

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1870 Session of  
2007

INTRODUCED BY STURLA, DeLUCA, EACHUS, DERMODY, DeWEESE, McCALL,  
SURRA AND WALKO, OCTOBER 3, 2007

REFERRED TO COMMITTEE ON INSURANCE, OCTOBER 3, 2007

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An  
2 act relating to insurance; amending, revising, and  
3 consolidating the law providing for the incorporation of  
4 insurance companies, and the regulation, supervision, and  
5 protection of home and foreign insurance companies, Lloyds  
6 associations, reciprocal and inter-insurance exchanges, and  
7 fire insurance rating bureaus, and the regulation and  
8 supervision of insurance carried by such companies,  
9 associations, and exchanges, including insurance carried by  
10 the State Workmen's Insurance Fund; providing penalties; and  
11 repealing existing laws," providing for accessibility to  
12 affordable health insurance coverage for previously uninsured  
13 individuals and for small businesses; adding definitions;  
14 providing for subsidized health care, for outreach, for  
15 Federal waivers and for expiration; and making a repeal.

16 The General Assembly of the Commonwealth of Pennsylvania  
17 hereby enacts as follows:

18 Section 1. The act of May 17, 1921 (P.L.682, No.284), known  
19 as The Insurance Company Law of 1921, is amended by adding an  
20 article to read:

21 ARTICLE XXV

22 ADULT HEALTH CARE

23 SUBARTICLE A

24 PRELIMINARY PROVISION

1 Section 2501. Short title of article.

2 This article shall be known and may be cited as the Cover All  
3 Pennsylvanians (CAP) Act.

4 Section 2502. Legislative findings and intent.

5 The General Assembly finds and declares as follows:

6 (1) Health care costs have been increasing twice as fast  
7 as average wages in this Commonwealth. At the same time as  
8 health care costs are skyrocketing and nearly 1,000,000  
9 Pennsylvanians remain uninsured, billions of dollars are paid  
10 each year in this Commonwealth in avoidable health care  
11 costs.

12 (2) The large number of uninsured workers in this  
13 Commonwealth has a negative impact on this Commonwealth's  
14 economy and productivity because insured workers are  
15 healthier and more productive and use fewer sick days. The  
16 Commonwealth should play a role in making health care  
17 coverage affordable for small businesses and for uninsured  
18 individuals.

19 (3) The health care crisis is of national concern, but  
20 it is possible to create a solution in this Commonwealth that  
21 reduces the cost of health care and improves the well-being  
22 of Pennsylvania's residents by addressing the fundamental  
23 issues of affordability, accessibility and quality.

24 (4) The cost for covering the uninsured results in  
25 increased premiums for businesses and labor groups.

26 (5) The Commonwealth has a clear interest in ensuring  
27 that Pennsylvania families and small employers can afford  
28 health insurance.

29 Section 2503. Definitions.

30 The following words and phrases when used in this article

1 shall have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 "Adult basic." The health investment insurance program  
4 established under Chapter 13 of the act of June 26, 2001  
5 (P.L.755, No.77), known as the Tobacco Settlement Act.

6 "Average annual wage." The total annual wages paid by an  
7 employer divided by the number of the employer's employees.

8 "Basic benefit package." The minimum health benefit  
9 insurance plan determined by the Insurance Commissioner under  
10 section 2520.

11 "Behavioral health services." Mental health or substance  
12 abuse services.

13 "CAP contracts." The contracts entered into under section  
14 2514.

15 "CAP Fund." The restricted account established under section  
16 2512.

17 "Children's Health Insurance Program" or "CHIP." The  
18 Children's Health Care Program established under Article XXIII.

19 "Commissioner." The Insurance Commissioner of the  
20 Commonwealth.

21 "Commonwealth Attorneys Act." The act of October 15, 1980  
22 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

23 "Commonwealth average annual wage." The average annual wage  
24 in this Commonwealth for a calendar year determined by the  
25 Department of Labor and Industry under section 404(e)(2) of the  
26 act of 1936, (1937 2nd Sp.Sess. P.L.2897, No.1), known as the  
27 Unemployment Compensation Law.

28 "Commonwealth Documents Law." The act of July 31, 1968  
29 (P.L.769, No.240), referred to as the Commonwealth Documents  
30 Law.

1 "Community Health Reinvestment Agreement." The Agreement on  
2 Community Health Reinvestment entered into February 2, 2005, by  
3 the Insurance Department and Capital Blue Cross, Highmark Inc.,  
4 Hospital Service Association of Northeastern Pennsylvania and  
5 Independence Blue Cross and published in the Pennsylvania  
6 Bulletin at 35 Pa.B.4155.

7 "Contractor." A person with whom the Insurance Department  
8 has entered into a contract for the purposes of subarticle B.

9 "Cover All Pennsylvanians" or "CAP." The health insurance  
10 program established under this article.

11 "Department." The Insurance Department of the Commonwealth.

12 "Eligible employee enrollee." An individual who is 19 years  
13 of age or older, is an employee of an eligible small low-wage  
14 employer participant and has enrolled in CAP.

15 "Eligible individual." As follows:

16 (1) An individual who meets all of the following  
17 criteria:

18 (i) Is at least 19 years of age but no older than 64  
19 years of age.

20 (ii) Has been a resident of this Commonwealth at  
21 least 90 days prior to enrollment in CAP.

22 (iii) Is ineligible to receive continuous  
23 eligibility coverage under Title XIX or XXI of the Social  
24 Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.),  
25 except for benefits authorized under a waiver granted by  
26 the United States Department of Health and Human Services  
27 to implement CAP.

