

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 302 Session of 2009

INTRODUCED BY YUDICHAK, MANN, O'NEILL, BOYD, BELFANTI, BRENNAN, CALTAGIRONE, CARROLL, CASORIO, D. COSTA, DONATUCCI, FABRIZIO, FREEMAN, GEORGE, GIBBONS, GRUCELA, HORNAMAN, JOSEPHS, KIRKLAND, McILVAINE SMITH, MOUL, MUNDY, MURT, M. O'BRIEN, PALLONE, PASHINSKI, READSHAW, SCAVELLO, SIPTROTH, K. SMITH, SOLOBAY, STABACK, VULAKOVICH, WALKO AND WHITE, FEBRUARY 9, 2009

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 9, 2009

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employees in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employees of certain departments, boards and
20 commissions shall be determined," establishing the Office of
21 Consumer Advocate for Health Insurance as an office within
22 the Office of Consumer Advocate and prescribing its powers
23 and duties; establishing the Consumer Advocate for Health
24 Insurance Fund; and making editorial changes.

25 The General Assembly of the Commonwealth of Pennsylvania
26 hereby enacts as follows:

1 Section 1. Article IX-A of the act of April 9, 1929 (P.L.
2 177, No.175), known as The Administrative Code of 1929, is
3 amended by adding a subarticle heading to read:

4 ARTICLE IX-A

5 OFFICE OF CONSUMER ADVOCATE

6 (a) General Provisions

7 Section 2. Section 901-A of the act, added July 9, 1976
8 (P.L.903, No.161), is amended to read:

9 Section 901-A. Definitions.--As used in this [article]
10 subarticle:

11 "Commission" means the Pennsylvania Public Utility
12 Commission.

13 "Consumer" means any person (i) who makes a direct use or is
14 the ultimate recipient of a product or a service supplied by any
15 person or public utility subject to the authority of the
16 commission or (ii) who may be a direct user or ultimate
17 recipient of a product or service supplied by any person or
18 public utility subject to the authority of the commission and
19 may be affected in any way by any action within the authority of
20 the commission. The term "consumer" includes any "person,"
21 "corporation" or "municipal corporation" as defined in [section
22 2 of the act of May 28, 1937 (P.L.1053, No.286), known as the
23 "Public Utility Law."] 66 Pa.C.S. § 102 (relating to
24 definitions).

25 "Public utility" means public utility as defined in [section
26 2(17), act of May 28, 1937 (P.L.1053, No.286), known as the
27 "Public Utility Law."] 66 Pa.C.S. § 102 (relating to
28 definitions).

29 Section 3. Article IX-A of the act is amended by adding a
30 subarticle to read:

1 (b) Office of Consumer Advocate

2 for Health Insurance

3 Section 921-A. Definitions.

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

7 "Consumer." Any person who is a named insured, insured or
8 beneficiary of a policy of health insurance or any other person
9 who may be affected in any way by the Insurance Department's
10 exercise of or the failure to exercise its authority.

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

12 "Fund." The Consumer Advocate for Health Insurance Fund
13 established pursuant to section 926-A.

14 "Insurer." Any "company," "association" or "exchange" as
15 such terms are defined in section 101 of the act of May 17, 1921
16 (P.L.682, No.284), known as The Insurance Company Law of 1921 or
17 any entity subject to 40 Pa.C.S. Ch. 61 (relating to hospital
18 plan corporations) or 63 (relating to professional health
19 services plan corporations) or Article XXIV of The Insurance
20 Company Law of 1921 or the act of December 29, 1972 (P.L.1701,
21 No.364), known as the Health Maintenance Organization Act.

22 Section 922-A. Office of Consumer Advocate for Health
23 Insurance.

24 (a) Office established.--There is hereby established as an
25 office within the Office of Consumer Advocate an Office of
26 Consumer Advocate for Health Insurance to represent the interest
27 of consumers before the department.

28 (b) Consumer Advocate for Health Insurance.--The Office of
29 Consumer Advocate for Health Insurance shall be headed by the
30 Consumer Advocate for Health Insurance appointed by the Attorney

General who by reason of training, experience and attainment is
qualified to represent the interest of consumers. Compensation
shall be set by the Executive Board.

(c) Conflict of interest.--No individual who serves as a
Consumer Advocate for Health Insurance shall, while serving in
the position, engage in any business, vocation or other
employment, or have other interests, inconsistent with the
official responsibilities, nor shall the individual seek or
accept employment nor render beneficial services for
compensation with any insurer subject to the authority of the
office during the tenure of the appointment and for a period of
two years immediately after the appointment is served or
terminated.

