and annuitants pursuant
3 to section 333(a)(1) in the event the board elects to
4 assume all or a portion of the liability. The board
5 shall use an amortization period that does not exceed
6 30 years for this purpose.

7 (ii) The board shall annually establish through an
8 actuary retained by the board the amount necessary, if
9 any, to establish and maintain a reserve or separate
10 reserves sufficient for the purposes of this paragraph.
11 Any moneys needed to maintain the reserve or separate
12 reserves established under this paragraph shall be
13 collected through the adjustment of the contribution rate
14 established pursuant to section 334(b) and (c) or through
15 other available sources.

16 (iii) The moneys in any reserve account may be
17 invested by the board separate from other moneys of the
18 trust fund. All earnings derived from investment of the
19 assets of any reserve account shall be credited to the
20 reserve account.

21 (3) The employer contribution account shall be the
22 ledger account to which shall be credited all contributions
23 made by the Commonwealth as determined in accordance with
24 section 334(e) and payments from public school entities as
25 determined in accordance with section 334(i), as well as all
26 earnings derived from the investment of the assets of the
27 employer contribution account. The total amount of the
28 Commonwealth and public school entity contributions required
29 to provide the standard benefit package on behalf of all
30 members who are school employees and their eligible health

1 care dependents shall be transferred on a monthly basis to
2 the employee benefits account.

3 (b) Composition.--The trust fund shall consist of:

4 (1) All payments made by members or received from the
5 Commonwealth and public school entities and all interest,
6 earnings and additions thereto.

7 (2) Any other money, public or private, appropriated or
8 made available to the board for the trust fund or any reserve
9 account from any source and all interest, earnings and
10 additions thereto.

11 (c) Administration of trust and associated funds.--The
12 assets of the trust fund shall be preserved, invested and
13 expended solely pursuant to and for the purposes set forth in
14 this chapter.

15 (d) Control and management of trust fund.--

16 (1) The board shall have exclusive control and
17 management of the trust fund and full power to invest and
18 manage the assets of each account of the trust fund as a
19 prudent investor would, by considering the purposes, terms
20 and other circumstances of each account and by pursuing an
21 overall investment strategy reasonably suited to the trust
22 fund.

23 (2) The board may invest in every kind of property and
24 type of investment, including, but not limited to, mutual
25 funds and similar investments, consistent with this
26 subsection.

27 (3) In making investment and management decisions, the
28 board shall consider, among other things, to the extent
29 relevant to the decision or action:

30 (i) the size and nature of the account;

1 (ii) the liquidity and payment requirements of the
2 account;

3 (iii) the role that each investment or course of
4 action plays in the overall investment strategy;

5 (iv) to the extent reasonably known to the board,
6 the needs for present and future payments; and

7 (v) the reasonable diversification of assets, taking
8 into account the purposes, terms and other circumstances
9 of the trust fund and the requirements of this section.

10 (e) Custodian of trust fund.--The State Treasurer shall be
11 the custodian of the trust fund.

12 (f) Name for transacting business.--By the name of "The
13 Public School Employees' Benefit Trust Fund," all of the
14 business of the trust fund shall be transacted, its fund
15 invested, all requisitions for money drawn and payments made and
16 all of its cash and securities and other property shall be held,
17 except that, any other law to the contrary notwithstanding, the
18 board may establish a nominee registration procedure for the
19 purpose of registering securities in order to facilitate the
20 purchase, sale or other disposition of securities.

21 (g) Payment from trust fund.--All payments from the trust
22 fund shall be made by the State Treasurer in accordance with
23 requisitions signed by the secretary of the board or the
24 secretary's designee. The board shall reimburse the State
25 Treasurer for the cost of making disbursements from the trust
26 fund.

27 (h) Fiduciary status of board.--Board members, employees of
28 the board and agents thereof shall stand in a fiduciary
29 relationship to the members regarding the investments and
30 disbursements of any of the moneys of the trust fund and shall

1 not profit either directly or indirectly with respect thereto.

2 (i) Transfers.--The board may transfer moneys among the
3 various accounts of the trust fund, including any reserve
4 accounts established under subsection (a)(2), as may be
5 necessary to satisfy the provisions of this chapter. Transfers
6 from funds retained in the reserve account pursuant to
7 subsection (a)(2)(i)(A) may be made only for the payment of
8 claims or expected claims as determined by the actuary retained
9 by the board. Transfers from funds retained in the reserve
10 account pursuant to subsection (a)(2)(i)(B) or (C) may be made
11 only for paying toward the cost of providing health care
12 benefits to annuitants enrolled in the program pursuant to
13 section 333(a)(1).

