

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1304 Session of  
2008

INTRODUCED BY D. WHITE, M. WHITE, ORIE, EICHELBERGER, WAUGH,  
BROWNE, ARMSTRONG, CORMAN, RHOADES AND PUNT, APRIL 9, 2008

REFERRED TO BANKING AND INSURANCE, APRIL 9, 2008

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An  
2 act relating to insurance; amending, revising, and  
3 consolidating the law providing for the incorporation of  
4 insurance companies, and the regulation, supervision, and  
5 protection of home and foreign insurance companies, Lloyds  
6 associations, reciprocal and inter-insurance exchanges, and  
7 fire insurance rating bureaus, and the regulation and  
8 supervision of insurance carried by such companies,  
9 associations, and exchanges, including insurance carried by  
10 the State Workmen's Insurance Fund; providing penalties; and  
11 repealing existing laws," further providing for effect of act  
12 on existing laws and, in insurance holding companies, for  
13 definitions, for acquisition of control of or merger with  
14 domestic insurer and for acquisitions involving insurers not  
15 otherwise covered; providing for committee review; imposing a  
16 duty on the Insurance Department; establishing the Insurance  
17 Restructuring Restricted Receipt Account; providing for  
18 community health reinvestment; imposing duties on the  
19 Insurance Department; and establishing a restricted receipts  
20 account in the Tobacco Settlement Fund; and making related  
21 repeals.

22 The General Assembly of the Commonwealth of Pennsylvania  
23 hereby enacts as follows:

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

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

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4 law shall not revive any law heretofore repealed or superseded,  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8 punish any offense under the authority of the repealed laws.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

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

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

21 \* \* \*

22 "Hospital plan corporation." A not-for-profit corporation  
23 engaged in the business of maintaining and operating a nonprofit  
24 hospital plan.

25 \* \* \*

26 "Insurer." Any health maintenance organization, preferred  
27 provider organization, company, association [or], exchange,  
28 hospital plan corporation subject to 40 Pa.C.S. Ch. 61 (relating  
29 to hospital plan corporations) or professional health services  
30 plan corporation subject to 40 Pa.C.S. Ch. 63 (relating to

1 professional health services plan corporations), authorized by  
2 the Insurance Commissioner to transact the business of insurance  
3 in this Commonwealth except that the term shall not include:

4 (1) the Commonwealth or any agency or instrumentality  
5 thereof;

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

10 (3) fraternal benefit societies[; or

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

12 \* \* \*

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

20 "Professional health service corporation." A dental service  
21 corporation, a general medical service corporation or an  
22 optometric service corporation.

23 \* \* \*

24 "Shareholder." A record holder or record owner of shares of  
25 an insurer.

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

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

30 (ii) A member, as defined in 15 Pa.C.S. § 5103

1       (relating to definitions), of an insurer that is a  
2       domestic nonprofit corporation under 15 Pa.C.S. Ch. 51  
3       (relating to general provisions) or a prior statute.

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

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

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

10       or

11               (ii) a professional health service plan corporation  
12       subject to 40 Pa.C.S. Ch. 63 (relating to professional  
13       health services plan corporations).

14       \* \* \*

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

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

1 entered into or prior to the acquisition of such securities if  
2 no offer or agreement is involved, such person has filed with  
3 the department and has sent to such insurer a statement  
4 containing the information required by this section and such  
5 offer, request, invitation, agreement or acquisition has been  
6 approved by the department in the manner hereinafter prescribed.

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

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

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

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

1       (ii) if such person is not an individual, a report of the  
2 nature of its business operations during the past five (5) years  
3 or for such lesser period as the person and any predecessors  
4 thereof shall have been in existence; an informative description  
5 of the business intended to be done by the person and the  
6 person's subsidiaries; and a list of all individuals who are or  
7 who have been selected to become directors or executive officers  
8 of the person, or who perform or will perform functions  
9 appropriate to those positions. This list shall include for each  
10 individual the information required by subparagraph (i).

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

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

29       (4) Any plans or proposals which each acquiring party may  
30 have to liquidate such insurer, to sell its assets or merge or

1 consolidate it with any person or to make any other material  
2 change in its business or corporate structure or management.