28 (iv) Meets one of the following:

29 (A) Is currently enrolled in the health  
30 investment insurance program established under

Chapter 13 of the act of June 26, 2001 (P.L.755, No.77), known as the Tobacco Settlement Act, or is wait-listed for the program on the effective date of this section.

(B) Has a household income that is no greater than 200% of the Federal poverty level at the time of application and has not been covered by any health insurance plan or program for at least 90 days immediately preceding the date of application, except that the 90-day period shall not apply to an individual who meets one of the following:

(I) Is eligible to receive benefits under the act of December 5, 1936 (1937 2nd Sp.Sess. P.L. 2897, No.1), known as the Unemployment Compensation Law.

(II) Was covered under a health insurance plan or program provided by an employer but at the time of application is no longer covered because of a change in the individual's employment status and is ineligible to receive benefits under the Unemployment Compensation Law.

(III) Lost coverage as a result of divorce or separation from a covered individual, the death of a covered individual or a change in employment status of a covered individual.

(IV) Is transferring from another government-subsidized health insurance program, including as a result of failure to meet income eligibility requirements.

(C) Has a household income that is greater than

1       200% of the Federal poverty level and has not been  
2       covered by any health insurance plan or program  
3       during the 180 days immediately preceding the date of  
4       application, except that the 180-day period shall not  
5       apply to an individual who meets one of the  
6       following:

7               (I) Is eligible to receive benefits under  
8               the Unemployment Compensation Law.

9               (II) Was covered under a health insurance  
10              plan or program provided by an employer but at  
11              the time of application is no longer covered  
12              because of a change in the individual's  
13              employment status and is ineligible to receive  
14              benefits under the Unemployment Compensation Law.

15              (III) Lost coverage as a result of divorce  
16              or separation from a covered individual, the  
17              death of a covered individual or a change in  
18              employment status of a covered individual.

19              (IV) Is transferring from another  
20              government-subsidized health insurance program,  
21              including as a result of failure to meet income  
22              eligibility requirements.

23       (2) If an individual who otherwise meets the definition  
24       in paragraph (1) is attending an institution of higher  
25       education in this Commonwealth, the individual shall be  
26       required to meet the domiciliary requirements of 22 Pa. Code  
27       Ch. 507 (relating to finance and administration) prior to  
28       enrollment in CAP.

29       "Eligible individual enrollee." An eligible individual who  
30       is enrolled in CAP. The term does not include an eligible

1 employee enrollee.

2 "Eligible small low-wage employer." An employer that meets  
3 all of the following:

4 (1) Has at least two, but not more than 50 full-time  
5 equivalent employees.

6 (2) Has not offered health care insurance through any  
7 plan or program during the 180 days immediately preceding the  
8 date of application for participation in CAP.

9 (3) Pays an average annual wage that is less than the  
10 Commonwealth average annual wage.

11 (4) Will enroll in CAP at least 75% of all of its  
12 employees who work 20 hours or more per week.

13 "Eligible small low-wage employer participant." An eligible  
14 small low-wage employer who is participating in CAP.

15 "Employee." Any individual whose wages an employer is  
16 required under the Internal Revenue Code of 1986 (Public Law 99-  
17 514, 26 U.S.C. § 1 et. seq.) to withhold Federal income tax.

18 "Employer." The term shall include:

19 (1) Any of the following who or which employ one or more  
20 employees to perform services for remuneration for any  
21 period of time:

22 (i) An individual, copartnership, association,  
23 domestic or foreign corporation or other entity.

24 (ii) The legal representative, trustee in  
25 bankruptcy, receiver or trustee of any individual,  
26 copartnership, association or corporation or other  
27 entity.

28 (iii) The legal representative of a deceased  
29 individual.

30 (2) Individuals who are self-employed.

1       (3) The executive, legislative and judicial branches of  
2       the Commonwealth and any of its political subdivisions.

3       "Enrollee." An eligible employee enrollee or an eligible  
4       individual enrollee, as the context may require.

5       "Fair share tax." The tax imposed under section 2541.

6       "Fiscal year." A period of 12 consecutive calendar months  
7       commencing with July 1.

8       "Hospital plan corporation." A not-for-profit corporation  
9       operating under the provisions of 40 Pa.C.S. Ch. 61 (relating to  
10       hospital plan corporations).

11       "Institution of higher education." A public or private two-  
12       year or four-year college, university or postbaccalaureate  
13       program.

14       "Insurer." A company or health insurance entity licensed in  
15       this Commonwealth to issue any individual or group health,  
16       sickness or accident policy or subscriber contract or  
17       certificate or plan that provides medical or health care  
18       coverage by a health care facility or licensed health care  
19       provider that is offered or governed under this act or any of  
20       the following:

21               (1) The act of December 29, 1972 (P.L.1701, No.364),  
22               known as the Health Maintenance Organization Act.

23               (2) The act of May 18, 1976 (P.L.123, No.54), known as  
24               the Individual Accident and Sickness Insurance Minimum  
25               Standards Act.

26               (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan  
27               corporations) or 63 (relating to professional health services  
28               plan corporations).

29               (4) Section 630 of this act.

30               (5) Article XXIV of this act.



1     "Medical loss ratio." The ratio of incurred medical claim  
2     costs to earned premiums.

3     "Offeror." A hospital plan corporation, professional health  
4     service corporation or other insurer that submits a proposal in  
5     response to the Insurance Department's solicitation of bids or  
6     proposals issued under section 2514.

7     "Preexisting condition." A disease or physical condition for  
8     which medical advice, diagnosis, care or treatment has been  
9     recommended or received prior to the effective date of coverage.