(d) Political office.--Any individual who is appointed to
the position of Consumer Advocate for Health Insurance shall not
seek election nor accept appointment to any political office
during the tenure as Consumer Advocate for Health Insurance and
for a period of two years after the appointment is served or
terminated.

Section 923-A. Assistant consumer advocates for health
insurance; employees.

The Consumer Advocate for Health Insurance with the approval
of the Attorney General shall appoint attorneys as assistant
consumer advocates for health insurance and additional clerical,
technical and professional staff as may be appropriate, and may
contract for additional services as shall be necessary for the
performance of the duties imposed by this subarticle. The
compensation of assistant consumer advocates for health
insurance and clerical, technical and professional staff shall
be set by the Executive Board. No assistant consumer advocate

for health insurance or other staff employee shall, while
serving in the position, engage in any business, vocation or
other employment, or have other interests, inconsistent with
official responsibilities.

Section 924-A. Powers and duties of Consumer Advocate for
Health Insurance.

(a) Representation of consumer interests.--In addition to
any other authority conferred by this subarticle, the Consumer
Advocate for Health Insurance is authorized to and shall, in
carrying out the responsibilities under this subarticle,
represent the interest of consumers as a party, or otherwise
participate for the purpose of representing an interest of
consumers, before the department in any matter properly before
the department, and before any court or agency, initiating
proceedings if, in the judgment of the Consumer Advocate for
Health Insurance, the representation may be necessary, in
connection with any matter involving regulation by the
department or the corresponding regulatory agency of the United
States, whether on appeal or otherwise initiated.

(b) Exercise of discretion.--The Consumer Advocate for
Health Insurance may exercise discretion in determining the
interests of consumers which will be advocated in any particular
proceeding and in determining whether to participate in or
initiate any particular proceeding and, in so determining, shall
consider the public interest, the resources available and the
substantiality of the effect of the proceeding on the interest
of consumers. The Consumer Advocate for Health Insurance may
refrain from intervening when, in the judgment of the Consumer
Advocate for Health Insurance, intervention is not necessary to
represent adequately the interest of consumers.

1 (c) Action on petition.--In addition to any other authority
2 conferred by this subarticle, the Consumer Advocate for Health
3 Insurance is authorized to represent an interest of consumers
4 which is presented for consideration, upon petition in writing,
5 by a substantial number of persons who are consumers of an
6 insurer subject to regulation by the department. The Consumer
7 Advocate for Health Insurance shall notify the principal
8 sponsors of the petition within a reasonable time after receipt
9 of the petition of the action taken or intended to be taken with
10 respect to the interest of consumers presented in that petition.
11 If the Consumer Advocate for Health Insurance declines or is
12 unable to represent the interest, written notification and the
13 reasons for the action shall be given to the sponsors.

14 (d) Name in which action is brought.--Any action brought by
15 the Consumer Advocate for Health Insurance before a court or an
16 agency of this Commonwealth shall be brought in the name of the
17 Consumer Advocate for Health Insurance. The Consumer Advocate
18 for Health Insurance may name a consumer or group of consumers
19 in whose name the action may be brought or may join with a
20 consumer or group of consumers in bringing the action.

21 (e) Public statement.--At a time as the Consumer Advocate
22 for Health Insurance determines, in accordance with applicable
23 time limitations, to initiate, intervene or otherwise
24 participate in any department, agency or court proceeding, the
25 Consumer Advocate for Health Insurance shall issue publicly a
26 written statement, a copy of which shall be filed in the
27 proceeding in addition to any required entry of appearance,
28 stating concisely the specific interest of consumers to be
29 protected.

30 Section 925-A. Duties of department.

1 In dealing with any proposed action which may substantially
2 affect the interest of consumers, including, but not limited to,
3 a proposed change of rates and the adoption of rules,
4 regulations, guidelines, orders, standards or final policy
5 decisions, the department shall:

6 (1) Notify the Consumer Advocate for Health Insurance
7 when notice of the proposed action is given to the public or
8 at a time fixed by agreement between the Consumer Advocate
9 for Health Insurance and the department in a manner to assure
10 the Consumer Advocate for Health Insurance reasonable notice
11 and adequate time to determine whether to intervene in the
12 matter.

13 (2) Consistent with its other statutory
14 responsibilities, take action with due consideration to the
15 interest of consumers.