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

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

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

22 (8) A description of the purchase of any security referred  
23 to in subsection (a) during the twelve calendar months preceding  
24 the filing of the statement, by any acquiring party, including  
25 the dates of purchase, names of the purchasers and consideration  
26 paid or agreed to be paid therefor.

27 (9) A description of any recommendations to purchase any  
28 security referred to in subsection (a) made during the twelve  
29 calendar months preceding the filing of the statement, by any  
30 acquiring party, or by anyone based upon interviews or at the

1 suggestion of such acquiring party.

2 (10) Copies of all tender offers for, requests or  
3 invitations for tenders of, exchange offers for and agreements  
4 to acquire or exchange any securities referred to in subsection  
5 (a) and, if distributed, of additional soliciting material  
6 relating thereto.

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

12 (12) Such additional information as the department may by  
13 rule or regulation prescribe as necessary or appropriate for the  
14 protection of policyholders of the insurer or in the public  
15 interest.

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



1 (d) If any material change occurs in the facts set forth in  
2 the statement filed with the department and sent to such insurer  
3 pursuant to this section, an amendment setting forth such  
4 change, together with copies of all documents and other material  
5 relevant to such change, shall be filed with the department and  
6 sent to such insurer within two (2) business days after the  
7 person learns of such change.

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

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

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

25 (ii) The effect of the merger, consolidation or other  
26 acquisition of control would be to substantially lessen  
27 competition in insurance in this Commonwealth or tend to create  
28 a monopoly therein. In applying the competitive standard in this  
29 subparagraph:

30 (A) the informational requirements of section 1403(c)(2) and

1 the standards of section 1403(d)(2) shall apply;

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

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

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

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

18 (v) The competence, experience and integrity of those  
19 persons who would control the operation of the insurer are such  
20 that it would not be in the interest of policyholders of the  
21 insurer and of the public to permit the merger, consolidation or  
22 other acquisition of control.

23 (vi) The [acquisition] merger, consolidation or other  
24 acquisition of control is likely to be hazardous or prejudicial  
25 to the insurance buying public.

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

29 (viii) The merger, consolidation or other acquisition of  
30 control will result in a single hospital plan corporation or

1 professional health services plan corporation having a forty per  
2 centum (40%) or greater share of the total market for a line of  
3 business in this Commonwealth as measured by the most recent  
4 annual statement of the hospital plan corporation or  
5 professional health services plan corporation and standards of  
6 the department, and the hospital plan corporation or  
7 professional health services plan corporation has failed to  
8 cooperate and consent to permit a hospital plan corporation or  
9 professional health services plan corporation and its respective  
10 subsidiaries that are not affiliated directly or through  
11 subsidiaries with an insurer involved in the merger,  
12 consolidation or acquisition of control to obtain, market and  
13 operate competing products using Blue Cross or Blue Shield  
14 trademarks and licenses on a Statewide basis, to include  
15 cooperation and consent with regard to third parties, if the  
16 hospital plan corporation or professional health services plan  
17 corporation and its subsidiaries seek Statewide or expanded  
18 authority.

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

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

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

30 (g) The provisions of this section shall not apply to any

1 offer, request, invitation, agreement or acquisition which the  
2 department by order shall exempt therefrom as:

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

6 (2) as otherwise not comprehended within the purposes of  
7 this section.

8 (h) The following shall constitute a violation of this  
9 section:

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

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

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

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

21 (j) As used in this section, the term "annual statement"  
22 shall mean the annual report of the financial condition required  
23 to be filed under 40 Pa.C.S. § 6331 (relating to reports and  
24 examinations).

25 Section 4. Section 1403(a), (b) and (d), added December 18,  
26 1992 (P.L.1519, No.178), are amended to read:

27 Section 1403. Acquisitions Involving Insurers not Otherwise  
28 Covered.--(a) As used in this section the following words and  
29 phrases shall have the meanings given to them in this  
30 subsection:

1 "Acquisition." Any agreement, arrangement or activity the  
2 consummation of which results in a person acquiring, directly or  
3 indirectly, the control of another person and includes, but is  
4 not limited to, the acquisition of voting securities, the  
5 acquisition of assets, bulk reinsurance [and], mergers and  
6 consolidations.

7 "Involved insurer." Includes an insurer which either  
8 acquires or is acquired, is affiliated with an acquirer or  
9 acquired or is the result of a merger or consolidation.