10    "Prescription drug." A controlled substance, other drug or  
11    device for medication dispensed by order of a health care  
12    provider with prescriptive authority under the laws of this  
13    Commonwealth.

14    "Prevailing Wage Act." The act of August 15, 1961 (P.L.987,  
15    No.442), known as the Pennsylvania Prevailing Wage Act.

16    "Professional health service plan corporation." A not-for-  
17    profit corporation operating under the provisions of 45 Pa.C.S.  
18    Ch. 63 (relating to professional health services plan  
19    corporations).

20    "Public Welfare Code." The act of June 13, 1967 (P.L.31,  
21    No.21), known as the Public Welfare Code.

22    "Qualifying health care coverage." A health benefit plan or  
23    other form of health care coverage that qualifies an employer  
24    for the credit under section 2542.

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

27    "Tobacco Settlement Act." The act of June 26, 2001 (P.L.755,  
28    No.77), known as the Tobacco Settlement Act.

29    "Unemployment Compensation Law." The act of December 5, 1936  
30    (1937 2nd Sp.Sess. P.L. 2897, No.1), known as the Unemployment

1 Compensation Law.

2 "Wages." All remuneration, including the cash value of  
3 mediums of payment other than cash, paid by an employer to all  
4 employees for services performed in this Commonwealth, including  
5 amounts withheld from the employees' pay by the employer. The  
6 term shall not include remuneration excluded from wages under  
7 the provisions of the definition of "wages under section 4(x) of  
8 the act of December 5, 1936 (1937 2nd Sp.Sess. P.L.2897, No.1),  
9 known as the Unemployment Compensation Law, other than the  
10 provisions of the definition of "wages" under section 4 (x)(1).  
11 The term shall not exclude remuneration included in wages under  
12 the provisions of the definition of "wages" under section 4  
13 (x)(6) of the Unemployment Compensation Law.

14 SUBARTICLE B

15 (B) PRIMARY HEALTH CARE PROGRAM

16 Section 2511. Cover All Pennsylvanians health insurance  
17 program.

18 (a) Establishment.--The Cover All Pennsylvanians health  
19 insurance program is established within the department.

20 (b) Purpose.--The purpose of CAP is to assist certain small  
21 business employers to cover their uninsured employees and to  
22 provide access to affordable health insurance coverage for  
23 uninsured adult Pennsylvanians.

24 (c) Administration.--The department shall administer CAP  
25 under section 2514(1).

26 Section 2512. CAP Fund.

27 (a) Establishment.--There is established a restricted  
28 account in the General Fund to be known as the CAP Fund.

29 (b) Sources.--The following are the sources of money for the  
30 CAP Fund:

1           (1) Appropriations to the fund.

2           (2) Money received from the Federal Government or other  
3           sources.

4           (3) Money required to be deposited pursuant to other  
5           provisions of this article or any other law of the  
6           Commonwealth.

7           (4) Money received under subarticle C.

8           (5) Upon implementation of CAP:

9                 (i) Money appropriated for adult basic under section  
10                306(b)(1)(vi) of the Tobacco Settlement Act.

11               (ii) Money required to be dedicated to adult basic  
12               or any alternative program to benefit persons of low-  
13               income under the Community Health Reinvestment Agreement  
14               within the respective service areas for each party to  
15               that agreement. Money under this subparagraph shall only  
16               be used to defray the cost of the subsidies approved  
17               under section 2513(6).

18           (6) Returns on money in the fund.

19           (c) Appropriation.--Money in the fund is hereby  
20           appropriated, upon approval of the Governor, to the fund to be  
21           used exclusively for the implementation and administration of  
22           CAP.

23           Section 2513. Rates, premiums, discounts and subsidies.

24           Rates, premiums, discounts and subsidies for CAP shall be  
25           determined in accordance with the following:

26               (1) Rates for CAP shall be approved annually by the  
27               department and may vary by region and contractor. Rates shall  
28               be based on actuarially sound and adequate review.

29           (2) Premiums for CAP:

30               (i) shall be established annually by the

commissioner; and

(ii) may vary by region and contractor.

(3) Premiums to be paid by eligible small low-wage employer participants and enrollees under this section shall be increased by a factor no higher than the average of the change in the medical care component of the Consumer Price Index and the change in average wage for this Commonwealth as determined by the Department of Labor and Industry.

(4) Except as set forth in paragraph (7), the premium for eligible employee enrollees shall be discounted from the amount established under paragraph (2) in an amount determined annually by the commissioner. The premium discount shall not exceed 30%. The following apply:

(i) An eligible small low-wage employer participant:

(A) shall pay at least 65% of the discounted premium for each employee enrolled; and

(B) may pay more than 65% of the discounted premium for each employee.

(ii) An eligible employee enrollee not receiving a subsidy under paragraph (6) shall pay the balance of the discounted premium.

(iii) An eligible small low-wage employer participant shall sponsor a program that allows health insurance premiums paid by its employees to be made on a pretax basis and shall inform its employees of the availability of the program. The program shall include the following payments:

(A) that portion of the discounted premium less applicable subsidies to be paid by its eligible employee enrollees;

1                   (B) CAP premium paid for dependents of the  
2                   employees; and

3                   (C) premiums paid by employees for CHIP.

4           (5) The premiums for eligible individual enrollees and  
5           receiving subsidies under paragraph (6) shall be at the full  
6           premium level.

7           (6) Subject to paragraph (7), an enrollee whose  
8           household income is at or below 300% of the Federal poverty  
9           level may apply to the department for a premium subsidy as  
10          follows:

11                  (i) The department shall review and approve  
12                  applications for subsidies under this paragraph.