14 (j) Additional powers of board.--The board may:

15 (1) Adopt, from time to time, appropriate investment
16 policy guidelines and convey the same to those fiduciaries
17 who have the responsibility for the investment of funds.

18 (2) Retain such portion of the moneys of the accounts in
19 cash or cash balances as the board may deem desirable,
20 without any liability or interest thereon.

21 (3) Settle, compromise or submit to arbitration all
22 claims or damages due from or to the accounts, commence or
23 defend any legal, equitable or administrative proceedings
24 brought in connection with the program and represent the
25 trust fund in all proceedings under this paragraph.

26 (k) Additional duties of secretary.--The secretary of the
27 board shall serve as liaison to the Treasury Department, the
28 Department of the Auditor General and between the board and the
29 investment counsel and the mortgage supervisor in arranging for
30 investments to secure maximum returns to the trust fund.

1 Section 337. Misrepresentation, refusal to cooperate and fraud.

2 (a) Misrepresentation.--If the eligible individual or anyone
3 acting on behalf of an eligible individual makes a false
4 statement or withholds information on the application for
5 enrollment with intent to deceive or affect the acceptance of
6 the enrollment application or the risks assumed by the program
7 or otherwise misleads the board, the board shall be entitled to
8 recover its damages, including legal fees, from the eligible
9 individual or from any other person responsible for misleading
10 the board and from the person for whom the benefits were
11 provided. Any material misrepresentation on the part of the
12 eligible individual in making application for coverage or any
13 application for reclassification thereof or for service
14 thereunder shall render the coverage under the program null and
15 void.

16 (b) Refusal to cooperate.--The board may refuse to pay
17 benefits, or cease to pay benefits, on behalf of an eligible
18 individual who fails to sign any document deemed by the board to
19 be relevant to protecting its subrogation rights or certifying
20 eligibility or who fails to provide relevant information when
21 requested. As used in this subsection, the term "information"
22 includes any documents, insurance policies, police reports or
23 any reasonable request by the claims processor to enforce the
24 board's rights.

25 (c) Penalty for fraud.--In any case in which the board finds
26 that an eligible individual is receiving benefits based on false
27 information, the additional amounts received predicated on the
28 false information, together with interest doubled and compounded
29 and legal fees, shall be due from the member. To secure payment
30 of funds, the board shall have the right to garnish or attach

1 all or a portion of any compensation payable to the party by the
2 party's employer, any annuity payable to the party by the
3 retirement system, any accumulated deductions held by the
4 retirement system in the party's account or any process
5 whatsoever.

6 Section 338. Miscellaneous provisions.

7 (a) Construction of chapter.--

8 (1) Any termination or other modifications of the
9 program, including, but not limited to, a change in rates,
10 benefits options or structure of the provision of health care
11 benefits, shall not give rise to any contractual rights or
12 claims by any eligible individuals or any other person
13 claiming an interest, either directly or indirectly, in the
14 program. No provisions of this chapter, nor any rule or
15 regulation adopted pursuant to this chapter, shall create in
16 any person a contractual right in that provision.

17 (2) The provisions of this chapter are severable and if
18 any of its provisions shall be held to be unconstitutional,
19 the decision of the court shall not affect or impair any of
20 the remaining provisions. It is hereby declared to be the
21 legislative intent that this chapter would have been adopted
22 had the unconstitutional provisions not been included.

23 (3) This subsection shall not apply to policies designed
24 primarily to provide coverage payable on a per diem, fixed
25 indemnity or nonexpense incurred basis, or policies that
26 provide accident only coverage, where payment for such policy
27 is made solely by the school employee.

28 (b) Hold harmless.--Neither the Commonwealth nor the board,
29 including their respective officers, directors and employees,
30 shall be liable for any claims, demands, actions or liability of

1 any nature, including, but not limited to, attorney fees and
2 court costs, based upon or arising out of the operations of the
3 program, whether incurred directly or indirectly. The eligible
4 individuals who enroll and participate in the program shall be
5 deemed to agree, on behalf of themselves and their heirs,
6 successors and assigns, to hold harmless the Commonwealth and
7 the board, including their respective officers, directors and
8 employees, from any claims, demands, actions or liability of any
9 nature, whether directly or indirectly, including attorney fees
10 and court costs, based upon or arising out of the operation of
11 the program.

12 (c) No recourse.--Under no circumstances shall the assets of
13 the Commonwealth be liable for or its assets be used to pay any
14 claims, demands, actions or liability of any nature, whether
15 directly or indirectly, including, but not limited to, attorney
16 fees and court costs, based upon or arising out of the operation
17 of the program.