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

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

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

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

28 (iii) The acquisition of a person by another person when  
29 both persons are neither directly nor through affiliates  
30 primarily engaged in the business of insurance, if

1 preacquisition notification is filed with the department in  
2 accordance with subsection (c)(2) thirty (30) days prior to the  
3 proposed effective date of the acquisition. However, such  
4 preacquisition notification is not required for exclusion from  
5 this section if the acquisition would otherwise be excluded from  
6 this section by this paragraph.

7 (iv) The acquisition of already affiliated persons.

8 (v) An acquisition if, as an immediate result of the  
9 acquisition:

10 (A) in no market would the combined market share of the  
11 involved insurers exceed five per centum (5%) of the total  
12 market;

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

14 (C) in no market would:

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

17 (II) the market share increases by more than two per centum  
18 (2%) of the total market.

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

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

26 (vii) An acquisition of an insurer whose domiciliary  
27 insurance department affirmatively finds that such insurer is in  
28 failing condition; there is a lack of feasible alternative to  
29 improving such condition; the public benefits of improving such  
30 insurer's condition through the acquisition exceed the public

1 benefits that would arise from not lessening competition; and  
2 such findings are communicated by the domiciliary insurance  
3 department to the Insurance Department of the Commonwealth.

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

6 \* \* \*

7 (d) (1) The department may enter an order under subsection  
8 (e)(1) with respect to an acquisition if there is substantial  
9 evidence that the effect of the acquisition may be substantially  
10 to lessen competition in any line of insurance in this  
11 Commonwealth or tend to create a monopoly therein or if the  
12 insurer fails to file adequate information in compliance with  
13 subsection (c).

14 (2) In determining whether a proposed acquisition would  
15 violate the competitive standard of paragraph (1), the  
16 department shall consider the following:

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

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

22	Insurer A	Insurer B
23	4%	4% or more
24	10%	2% or more
25	15%	1% or more; or

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

28	Insurer A	Insurer B
29	5%	5% or more
30	10%	4% or more



1	15%	3% or more
2	19%	1% or more.

3 A highly concentrated market is one in which the share of the  
4 four largest insurers is seventy-five per centum (75%) or more  
5 of the market. Percentages not shown in the tables are  
6 interpolated proportionately to the percentages that are shown.  
7 If more than two insurers are involved, exceeding the total of  
8 the two columns in the table is prima facie evidence of  
9 violation of the competitive standard in paragraph (1). For the  
10 purpose of this subparagraph, the insurer with the largest share  
11 of the market shall be deemed to be insurer A.

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

22 (A) there is a significant trend toward increased  
23 concentration in the market;

24 (B) one of the insurers involved is one of the insurers in a  
25 grouping of such large insurers showing the requisite increase  
26 in the market share; and

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

29 (iii) For the purposes of this paragraph:

30 (A) The term "insurer" includes any company or group of

1 companies under common management, ownership or control.

2 (B) The term "market" means the relevant product and  
3 geographical markets. In determining the relevant product and  
4 geographical markets, the department shall give due  
5 consideration to, among other things, the definitions or  
6 guidelines, if any, promulgated by the NAIC and to information,  
7 if any, submitted by parties to the acquisition. In the absence  
8 of sufficient information to the contrary, the relevant product  
9 market is assumed to be the direct written insurance premium for  
10 a line of business, such line being that used in the annual  
11 statement required to be filed by insurers doing business in  
12 this Commonwealth and the relevant geographical market is  
13 assumed to be this Commonwealth.

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

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

29 (3) An order may not be entered under subsection (e)(1) if:

30 (i) the acquisition will yield substantial economies of

1 scale or economies in resource utilization that cannot be  
2 feasibly achieved in any other way, and the public benefits  
3 which would arise from such economies exceed the public benefits  
4 which would arise from not lessening competition; or

5 (ii) the acquisition will substantially increase the  
6 availability of insurance, and the public benefits of such  
7 increase exceed the public benefits which would arise from not  
8 lessening competition.

9 \* \* \*

10 Section 5. The act is amended by adding sections to read:

11 Section 1403.1. Committee Review.--(a) The Banking and  
12 Insurance Committee of the Senate and the Insurance Committee of  
13 the House of Representatives may review an application or  
14 statement submitted by a hospital plan corporation or  
15 professional health services plan corporation seeking the  
16 approval of a merger, consolidation or other acquisition of  
17 control of a hospital plan corporation or professional health  
18 services plan corporation under this act.