13                  (ii) Except to the extent that changes may be  
14                  necessary to meet Federal requirements or to encourage  
15                  eligible small low-wage employer participation or  
16                  enrollment by eligible individuals, subsidies for the  
17                  2007-2008 fiscal year are preliminarily estimated to  
18                  result in the following premium amount based on household  
19                  income:

20                          (A) For an enrollee whose household income is  
21                          not greater than 100% of the Federal poverty level, a  
22                          monthly premium of \$10.

23                          (B) For an enrollee whose household income is  
24                          greater than 100% but not greater than 200% of the  
25                          Federal poverty level, a monthly premium of \$40.

26                          (C) For an enrollee whose household income is  
27                          greater than 200% but not greater than 300% of the  
28                          Federal poverty level, a monthly premium of \$60.

29                          (iii) For fiscal years beginning after June 30,  
30                          2008, the commissioner may establish different subsidy

1       amounts and shall forward notice of the new premium  
2       amounts to the Legislative Reference Bureau for  
3       publication in the Pennsylvania Bulletin.

4       (iv) An enrollee who receives a subsidy under this  
5       paragraph must do all of the following:

6               (A) Verify household income and household  
7               composition with the department every six months.

8               (B) Notify the department in writing within 30  
9               days of a change in household income or composition.

10      (7) The following apply:

11              (i) An enrollee who is paid the prevailing wage  
12              while working on a public work project as required by the  
13              Prevailing Wage Act, and who is otherwise entitled to a  
14              subsidy under paragraph (6), shall be subject to a  
15              reduction of the subsidy on a dollar-for-dollar basis for  
16              every dollar paid to the enrollee as part of the  
17              prevailing wage requirement which is allocable for use in  
18              the purchase of health care benefits.

19              (ii) A small low-wage employer participant that has  
20              a contract to perform work on a public work project  
21              subject to the Prevailing Wage Act shall not be entitled  
22              to the premium discount provided under paragraph (4)  
23              during the term of the contract.

24      (8) The department shall freeze enrollment and establish  
25      waiting lists to assure that the Commonwealth's costs to  
26      implement and administer CAP do not exceed funds made  
27      available for CAP.

28      (9) Notwithstanding any other provision of law to the  
29      contrary, employer-based coverage may, in the commissioner's  
30      sole discretion, be purchased in place of enrollment in CAP

1 or may be purchased in conjunction with any portion of CAP  
2 provided outside the scope of CAP contracts by the  
3 Commonwealth paying the employee's share of the premium to  
4 the employer if it is more cost effective for the  
5 Commonwealth to purchase health care coverage from an  
6 enrollee's employer-based program than to pay the  
7 Commonwealth's share of a subsidized premium. This paragraph  
8 shall apply to any employer-based program, whether individual  
9 or family, such that if the Commonwealth's share of the  
10 enrollee plus its share for any spouse under CAP or children  
11 under CHIP is greater than the enrollee's premium share for  
12 family coverage under the employer-based program, the  
13 Commonwealth may choose to pay the latter alone or in  
14 combination with providing any benefit the Commonwealth does  
15 not provide through its CAP contracts.

16 Section 2514. Duties of department.

17 The department shall have the following duties:

18 (1) Administer CAP on a Statewide basis.  
19 (2) Solicit bids or proposals and award contracts for  
20 the basic benefit package through a competitive procurement  
21 in accordance with 62 Pa.C.S. (relating to procurement) and  
22 section 2515. The department may award contracts on a  
23 multiple award basis as described in 62 Pa.C.S. § 517  
24 (relating to multiple awards).

25 (3) Impose reasonable cost-sharing arrangements and  
26 encourage appropriate use by contractors of cost-effective  
27 health care providers who will provide quality health care by  
28 establishing and adjusting copayments to be incorporated into  
29 CAP by contractors. The department shall forward changes to  
30 copayments to the Legislative Reference Bureau for

1 publication in the Pennsylvania Bulletin. Changes shall be  
2 implemented by contractors as soon as practicable following  
3 publication, but in no event more than 120 days following  
4 publication.

5 (4) Ensure that the eligibility of small low-wage  
6 employer participants and enrollees receiving subsidies is  
7 redetermined every six months.

8 (5) In consultation with other appropriate Commonwealth  
9 agencies, conduct monitoring and oversight of contracts  
10 entered into with contractors.

11 (6) In consultation with other appropriate Commonwealth  
12 agencies, monitor, review and evaluate the adequacy,  
13 accessibility and availability of services delivered to  
14 enrollees.

15 (7) In consultation with other appropriate Commonwealth  
16 agencies, establish and coordinate the development,  
17 implementation and supervision of an outreach plan to ensure  
18 that those who may be eligible are aware of CAP. The plan  
19 shall include provisions for:

20 (i) reaching special populations, including nonwhite  
21 and non-English-speaking individuals and individuals with  
22 disabilities;

23 (ii) reaching different geographic areas, including  
24 rural and inner-city areas; and

25 (iii) assuring that special efforts are coordinated  
26 within the overall outreach activities throughout this  
27 Commonwealth.

28 (8) At the request of an individual enrollee, facilitate  
29 the payment on a pretax basis of premiums:

30 (i) for CAP and dependents covered under CAP; or



1           (ii) if applicable, for CHIP.

2           (9) To establish penalties for persons who enroll in  
3           CAP, drop enrollment and subsequently reenroll for the  
4           purpose of avoiding the ongoing payment of premiums.