18 (d) Reservation of immunities.--Nothing contained in this
19 chapter shall be construed as a waiver of the Commonwealth's or
20 board's immunities, defenses, rights or actions arising out of
21 their sovereign status or from the 11th amendment to the
22 Constitution of the United States.

23 (e) Collective bargaining, mediation and binding
24 arbitration.--Except as otherwise provided in subsection (f),
25 nothing in this chapter or in any other law shall be construed
26 to permit, authorize or require collective bargaining, mediation
27 or binding arbitration to create, alter or modify health
28 benefits set forth in this chapter or administered by the board
29 for school employees and their health care dependents. Further,
30 except as otherwise provided in subsection (f), nothing in this

1 chapter or in any other law shall be construed to permit,
2 authorize or require a public school entity, through collective
3 bargaining, mediation or binding arbitration, or otherwise, to
4 establish, create, alter or modify a health benefits plan or pay
5 health benefits set forth in this chapter or administered by the
6 board that modify or supplement in any way the health benefits
7 set forth in this chapter for school employees and their health
8 care dependents.

9 (f) Exceptions.--

10 (1) The parties may:

11 (i) Continue to engage in collective bargaining with
12 regard to health benefits until such time as the board-
13 sponsored program, pursuant to this subchapter, is
14 released and the standard benefit package is made
15 available to employees of a public school entity.
16 However, any health benefits provided under a collective
17 bargaining agreement entered into on or after the
18 effective date of this chapter shall contain a provision
19 that school employees covered by the agreement must join
20 the board-sponsored program as required by section 332 as
21 a condition of continuing to receive health benefits. The
22 board shall determine the appropriate timing and phase-in
23 of the program in any public school entity taking into
24 consideration the need for the public school entity to
25 properly terminate any existing health benefits
26 arrangements.

27 (ii) Negotiate or otherwise agree to provide or make
28 payment for supplemental benefits that have not been
29 included as part of the standard benefit package.

30 (2) Nothing contained in this chapter shall restrict a

1 public school entity from negotiating or otherwise agreeing
2 to make payment for postretirement health benefits for
3 members or as may be provided for in Subchapter F.

4 (g) Initial qualified majority vote requirement.--A
5 qualified majority vote of the board that occurs on or before
6 December 31, 2010, must include the support of either the
7 Secretary of the Budget or the Insurance Commissioner.

8 SUBCHAPTER E

9 ALTERNATIVE MEASURES FOR COST REDUCTION

10 Section 351. Alternative measures program.

11 (a) Creation.--Upon completing the study required under
12 section 321 with either a negative recommendation to proceed
13 with implementation of a Statewide health care program or if the
14 board fails to achieve agreement and approve a plan for
15 implementing a Statewide health benefits program by a qualified
16 majority vote, the board shall proceed to initiate and sponsor
17 an alternative measures program to reduce the costs for public
18 school entities in providing health care coverage to employees
19 and other eligible individuals.

20 (b) Program design.--In designing an alternative measures
21 program, the board may consider all of the following:

22 (1) Establishment of pools for selected areas of
23 coverage, such as pharmacy services, transplants, stop-loss
24 insurance, health care management or other possible areas
25 that in the board's judgment can be offered Statewide or
26 regionally on a more stable and cost-effective basis.

27 (2) Assistance in the formation of consortia to serve
28 public school entities that do not have the option of joining
29 an existing consortium.

30 (3) Development of best practice standards and

1 benchmarks for public school entities and consortia-
2 sponsoring health care plans for school employees.

3 (4) Requirements that public school entities and
4 consortia aggregate into larger regional pools, with opt-out
5 provisions for public school entities or consortia that meet
6 best practice standards and benchmarks.

7 (5) Requirements for public disclosure by public school
8 entities and consortia comparing their health benefits
9 purchasing to established best practice standards in their
10 region.

11 (c) Implementation.--The board shall have full authority to
12 select and contract with insurance carriers, health maintenance
13 organizations, pharmacy benefit managers, third-party
14 administrators, reinsurers and any other entities necessary to
15 provide the selected areas of coverage. The board shall have
16 full authority to determine the nature, amount and duration and
17 discontinuation of coverage to be provided.

18 (d) Mandatory and optional participation.--The board shall
19 have the authority to require public school entities and
20 consortia to participate in the alternative measures program.

