

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2080 Session of  
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INTRODUCED BY O'NEILL, HANNA, BARBIN, BOYD, CALTAGIRONE,  
D. COSTA, DALEY, GEIST, GINGRICH, GOODMAN, GRELL, HALUSKA,  
HARKINS, HESS, HORNAMAN, JOSEPHS, MURT, SANTONI, SWANGER AND  
VULAKOVICH, DECEMBER 15, 2011

REFERRED TO COMMITTEE ON EDUCATION, DECEMBER 15, 2011

AN ACT

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

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

21 CHAPTER 1

22 PRELIMINARY PROVISIONS

23 Section 101. Short title.

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

26 CHAPTER 3

27 ADMINISTRATION OF BENEFITS

28 SUBCHAPTER A

29 DEFINITIONS

30 Section 301. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8           (5) Others as approved by the Public School Employees'  
9 Benefit Board.

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

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

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

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

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

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

13 "Qualified majority vote." A vote by the Public School  
14 Employees' Benefit Board requiring the support of a majority of  
15 the members of the board present and voting, with the support of  
16 at least two board members described in section 311(a)(1), at  
17 least two board members appointed under section 311(a)(3) and at  
18 least four board members appointed under section 311(a)(2), of  
19 whom at least two board members must be appointed under section  
20 311(a)(2)(i)(A), to pass.

21 "Qualifying event." A change in marital status, death of a  
22 member or the change in a health care dependent's status,  
23 subsequent to the commencement of coverage under this chapter,  
24 or the involuntary termination of health plan coverage that was  
25 obtained through a health care dependent.

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

28 "Retirement system." The term shall have the same meaning as  
29 "system" in 24 Pa.C.S. § 8102 (relating to definitions).

30 "School employee." Any person regularly employed by or in a

1 public school entity for which work the person is receiving  
2 regular remuneration as an officer, administrator, employee or  
3 long-term substitute. The term excludes any independent  
4 contractor, person compensated on a fee basis or, unless  
5 otherwise determined by the Public School Employees' Benefit  
6 Board, any part-time hourly school employee. The term includes  
7 any employee of a public school entity who has a position for  
8 which eligibility in a health care plan sponsored by the public  
9 school entity is in effect as of the effective date of this  
10 chapter.

11 "Standard benefit package." The benefit package established  
12 by the Public School Employees' Benefit Board pursuant to  
13 section 331(f)(1).

14 "Supplemental benefits." Dental care, vision care and  
15 employee assistance program benefits that may be offered in  
16 addition to medical and hospital services and prescription drug  
17 benefits.

18 "Transfer employee." A person who is not a school employee  
19 who is regularly employed at a worksite in a public school  
20 entity, regardless of who actually employs the person, if the  
21 person is performing services previously performed by a school  
22 employee.

23 "Trust fund." The Public School Employees' Benefit Trust  
24 Fund established in section 336.

25 SUBCHAPTER B

26 PUBLIC SCHOOL EMPLOYEES' BENEFIT BOARD

27 Section 311. Public School Employees' Benefit Board.

28 (a) Status and membership.--The board shall be an  
29 independent administrative board and shall consist of the  
30 following board members:



1           (1) The Secretary of the Budget, the Secretary of  
2 Education, the Secretary of Administration and the Insurance  
3 Commissioner, who shall serve ex officio.

4           (2) Eight persons representing school employees who are  
5 covered by the program appointed in the following manner:

6           (i) Six persons representing school employees who  
7 are covered by the program in an approximate proportion  
8 to the percentage of professional employees represented  
9 in collective bargaining by school employee unions  
10 working in public school entities that will be covered by  
11 the program when it is fully operational and based on  
12 full participation by all school entities, appointed by  
13 the Governor and chosen from a list of candidates  
14 submitted by those school employee unions; provided that  
15 all of the following shall occur:

16           (A) no fewer than five persons shall be  
17 appointed from a list of candidates submitted by the  
18 school employee union that on the effective date of  
19 this chapter represents in collective bargaining the  
20 greatest proportion of all professional employees  
21 working in public school entities that will be  
22 covered by the program when it is fully operational  
23 based on full participation by all school entities;

24           (B) no less than one person shall be appointed  
25 from a list of candidates submitted by any school  
26 employee union that on the effective date of this  
27 chapter represents in collective bargaining more than  
28 4,000 professional employees working in public school  
29 entities that will be covered by the program when it  
30 is fully operational; and

1           (ii) Two persons representing school employees who  
2           are covered by the program represented in collective  
3           bargaining by school employee unions other than school  
4           employee unions within subparagraph (i) appointed by the  
5           Governor and chosen from a list of candidates submitted  
6           by those school employee unions other than school  
7           employee unions within subparagraph (i).