5 Section 2515. Submitting proposals and awarding contracts.

6           (a) Submission.--Each professional health service plan  
7           corporation and hospital plan corporation and their subsidiaries  
8           and affiliates doing business in this Commonwealth shall submit  
9           a bid or proposal to the department to carry out the purposes of  
10           this subarticle in the geographic area serviced by the  
11           corporation. All other insurers may submit a bid or proposal to  
12           the department to carry out the purposes of this subarticle.

13           (b) Review.--The department shall review and score the bids  
14           or proposals on the basis of all of the requirements for CAP.  
15           The department may include other criteria in the solicitation  
16           and in the scoring and selection of the bids or proposals that  
17           the department, in the exercise of its duties under section  
18           2514, deems necessary. The department shall do all of the  
19           following:

20           (1) Select, to the greatest extent practicable, offerors  
21           that contract with health care providers to provide health  
22           care services on a cost-effective basis. The department shall  
23           select offerors that use appropriate cost management methods,  
24           including the chronic care model, which will enable CAP to  
25           provide coverage to the maximum number of enrollees.

26           (2) Select, to the greatest extent practicable, only  
27           offerors that comply with all procedures relating to  
28           coordination of benefits as required by the department and  
29           the Department of Public Welfare.

30           (c) Term.--Contracts may be for an initial term of up to

five years, with options to extend for five one-year periods.

Section 2516. Rates and charges.

(a) Medical loss ratio.--The medical loss ratio for a contract shall be no less than 85%.

(b) Fee.--No enrollee shall be charged a fee by any person as a requirement for enrolling in CAP.

Section 2517. Participation by eligible small low-wage employers.

(a) Employer.--An eligible small low-wage employer seeking to participate in the CAP program must do all of the following:

(1) Select and contact a contractor that services its geographic area from a list of CAP contractors posted on the department's CAP website or otherwise obtained from the department upon request.

(2) Adequately inform employees of the opportunity to enroll in CAP and the process for enrollment required by the contractor.

(3) Comply with all other relevant provisions of this article.

(b) Employees.--Eligible employee enrollees must do all of the following:

(1) Comply with the application and other enrollment requirements of the contractor.

(2) Pay the required premium.

Section 2518. Termination of employment.

An eligible employee enrollee who is terminated from employment shall be eligible to continue participating in CAP if the eligible employee enrollee continues to meet the requirements of an eligible individual enrollee and pays any increased premium required.

1 Section 2519. Enrollment by eligible individuals.

2 An eligible individual seeking to purchase insurance through  
3 CAP must do all of the following:

4 (1) Select and contact a contractor that services the  
5 eligible individual's geographic area from a list of CAP  
6 contractors posted on the department's CAP website or  
7 otherwise obtained from the department upon request.

8 (2) Comply with the application and other enrollment  
9 requirements of the contractor.

10 (3) Pay the required premium directly to the contractor.

11 (4) Comply with all other relevant provisions of this  
12 article.

13 Section 2520. Basic benefit package.

14 (a) Benefits.--The basic benefit package to be offered under  
15 CAP shall be of the scope and duration as the department  
16 determines and shall provide for all of the following, which may  
17 be limited or unlimited as the department may determine:

18 (1) Preliminary and annual health assessments.

19 (2) Emergency care.

20 (3) Inpatient and outpatient care.

21 (4) Prescription drugs, medical supplies and equipment.

22 (5) Emergency dental care.

23 (6) Maternity care.

24 (7) Skilled nursing.

25 (8) Home health and hospice care.

26 (9) Chronic disease management.

27 (10) Preventive and wellness care.

28 (11) Inpatient and outpatient behavioral health  
29 services.

30 (b) Commonwealth election.--The Commonwealth may elect to

provide any benefit independently and outside the scope of CAP contracts.

(c) Enrollment.--Enrollment in CAP shall not be prohibited based upon a preexisting condition, nor shall a CAP benefit plan exclude a diagnosis or treatment for a condition based upon its preexistence.

Section 2521. Data matching.

(a) Covered individuals.--All entities providing health insurance or health care coverage within this Commonwealth shall, not less frequently than once every month, provide the names, identifying information and any additional information on coverage and benefits as the department may specify for all individuals for whom the entities provide insurance or coverage.

(b) Use of information.--The department shall use the information obtained in subsection (a) to determine whether any portion of an enrollee's premium is being paid from any other source and to determine whether another entity has primary liability for any health care claims paid under any program administered by the department. If a determination is made that an enrollee's premium is being paid from another source, the department shall not make any additional payments to the insurer for the enrollee.

(c) Excess payment.--If any payment has been made to an insurer by the department for an enrollee for whom any portion of the premium paid by the department is being paid from another source, the insurer shall reimburse the department the amount of any excess payment or payments.

(d) Reimbursement.--The department may seek reimbursement from an entity that provides health insurance or health care coverage that is primary to the coverage provided under any

1 program administered by the department.

2 (e) Timeliness.--To the maximum extent permitted by law, and  
3 notwithstanding any policy or plan provision to the contrary, a  
4 claim by the department for reimbursement under subsection (c)  
5 or (d) shall be deemed timely filed if it is filed with the  
6 insurer or entity within three years following the date of  
7 payment.

8 (f) Agreements.--The department is authorized to enter into  
9 agreements with entities providing health insurance and health  
10 care coverage for the purpose of carrying out the provisions of  
11 this section. The agreements shall provide for the electronic  
12 exchange of data between the parties at a mutually agreed upon  
13 frequency, but no less than once every two months, and may also  
14 allow for payment of a fee by the department to the entity  
15 providing health insurance or health care coverage.

16 (g) Other coverage.--The department shall determine that no  
17 other health care coverage is available to the enrollee through  
18 an alimony agreement or an employment-related or other group  
19 basis. If health care coverage is available, the department  
20 shall reevaluate the enrollee's eligibility under this  
21 subarticle.