21 (e) Transition plan.--If the board determines that a public
22 school entity or consortium shall be required to participate in
23 the alternative measures program, the public school entity or
24 consortium shall, within a reasonable period of time as
25 determined by the board, present to the board a transition plan
26 with a schedule for the public school entity or consortium to
27 join the alternative measures program. The board shall review
28 the transition plan with the public school entity or consortium
29 and make any necessary modifications before granting approval of
30 the plan. A public school entity or consortium shall be subject

1 to adherence to the transition plan approved by the board.

2 (f) Extensions of time.--The board shall give due
3 consideration to a transition plan submitted pursuant to
4 subsection (e) that includes a request for an extension of time.
5 Consideration shall be given to a public school entity or
6 consortium which will incur a significant financial cost or
7 penalty.

8 (g) Prohibited membership.--A public school entity that
9 participates in the Pennsylvania Employees' Benefit Trust Fund
10 shall be prohibited from participating in the alternative
11 measures program.

12 (h) Transition of employees.--A public school entity that
13 provides some or all of its employees with health benefits
14 through another health care plan by virtue of one or more
15 collective bargaining agreements entered into prior to the
16 effective date of this chapter shall not be required to join the
17 alternative measures program until expiration of the collective
18 bargaining agreements. The public school entity and some or all
19 of its employees, or bargaining representatives of its
20 employees, may, by mutual agreement and approval of the board,
21 join the program at an earlier date. Renewal or extension of a
22 collective bargaining agreement shall constitute its expiration
23 for the purposes of this subsection.

24 (i) Optional membership.--No school district of the first
25 class, as classified pursuant to section 202 of the Public
26 School Code, shall be required to participate in the alternative
27 measures program, except as may be agreed upon under the terms
28 of a collective bargaining agreement covering a majority of
29 employees of the school district. Upon a school district of the
30 first class entering participation in the alternative measures

1 program pursuant to a collective bargaining agreement, continued
2 participation in the alternative measures program shall become
3 mandatory.

4 SUBCHAPTER F

5 RETIREMENT HEALTH SAVINGS PLAN

6 Section 361. Retirement health savings plan.

7 (a) Plan created.--The board shall establish a retirement
8 health savings plan through which school employees can save to
9 cover health-related expenses following retirement. For this
10 purpose the board shall make available one or more trusts
11 including a governmental trust or governmental trusts authorized
12 under the IRC as eligible for tax-preferred or tax-free
13 treatment. The board may promulgate regulations regarding the
14 prudent and efficient operation of the retirement health savings
15 plan, including, but not limited to:

16 (1) Establishment of an annual administrative budget and
17 disbursements in accordance with the budget.

18 (2) Determination of the structure of the retirement
19 health savings accounts available to eligible school
20 employees.

21 (3) Determination of enrollment procedures.

22 (b) Contracting authorized.--The board is authorized to
23 administer the retirement health savings plan and to contract
24 with any lawfully authorized entities to provide investment
25 services, recordkeeping, benefit payments and other functions
26 necessary for the administration of the retirement health
27 savings plan. The board may contract with the retirement system
28 to invest funds in an account that shall be maintained and
29 accounted for separately from the funds of the retirement system
30 and invested in a prudent manner intended to maximize the safety

1 of the capital, with all earnings derived from investment of the
2 assets to be credited to the retirement health savings plan.
3 Costs and expenses incurred by the retirement system in
4 administering the investment option shall be paid by the
5 retirement health savings plan.

6 (c) Separate account.--All funds related to the retirement
7 health savings plan shall be maintained and accounted for
8 separately from the health benefits program sponsored by the
9 board. The assets of the retirement health savings plan shall
10 not be liable or utilized for payment of any expenses or claims
11 incurred by the health benefits program other than as may be
12 directed by the participant account holder for reimbursement of
13 an IRC-qualifying health-related expense.

14 (d) Enrollment.--The board shall establish eligibility
15 guidelines consistent with the IRC for school employees to
16 participate in the retirement health savings plan.

17 (e) Contributions.--

18 (1) The board shall determine what contributions are
19 eligible under the IRC for tax-preferred or tax-free
20 treatment and may be made into a retirement health savings
21 plan by a school employee. The board shall authorize and
22 allow contributions, subject to appropriate limits as may be
23 established by the board, to be paid by a school employee
24 electing participation in the retirement health savings plan
25 subject to the following conditions:

26 (i) A mandatory school employee contribution
27 established as a fixed percentage of compensation may be
28 established through a collective bargaining agreement
29 between a public school entity and a bargaining group
30 representing school employees. The retirement health

1 savings plan contribution rate does not have to be
2 uniform for all groups of school employees.