16 Section 926-A. Assessment upon insurance companies,
17 disposition, appropriation and disbursement of
18 assessments.

19 (a) Estimate of expenditures.--Before November 1, 2009, for
20 fiscal year 2010-2011, and before November 1 of each year
21 thereafter, the Office of Consumer Advocate for Health Insurance
22 shall estimate the total expenditures for the Office of Consumer
23 Advocate for Health Insurance and submit the estimate to the
24 Governor in accordance with section 610. At the same time the
25 Consumer Advocate for Health Insurance submits the estimate to
26 the Governor, the Consumer Advocate for Health Insurance shall
27 also submit that estimate to the General Assembly. The estimate
28 shall not exceed an amount equal to the total assessments as
29 provided in this section.

30 (b) Budget procedures.--The Consumer Advocate for Health

Insurance or designated representatives shall be afforded an opportunity to appear before the Governor and the Appropriations Committee of the Senate and the Appropriations Committee of the House of Representatives regarding the estimate. If the General Assembly fails to approve the Consumer Advocate for Health Insurance's budget for the purposes of this section by March 30, the department shall assess insurers on the basis of the assessment provided in this section. At such time as the General Assembly approves the proposed budget, the Consumer Advocate for Health Insurance and the department shall make an adjustment in the assessments to reflect the approved budget. The Office of Consumer Advocate shall subtract from the budget finally approved by the General Assembly any balance of the appropriation to be carried over into the fiscal year from the preceding fiscal year.

(c) Assessment.--For fiscal year 2010-2011 an assessment on each insurer who writes coverages for health and health under life/annuity/accident, including annuities, in this Commonwealth shall be made. Each insurer shall be assessed an amount equal to the product obtained by multiplying \$2,000,000 by a fraction, the numerator of which is the direct premium collected for all coverages by that insurer in this Commonwealth during the preceding calendar year and the denominator of which is the direct premium written on such coverages in this Commonwealth by all insurers in the same period.

(d) Adjustment.--In succeeding years the General Assembly may vary the base amount of \$2,000,000 based upon the actual funding experience and requirements of the Office of Consumer Advocate for Health Insurance.

(e) Fund.--All assessments received, collected or recovered

1 under this subarticle shall be paid by the department into a
2 separate account in the State Treasury, to be known as the
3 Consumer Advocate for Health Insurance Fund through the
4 Department of Revenue.

5 (f) Use of fund.--All assessments paid into the Consumer
6 Advocate for Health Insurance Fund shall be held in trust solely
7 for the purpose of defraying the cost of the administration and
8 performance of the duties of the Office of Consumer Advocate for
9 Health Insurance, related judicial proceedings and other such
10 matters within the jurisdiction of the Office of Consumer
11 Advocate for Health Insurance, and shall be earmarked for the
12 use of, and annually appropriated to, the Office of Consumer
13 Advocate for disbursement solely for that purpose. The fund
14 shall be subject to audit by the Auditor General.

15 (g) Construction.--Assessments made under this section shall
16 not be considered burdens and prohibitions under section 212 of
17 the act of May 17, 1921 (P.L.789, No.285), known as The
18 Insurance Department Act of 1921.

19 (h) Requisitions.--All requisitions upon such appropriation
20 shall be signed by the Consumer Advocate for Health Insurance or
21 such deputies as the Consumer Advocate for Health Insurance may
22 designate in writing to the State Treasurer and shall be
23 presented to the State Treasurer and dealt with by the State
24 Treasurer and the Treasury Department in the manner prescribed
25 by the act of April 9, 1929 (P.L.343, No.176), known as The
26 Fiscal Code.

27 (i) Balance.--In the event that the fund is dissolved or the
28 Office of Consumer Advocate for Health Insurance is terminated
29 by operation of law, any balance remaining in the fund, after
30 deducting administrative costs for liquidation, shall be

1 returned to insurers in proportion to their financial
2 contributions to the fund in the preceding calendar year.

3 Section 927-A. Reports.

4 The Consumer Advocate for Health Insurance shall annually
5 transmit to the Governor, to the Attorney General and to the
6 General Assembly, and shall make available to the public, an
7 annual report on the conduct of the Office of Consumer Advocate
8 for Health Insurance. The Consumer Advocate for Health Insurance
9 shall make recommendations as may from time to time be necessary
10 or desirable to protect the interest of consumers.

11 Section 928-A. Savings provision and construction.

12 (a) No bar to action.--Nothing contained in this subarticle
13 shall in any way limit the right of any consumer to bring a
14 proceeding before either the department or a court.

15 (b) No impairment to department.--Nothing contained in this
16 subarticle shall be construed to impair the statutory authority
17 or responsibility of the department to regulate insurers in the
18 public interest.

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

20 (1) The addition of section 926-A of the act shall take
21 effect in 90 days.

22 (2) This section shall take effect immediately.

23 (3) The remainder of this act shall take effect July 1,
24 2009, or immediately, whichever is later.