22 (h) Penalty.--The commissioner may impose a penalty of up to  
23 \$1,000 per violation upon any entity that fails to comply with  
24 the obligations imposed by this subarticle. All funds collected  
25 under this subsection shall be deposited into the CAP Fund.

26 (i) Coordination.--The department shall coordinate with the  
27 Department of Public Welfare in the implementation of this  
28 subarticle and may designate the Department of Public Welfare to  
29 perform the duties that are appropriate under this subarticle.  
30 Section 2522. Information to be provided by insurers.

1     (a) Written notification.--Each hospital plan corporation  
2     and professional health services corporation shall provide an  
3     individual in this Commonwealth who has applied for insurance  
4     through its special care product with written information in  
5     plain language about the existence of CAP, the benefits it  
6     covers and the cost to the individual to purchase so that the  
7     individual applying for insurance through special care can  
8     compare the costs and benefits of it and CAP.

9     (b) Department review.--Each hospital plan corporation and  
10    professional health services corporation shall develop written  
11    materials which comply with subsection (a) and submit them to  
12    the department for review and approval.

13    (c) Approval required.--Only materials approved by the  
14    department under subsection (b) may be provided to applicants  
15    for a special care product offered in this Commonwealth.  
16    Section 2523. Regulations.

17    The department may promulgate regulations for the  
18    implementation and administration of this subarticle.  
19    Section 2524. Federal waivers.

20    The Department of Public Welfare, in cooperation with the  
21    department, shall apply for all applicable waivers from the  
22    Federal Government and shall seek approval to amend the State  
23    plan as necessary to carry out the provisions of this article.  
24    If the Department of Public Welfare receives approval of a  
25    waiver or approval of a State plan amendment as required by this  
26    section, it shall notify the department and shall transmit  
27    notice of the waiver or State plan amendment approvals to the  
28    Legislative Reference Bureau for publication as a notice in the  
29    Pennsylvania Bulletin. The department is authorized to change  
30    the benefits and the premium and copayment amounts payable under

1 section 2513 in order for CAP to meet Federal requirements.

2 Section 2525. Federal funds.

3 Notwithstanding any other provision of law, the Department of  
4 Public Welfare, in cooperation with the department, shall take  
5 any action necessary to do all of the following:

6 (1) Ensure the receipt of Federal financial  
7 participation under Title XIX of the Social Security Act (49  
8 Stat. 620, 42 U.S.C. § 1396 et seq.) for coverage and for  
9 services provided under this article.

10 (2) Qualify for available Federal financial  
11 participation under Title XIX of the Social Security Act.

12 Section 2526. Entitlements and claims.

13 Nothing in this subarticle shall constitute an entitlement  
14 derived from the Commonwealth or a claim on any funds of the  
15 Commonwealth.

16 Section 2527. Option to limit or not to proceed.

17 Notwithstanding any other provisions of this subarticle, in  
18 the event that Federal waiver requirements limit CAP to the  
19 extent that only a portion of those individuals otherwise  
20 eligible may be covered, the Commonwealth may limit CAP to that  
21 portion or, at its option, determine not to proceed with the CAP  
22 program.

23 SUBARTICLE C

24 FAIR SHARE TAX

25 Section 2541. Imposition of tax.

26 In order to help fund the Commonwealth's cost of implementing  
27 and administering CAP, each employer shall be subject to a fair  
28 share tax as follows:

29 (1) For fiscal years 2007-2008 through 2009-2010, 3% of  
30 the wages paid by the employer.

(2) For fiscal years commencing after June 30, 2010,  
3.5% of the wages paid by the employer.

Section 2542. Credits against tax.

(a) Reduction.--For fiscal years 2007-2008 through 2011-  
2012, the amount of the fair share tax to which an employer is  
otherwise subject may be reduced by the amount of a quarterly  
start-up credit as follows:

(1) Fiscal year 2007-2008, \$15,000.

(2) Fiscal year 2008-2009, \$12,000.

(3) Fiscal year 2009-2010, \$9,750.

(4) Fiscal year 2010-2011, \$7,700.

(5) Fiscal year 2011-2012, \$3,981.25.

(6) Fiscal year 2012-2013 and thereafter, \$0.

(b) Entitlement.--The following apply:

(1) An employer that offers qualifying health care  
coverage to each of its employees who work 30 hours per week  
or more following no more than 90 days of continued  
employment shall be entitled to a credit against the fair  
share tax in an amount equal to 3% of the employer's wages  
for fiscal years 2007-2008 through 2009-2010, and 3.5% of the  
employer's wages for fiscal years commencing after June 30,  
2010.

(2) The Department of Labor and Industry, in  
consultation with the department, shall determine whether the  
employer's offer shall be considered as qualifying health  
care coverage based on the premium and out-of-pocket costs to  
the employee and the level of employee participation. In the  
case of multiple plans offered by the same employer, the  
determination shall be based on the cost to the lowest wage  
employees of the employer and the relative participation of



1 those employees.

2 (c) Amount.--The total amount of credits under this section  
3 shall not exceed the amount of fair share tax imposed under  
4 section 2541 for the year the credit is granted.

5 (d) Limitations.--The credits under this section may not be  
6 carried back or carried forward to other years, refunded,  
7 assigned or sold.