3 (ii) An optional employee contribution at a fixed
4 percentage of compensation may be elected by a school
5 employee during an annual election window that, once
6 elected, shall continue in effect, except to the extent
7 it may be changed or discontinued at a subsequent annual
8 election window as provided for by the board or
9 supplanted by a mandatory contribution.

10 (iii) An optional school employee contribution of
11 all or any portion of annual leave, vacation pay,
12 personal days or sick leave may be elected by a school
13 employee as so designated by the employee and agreed to
14 by the employee's employer. The board may provide that
15 the election shall be made during an annual election
16 window of no greater than 90 days as determined by the
17 board. Once the election has been made, an employee shall
18 not be allowed to change the amount or discontinue the
19 contributions until the next annual election window.

20 (2) The following contributions shall be made into a
21 retirement health savings plan on behalf of a school
22 employee:

23 (i) For an employee who elects participation in the
24 retirement health savings plan, the employee's employer
25 shall make a contribution to the employee's account equal
26 to the public school entity's savings in Social Security
27 and Medicare taxes resulting from the tax-preferred or
28 tax-free treatment of contributions made by the school
29 employee under this subsection. Additional contributions
30 by a public school entity may be established through a

1 collective bargaining agreement between a public school
2 entity and a bargaining group representing school
3 employees.

4 (ii) Any other payments by the Commonwealth or
5 public school entity, including any set-aside payments to
6 be made to school employee accounts under section 334 as
7 determined by the board.

8 (3) Contributions to the plan by a school employee or by
9 the Commonwealth or a public school entity on behalf of an
10 employee must be held in trust for reimbursement of employee
11 health-related expenses and the health-related expenses of
12 any health care dependents following retirement of the
13 employee or when otherwise determined to be benefit eligible.
14 The board shall maintain a separate account of the
15 contributions made by or on behalf of each participant and
16 the earnings thereon. The board shall make available a
17 selection of investment options for participants who wish to
18 direct the investment of the accumulations in the
19 participant's account, in addition to a default option for
20 participants to be invested in a prudent manner as determined
21 by the board.

22 (f) Reimbursement for health-related expenses.--

23 (1) Upon retirement or separation from employment with a
24 public school entity, a participant becomes eligible to seek
25 reimbursements for IRC-qualifying health-related expenses
26 from the participant's retirement health savings plan
27 account, including reimbursements for the health-related
28 expenses of the participant's eligible health care
29 dependents.

30 (2) If a school employee dies prior to exhausting the

1 balance in the employee's retirement health savings plan
2 account, the employee's health care dependents are eligible
3 to seek reimbursement for IRC-qualifying health-related
4 expenses from the account.

5 (3) The board shall pay reimbursements from a retirement
6 health savings plan account until the accumulation in the
7 account has been exhausted. If an account balance remains
8 after the death of all participant account holders, the
9 remainder of the account must be paid to the school
10 employee's beneficiaries or, if none, to the employee's
11 estate.

12 (g) Annual financial statement.--Quarterly and annually the
13 board shall prepare summary retirement health savings plan
14 statements for individual participant account holders listing
15 information on contributions, investment earnings and
16 distributions for the account holders' accounts.

17 (h) Fees.--The board is authorized to charge uniform fees to
18 participants to cover the ongoing costs of operating the plan.
19 Any fees not needed must revert to participant accounts or be
20 used to reduce plan fees the following year.

21 (i) Advisory committee.--

22 (1) The board shall establish a participant advisory
23 committee for the retirement health savings plan composed of:

24 (i) One representative appointed by each Statewide
25 union that represents bargaining groups of school
26 employees participating in the plan.

27 (ii) One representative of each Statewide
28 organization representing at least 10% of annuitants.

29 (iii) One representative of the Pennsylvania
30 Association of School Business Officials.

1 (iv) One representative of the Pennsylvania School
2 Boards Association.

3 (2) Each participant group shall be responsible for the
4 expenses of its own representative.

5 (3) The advisory committee shall meet at least two times
6 per year and shall be consulted on plan offerings. By October
7 1 of each year, the board shall give the advisory committee a
8 statement of fees collected and the use of the fees.

9 CHAPTER 5

10 MISCELLANEOUS PROVISIONS

11 Section 501. Feasibility Report.

12 Within 18 months after the Statewide health benefits program
13 or the alternative measures program is fully implemented, the
14 Secretary of Administration shall report to the Governor, the
15 President pro tempore of the Senate and the Speaker of the House
16 of Representatives the feasibility of including community
17 college employees in the program.

18 Section 502. Effective date.

19 This act shall take effect July 1, 2009.