8           (iii) For purposes of this section "school employee  
9           unions" shall include a Statewide affiliate of such  
10          school employee unions.

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

17          The school employee unions and the Pennsylvania School Boards  
18          Association shall provide the Governor with their respective  
19          lists of candidates within 15 days following the effective date  
20          of this section. The Governor shall make his appointments within  
21          45 days following receipt of the lists.

22          (b) Terms.--

23               (1) Three board members appointed under subsection (a)  
24               (2)(i), as designated by the Governor, shall serve a term of  
25               two years, and three board members appointed under subsection  
26               (a)(2)(i), as designated by the Governor, shall serve a term  
27               of four years.

28               (2) One board member appointed under subsection (a)(2)  
29               (ii), as designated by the Governor, shall serve a term of  
30               two years, and one board member appointed under subsection

1 (a)(2)(ii), as designated by the Governor, shall serve a term  
2 of four years.

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

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

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

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

29 (e) Oath of office.--Each board member shall take an oath of  
30 office that the member will, so far as it devolves upon the

1 member, diligently and honestly administer the affairs of the  
2 board and that the member will not knowingly violate or  
3 willfully permit to be violated any of the provisions of law  
4 applicable to this chapter. The oath shall be subscribed by the  
5 board member making it and certified by the officer before whom  
6 it is taken and shall be immediately filed in the office of the  
7 Secretary of the Commonwealth.

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

27 (g) Corporate power and legal advisor.--For the purposes of  
28 this chapter, the board shall possess the power and privileges  
29 of a corporation. The Office of General Counsel shall be the  
30 legal advisor of the board.

1 (h) Duties of the board.--The board shall have the power and  
2 authority to carry out the duties established by this chapter,  
3 including the design, implementation and administration of the  
4 school employee health benefits study pursuant to Subchapter C  
5 and either the Statewide health benefits program if approved  
6 pursuant to section 323 or the alternative measures program if  
7 created pursuant to section 351.

8 Section 312. Administrative duties of board.

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

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

19 (1) Serve as the administrative agent of the board and  
20 as liaison between the board and applicable legislative  
21 committees.

22 (2) Review and analyze proposed legislation and  
23 legislative developments affecting the program and present  
24 findings to the board, legislative committees and other  
25 interested groups or individuals.

26 (3) Receive inquiries and requests for information  
27 concerning the program from the press, Commonwealth  
28 officials, public school entities, school employees and the  
29 general public and provide information as authorized by the  
30 board.

1       (c) Professional personnel.--The board may employ or  
2 contract with consultants and other professional personnel as  
3 needed to conduct the school employee health benefits study and  
4 evaluation pursuant to Subchapter C and to operate the program,  
5 including third-party administrators, managed care managers,  
6 chief medical examiners, actuaries, investment advisors and  
7 managers, legal counsel and other professional personnel as it  
8 deems advisable. The board may also contract for the services of  
9 any national or State banking corporation or association having  
10 trust powers, with respect to carrying out the business and  
11 other matters of the program.

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

17           (1) from the General Fund; or

18           (2) starting in the first fiscal year after the  
19 transition period is complete and every fiscal year  
20 thereafter, from reserves and investment earnings of the  
21 trust fund.

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

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

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

28       (h) Temporary regulations.--

29           (1) Notwithstanding any other provision of law to the  
30 contrary and in order to facilitate the prompt implementation

1 of this chapter, regulations promulgated by the board during  
2 the two years following the effective date of this chapter  
3 shall be deemed temporary regulations which shall expire no  
4 later than three years following the effective date of this  
5 chapter or upon promulgation of regulations as generally  
6 provided by law. The temporary regulations shall not be  
7 subject to:

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

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

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

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

## 26 SUBCHAPTER C

### 27 STUDY AND OPTIONS ELECTION

28 Section 321. School employee health benefits study and  
29 evaluation.

30 (a) Study.--The board shall conduct a thorough evaluation of

1 existing health care arrangements covering school employees in  
2 this Commonwealth, examine future cost forecasts and collect  
3 data necessary to determine if the board could construct and  
4 sponsor a health care benefit program that would reduce long-  
5 term costs or the rate of growth of long-term costs in the  
6 aggregate for public school entities while maintaining a  
7 comprehensive package of quality health care benefits for school  
8 employees. The board shall conduct the study as provided under  
9 this section.