8 Section 2543. Reports by employers.

9 (a) General rule.--If an employer's liability for fair share  
10 tax for a calendar quarter, determined without regard to section  
11 2542(b), exceeds the amount of credit available to the employer  
12 pursuant to section 2542(a) for that calendar quarter, the  
13 employer shall file a report with the Department of Labor and  
14 Industry for that calendar quarter. The report shall be due by  
15 the last day of the month immediately following the calendar  
16 quarter. The report shall be made in a manner prescribed by the  
17 Department of Labor and Industry and shall contain all  
18 information required by the Department of Labor and Industry,  
19 including the following:

20 (1) The amount of wages paid by the employer during the  
21 calendar quarter.

22 (2) A certification that the employer did or did not  
23 satisfy the requirements for the credit under section 2542(b)  
24 throughout the calendar quarter.

25 (b) Other reports.--Each employer shall file any other  
26 reports required by the Department of Labor and Industry in the  
27 administration of this subarticle, which reports shall be made  
28 in the manner prescribed by the Department of Labor and Industry  
29 and contain all information required by the Department of Labor  
30 and Industry.

1 Section 2544. Payment of tax.

2 Concurrently with each report required under section 2543,  
3 the employer shall pay to the Department of Labor and Industry  
4 the amount of fair share tax imposed under this subarticle for  
5 the period covered by the report.

6 Section 2545. Penalties.

7 (a) Failure to make or file report.--An employer that does  
8 not make and file the periodic reports required by section 2543  
9 in the manner prescribed by the Department of Labor and Industry  
10 on or before the date the report is required to be filed shall  
11 pay a penalty.

12 (b) Amount.--The amount of the penalty under subsection (a)  
13 shall be 10% of the amount of fair share tax due for the period  
14 and shall not be less than \$50 or more than \$5,000.

15 (c) Deposit.--All penalties collected under this section  
16 shall be deposited into the CAP Fund.

17 Section 2546. Interest.

18 (a) Interest.--Fair share taxes or penalties unpaid on the  
19 date on which they are due and payable shall bear interest at  
20 the greater of:

21 (1) one-twelfth of the annual rate determined by the  
22 Secretary of Revenue under section 806 of the act of April 9,  
23 1929 (P.L.343, No.176), known as The Fiscal Code, per month  
24 or fraction of a month; or

25 (2) the rate of 0.75% per month or fraction of a month  
26 from the date they become due until paid.

27 (b) Deposit.--All interest collected under this section  
28 shall be deposited into the CAP Fund.

29 Section 2547. Refunds.

30 (a) Credit or refund.--If an employer applies for refund or

credit of any amount paid as fair share tax, interest or penalties and the Department of Labor and Industry determines that the amount, or any portion thereof, was erroneously collected, the Department of Labor and Industry may, at its discretion, either allow a credit without interest against subsequent fair share tax payments or shall refund from the CAP Fund, without interest, the amount erroneously paid.

(b) Application.--No refund or credit shall be allowed with respect to a payment as fair share tax, interest or penalties, unless the employer files an application on or before the later of:

(1) one year from the date on which such payment was made; or

(2) four years from the reporting due date of the reporting period with respect to which the payment was made.

(c) Department of Labor and Industry.--For a like cause and within the same period, a refund may be made or a credit allowed on the initiative of the Department of Labor and Industry.

#### Section 2548. Collections and enforcement.

(a) Records open to inspection.--Records maintained by employers pursuant to section 206(a) of the Unemployment Compensation Law and corresponding regulations shall be open to inspection by the Department of Labor and Industry for purposes of this subarticle to the same extent that they are open to inspection for purposes of the Unemployment Compensation Law.

(b) Application of Unemployment Compensation Law.--The provisions of sections 304(a), (b) and (d), 305(c), 308.1, 309 and 309.2 of the Unemployment Compensation Law are incorporated into this subarticle and shall be applicable to the fair share tax, interest and penalties. References in these provisions of

the Unemployment Compensation Law to contributions shall be deemed to be references to the fair share tax for purposes of this subarticle.

Section 2549. False statements and representations and other offenses.

(a) Offense.--An employer, whether or not liable for the payment of fair share taxes under this subarticle, or an officer or agent of an employer or any other person who does any of the following commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$1,500 or to imprisonment for not longer than 30 days, or both:

(1) makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact to avoid becoming or remaining subject thereto or to avoid or reduce any fair share tax or other payment required from an employer under this subarticle;

(2) willfully fails or refuses to make fair share tax or other payments required under this subarticle;

(3) willfully fails or refuses to produce or permit the inspection or copying of records as required under this subarticle; or

(4) willfully fails or refuses to furnish any report required by section 2543 or the rules or regulations of the Department of Labor and Industry.

(b) Number of offenses.--The number of offenses under subsection (a) shall be determined as follows:

(1) Each false statement or representation or failure to disclose a material fact shall constitute a separate offense under subsection (a)(1).

(2) Each day of failure or refusal shall constitute a

1 separate offense under subsection (a)(2), (3) and (4).

2 (3) Each report required by section 2543 or the rules or  
3 regulations of the Department of Labor and Industry shall be  
4 the basis of a separate offense under subsection (a)(4).

5 (c) Restitution.--In addition to any other sanction, an  
6 employer, officer, agent or other person convicted under this  
7 subarticle for willful failure or refusal to make a payment  
8 shall be ordered to make restitution of the unpaid amounts,  
9 including interest and penalty, from the date the payment was  
10 due through the date of payment.

11 (d) Definition.--As used in this section, the term  
12 "willfully" shall have the meaning given to it under 18 Pa.C.S.  
13 § 302 (relating to general requirements of culpability).  
14 Section 2550. Powers and duties of Department of Labor and  
15 Industry.