19 (b) The Banking and Insurance Committee of the Senate and  
20 the Insurance Committee of the House of Representatives shall  
21 have the following powers and duties:

22 (1) To convene the committee for purposes of reviewing an  
23 application for approval of a merger, consolidation or other  
24 acquisition of control under this section.

25 (2) To receive and review all filings submitted to the  
26 department relating to the merger, consolidation or other  
27 acquisition of control and all accompanying data and other  
28 information. This paragraph shall not apply to information  
29 deemed confidential or proprietary by the department.

30 (3) To consult experts, hold hearings and obtain additional

information relating to the merger, consolidation or other acquisition of control.

(4) To develop written comments and recommendations on the merger, consolidation or acquisition of control and submit them to the department within forty-five (45) days of the close of the record developed by the department on the merger, consolidation or other acquisition of control. The department shall publish the date of the close of the record in the Pennsylvania Bulletin prior to final closure of the record.

(c) The commissioner, the department and its attorneys and experts, including experts employed or retained by the department, shall be available to provide testimony to each committee relating to the merger, consolidation or other acquisition of control. Nothing in this act shall affect any privileges or immunities of the department or its attorneys, experts or consultants. The department or its attorneys, experts or consultants shall not be required to appear before either committee within thirty (30) days following the department's issuance of a final order and determination.

(d) The department shall provide a detailed written response to each comment and recommendation submitted by the Banking and Insurance Committee of the Senate or the Insurance Committee of the House of Representatives in its final order. The order and determination shall not be issued before sixty (60) days have elapsed following receipt of the comments and recommendations under subsection (b)(4).

(e) In order to approve a merger, consolidation or other acquisition of control of a hospital plan corporation or professional health service plan corporation, the order and determination of the department must find that policyholders and

certificate holders and subscribers shall receive a sustained benefit from the merger, consolidation or other acquisition of control.

Section 1403.2. Insurance Restructuring Restricted Receipt Account.--(a) There is established in the State Treasury a restricted receipt account to be known as the Insurance Restructuring Restricted Receipt Account. Interest earned on money in the account shall be deposited into the account.

(b) All net economic benefits, including proceeds, savings, funds or moneys derived by the Commonwealth or a Commonwealth program from the merger, consolidation or other acquisition of control of a hospital plan corporation or professional health services plan corporation shall be deposited into the account for purposes as determined by the General Assembly.

(c) No contract or written agreement between a hospital plan corporation or professional health services plan corporation and the Commonwealth or any other entity relating to the disbursement or spending of money in the account may be entered into until moneys in the account are appropriated by the General Assembly.

(d) No moneys or funds may be transferred or paid from the account unless appropriated by the General Assembly.

Section 6. The act is amended by adding articles to read:

#### ARTICLE XXV

#### COMMUNITY HEALTH REINVESTMENT

Section 2501. Definitions.

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

"Annual statement." The annual report of the financial

1 condition required to be filed under 40 Pa.C.S. § 6331 (relating  
2 to reports and examinations).

3 "Community health reinvestment activity." Community health  
4 services and projects that improve health care or make health  
5 care more accessible. The term includes funding, subsidization  
6 or provision of the following:

7 (1) Health care coverage for persons who are determined  
8 by recognized standards as determined by the Insurance  
9 Department to be unable to pay for coverage.

10 (2) Health care services for persons who are determined  
11 by recognized standards to be uninsured and unable to pay for  
12 services.

13 (3) Programs for the prevention and treatment of disease  
14 or injury, including mental retardation, mental disorders,  
15 mental health counseling or the promotion of health or  
16 wellness.

17 The term shall not include expenditures for advertising, public  
18 relations, sponsorships, bad debt, the cost of administering  
19 State health care programs, programs provided as an employee  
20 benefit, use of facilities for meetings held by community groups  
21 or expenses for in-service training, continuing education,  
22 orientation or mentoring of employees.

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

24 "Plan." A hospital plan corporation as defined in 40 Pa.C.S.  
25 Ch. 61 (relating to hospital plan corporations) or professional  
26 health services plan corporation as defined in 40 Pa.C.S. Ch. 63  
27 (relating to professional health services plan corporations).

28 Section 2502. Duties of plan and department.

29 (a) Plan duties.--A plan shall have the following duties:

30 (1) To submit a proposal to the department on or before

1 March 30 of each year setting forth the manner in which the  
2 plan will provide proposed community health reinvestment  
3 activities conducted or provided by the plan during the next  
4 fiscal year.

5 (2) To annually provide to the department, the Banking  
6 and Insurance Committee of the Senate and the Insurance  
7 Committee of the House of Representatives the name and  
8 address of each officer, director or employee who serves on  
9 the board of directors of a hospital or other health care  
10 facility as defined in section 802.1 of the act of July 19,  
11 1979 (P.L.130, No.48), known as the Health Care Facilities  
12 Act, or on the board of an entity that owns, operates or  
13 manages a hospital or other health care facility. This  
14 paragraph shall apply to a nonprofit or for-profit subsidiary  
15 or affiliate of a hospital plan corporation or professional  
16 health services plan corporation. The information shall be  
17 submitted by January 31 for the immediately preceding year.

18 (b) Department duties.--The department shall have the  
19 following duties:

20 (1) To develop a form which shall be used by each plan  
21 for the submission of the proposal under subsection (a)(1).  
22 The form shall require the itemization of individual  
23 community health reinvestment activities and the cost of each  
24 activity. The proposal shall be on a form published by the  
25 department in the Pennsylvania Bulletin.

26 (2) To approve or disapprove the expenditures in the  
27 proposal submitted under subsection (a)(1).

28 Section 2503. Public record.

29 All proposals submitted under section 2502 shall be public  
30 records.

1 Section 2504. Regulations.

2 The department may promulgate regulations as necessary for  
3 the administration of this article.

4 ARTICLE XXVI

5 COMMUNITY HEALTH REINVESTMENT RESTRICTED ACCOUNT

6 Section 2601. Restricted receipts account.

7 There is established in the State Treasury a restricted  
8 receipts account in the Tobacco Settlement Fund to be known as  
9 the Community Health Reinvestment Restricted Account. Interest  
10 earned on money in the account shall remain in the account.

11 Section 2602. Annual payment.

12 (a) Annual payment.--Each calendar year, a plan shall pay to  
13 the account the amount owed under the agreement on Community  
14 Health Reinvestment entered into February 2, 2005, by the  
15 Insurance Department and the Capital Blue Cross, Highmark, Inc.,  
16 Hospital Service Association of Northeastern Pennsylvania and  
17 Independence Blue Cross for the calendar year in section 5 of  
18 the agreement published at 35 Pa.B 4155 (July 23, 2005).

19 (b) Definition.--As used in this section, the term "plan"  
20 shall mean a hospital plan corporation as defined in 40 Pa.C.S.  
21 Ch. 61 (relating to hospital plan corporations) or a  
22 professional health service corporation as defined in 40 Pa.C.S.  
23 Ch. 63 (relating to professional health services plan  
24 corporations).

25 Section 2603. Disbursement.

26 The money in the account, including all interest earned,  
27 shall not be disbursed or spent unless appropriated by the  
28 General Assembly.

29 Section 7. Repeals are as follows:

30 (1) The General Assembly declares as follows:



1 (i) The repeal under paragraph (2)(i) is necessary  
2 to effectuate the addition of section 1403.2 of the act.

3 (ii) Paragraph (2)(ii) is necessary to effectuate  
4 the addition of Article XXVI of the act.

5 (2) Repeals are as follows:

6 (i) Section 1716.1-E of the act of April 9, 1929  
7 (P.L.343, No.176), known as The Fiscal Code, is repealed.

8 (ii) Section 1716-G of the act of April 9, 1929  
9 (P.L.343, No.176), known as The Fiscal Code, is repealed.

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

13 Section 8. This act shall not apply to any merger,  
14 consolidation or other acquisition of control completed or  
15 consummated prior to the effective date of this section and, if  
16 required, following the issuance of an approving determination.

17 Section 9. This act shall apply to any application,  
18 statement or other plan or proposal relating to a merger,  
19 consolidation or other acquisition of control filed with the  
20 Insurance Department on or after January 1, 2007.

21 Section 10. This act shall take effect in 60 days.