16 (a) General rule.--The Department of Labor and Industry  
17 shall administer and enforce this subarticle and adopt, amend  
18 and rescind rules, regulations and guidance, require reports  
19 from employers, employees and any other person deemed by the  
20 Department of Labor and Industry to be affected by this  
21 subarticle, make investigations and take other action as it  
22 deems necessary or suitable. The rules, regulations and guidance  
23 shall not be inconsistent with the provisions of this  
24 subarticle.

25 (b) Authority.--In the discharge of the duties imposed by  
26 this subarticle, the Secretary of Labor and Industry and any  
27 agent authorized in writing by the secretary shall have the  
28 power to administer oaths and affirmations, take depositions and  
29 certify to official acts.

30 (c) Subpoenas.--The Department of Labor and Industry may

issue subpoenas to compel the attendance of witnesses and the  
production of books, papers, correspondence, memoranda and other  
records deemed necessary in the administration of this  
subarticle.

SUBARTICLE (D)

(RESERVED)

SUBARTICLE (E)

(RESERVED)

SUBARTICLE (F)

(RESERVED)

SUBARTICLE (G)

MISCELLANEOUS PROVISIONS

Section 2591. Regulations.

(a) Regulations promulgated under this article.--Except as  
otherwise provided in this article, the promulgation of  
regulations under this article by Commonwealth agencies given  
the authority to promulgate regulations shall, until three years  
from the effective date of this section, be exempt from the  
following:

(1) Section 205 of the Commonwealth Documents Law.

(2) The Commonwealth Attorneys Act.

(3) The Regulatory Review Act.

(b) Other regulations.--If, in the determination of the head  
of a Commonwealth agency given authority to promulgate  
regulations under this act, rulemaking is needed for purposes of  
the safety of patients in this Commonwealth, the Commonwealth  
agency may promulgate a final-omitted regulation under the  
Regulatory Review Act.

Section 2592. Enforcement.

(a) Determination of violation.--Upon a determination that a

1 person licensed by the department has violated any provision of  
2 this article, the department may, subject to 2 Pa.C.S. Chs. 5  
3 Subch. A (relating to practice and procedure of Commonwealth  
4 agencies) and 7 Subch. A (relating to judicial review of  
5 Commonwealth agency action), do any of the following:

6 (1) Issue an order requiring the person to cease and  
7 desist from engaging in the violation.

8 (2) Suspend or revoke or refuse to issue or renew the  
9 certificate or license of the offending party or parties.

10 (3) Impose an administrative penalty of up to \$5,000 for  
11 each violation.

12 (4) Seek restitution.

13 (5) Impose any other penalty or pursue any other remedy  
14 deemed appropriate by the commissioner.

15 (b) Other remedies.--The enforcement remedies imposed under  
16 this section are in addition to any other remedies or penalties  
17 which may be imposed by any other applicable statute, including  
18 the act of July 22, 1974 (P.L.589, No.205), known as the Unfair  
19 Insurance Practices Act. A violation by any person of this  
20 article is deemed an unfair method of competition and an unfair  
21 or deceptive act or practice under the Unfair Insurance  
22 Practices Act.

23 (c) No private cause of action.--Nothing in this article  
24 shall be construed as to create or imply a private cause of  
25 action for violation of this article.

26 Section 2593. Severability.

27 (a) General rule.--The provisions of this article are  
28 severable. If any provision of this article or its application  
29 to any person or circumstance is held invalid, the invalidity  
30 shall not affect other provisions or applications of this

1 article which can be given effect without the invalid provision  
2 or application.

3 (b) Limitation.--If the provisions of section 2542(b) are  
4 declared invalid by a court of competent jurisdiction and the  
5 decision is affirmed on its highest appeal or the appeal period  
6 expires without appeal being filed, the commissioner shall  
7 transmit notice of this fact to the Legislative Reference Bureau  
8 for publication as a notice in the Pennsylvania Bulletin.  
9 Thereafter, subsection (c) shall be effective in its place and  
10 stead.

11 (c) Alternate provision.--An employer that offers health  
12 care coverage to each of its employees who work 30 hours per  
13 week or more following no more than 90 days of continued  
14 employment during any fiscal year shall be entitled to an annual  
15 credit against the fair share tax in an amount equal to 3% of  
16 the employer's wages for fiscal years 2007-2008 through 2009-  
17 2010, and 3.5% of the employer's wages for fiscal years  
18 commencing after June 30, 2010.

19 Section 2. (1) The General Assembly declares that the  
20 repeal under paragraph (2) is necessary to effectuate the  
21 addition of Subarticle B of the act.

22 (2) Subject to section 3 of this act, Chapter 13 of the  
23 act of June 26, 2001 (P.L.755, No.77), known as the Tobacco  
24 Settlement Act, is repealed.

25 (3) All other acts and parts of acts are repealed  
26 insofar as they are inconsistent with this act.

27 Section 3. Savings from repeal are as follows:

28 (1) Notwithstanding section 2(2) of this act, funds  
29 appropriated under section 306(b)(1)(vi) of the act of June  
30 26, 2001 (P.L.755, No.77), known as the Tobacco Settlement



1 Act, for the program established in former Chapter 13 of that  
2 act shall be deposited in the CAP Fund under section 2512 of  
3 the act.

4 Section 4. This act shall take effect as follows:

5 (1) The addition of sections 2511, 2512, 2513, 2514,  
6 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523 and 2525  
7 of the act shall take effect 30 days after publication of the  
8 notice under section 2524 of the act.

9 (2) The addition of Subarticle C of the act shall take  
10 effect in 30 days.

11 (3) Section 2(2) of this act shall take effect upon  
12 publication of the notice under section 2524 of the act.

13 (4) The remainder of this act shall take effect  
14 immediately.