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

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

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

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

20 (4) An explanation and estimate of any financial  
21 obligation of or funds owed to a public school entity related  
22 to the termination of coverage under a school district-  
23 sponsored health benefits plan.

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

28 (6) The term and effect of collective bargaining  
29 agreements governing health benefits.

30 (7) The amount and basis of any school employee cost-



1 sharing, both individual and in aggregate.

2 (8) The total amount of employer-paid costs in  
3 aggregate.

4 (9) An assessment of any postretirement health care  
5 benefit liabilities and claims experience data.

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

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

1 been extenuating circumstances preventing the timely submission  
2 of all necessary information. In considering an appeal, the  
3 secretary may grant an extension of time for the public school  
4 entity or consortium to provide the necessary information before  
5 the suspension is instituted. The board is authorized and shall  
6 authorize school entities and consortia to enter into agreements  
7 with entities providing or administering coverage for health  
8 care benefits under this chapter for the purpose of carrying out  
9 the provisions of this section.

10 (e) Health benefit entities.--

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

19 (2) The Insurance Commissioner, the Department of Health  
20 and any other agency, authority, board, commission, council,  
21 department or office under the jurisdiction of the Governor  
22 having regulatory authority over any entity charged under  
23 paragraph (1), hereafter known as "regulating authority,"  
24 shall cooperate with the board, if necessary, to obtain  
25 information from any insurance company, third-party  
26 administrator or other administrator or provider of health  
27 insurance benefits for school employees, other than a public  
28 school entity or consortium. Following notice and hearing,  
29 the board may impose an order assessing a penalty of up to  
30 \$1,000 per day upon any entity, other than a public school

entity or consortium, that willfully fails to comply with the obligations imposed by this section. If the entity does not comply with the obligations imposed by this section within 15 days of an order being imposed, the board shall notify the regulating authority of the failure of an entity under its jurisdiction to provide data as set forth in this section. Upon notification, the regulating authority shall suspend or revoke the license of the entity or otherwise suspend or revoke the entity's ability to operate until such time as the board notifies the regulating authority that the entity is in compliance. The board shall have standing to petition the Commonwealth Court to seek enforcement of the order.

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

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

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

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

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

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

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

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

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

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

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

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

(g) Prepared materials.--Any documents, materials or information solely prepared or created for the purpose of implementation of subsection (b) are confidential and shall not be discoverable or admissible as evidence in any civil or administrative action or proceeding. Any documents, materials,

1 records or information that would otherwise be available from  
2 original sources shall not be construed as immune from discovery  
3 or use in any civil or administrative action or proceeding  
4 merely because they were presented to the board. Nothing in this  
5 subsection shall be construed to prevent publication or  
6 dissemination of the aggregate study findings.

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

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

27 (j) Original source document.--In the event an original  
28 source document as set forth in subsection (g) is determined by  
29 a court of competent jurisdiction to be unavailable from the  
30 entity providing health insurance or health care coverage in a

1 civil action or proceeding, then, in that circumstance alone,  
2 the board may be required pursuant to a court order to release  
3 that original source document to the party identified in the  
4 court order.

5 (k) Right-to-know requests.--Any documents, materials or  
6 information made confidential by subsection (f) shall not be  
7 subject to requests under the act of February 14, 2008 (P.L.6,  
8 No.3), known as the Right-to-Know Law, or any successor statute.

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

19 Section 322. Board review and election.

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

1 be predicated on a plan that provides quality health care  
2 benefits at a level consistent with those now provided to most  
3 school employees through existing collective bargaining  
4 contracts and offers coverage to school employees and other  
5 eligible individuals.

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

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

26 Section 323. Plan adoption.

27 (a) Statewide health benefits program adoption.--Within  
28 three months of electing to proceed with the Statewide health  
29 benefits program, pursuant to section 322(b), the board shall  
30 verify that implementation of a Statewide health care program

1 will result in reduction in the Statewide aggregate cost of the  
2 purchase of benefits or the rate of growth of such costs and  
3 adopt a proposed plan for the implementation of the program. The  
4 proposed plan shall be in writing and shall include a detailed  
5 description of the program and the transition procedures  
6 necessary to phase in and implement the program. The board's  
7 adoption of a proposed plan shall require approval by a  
8 qualified majority vote.

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

11 (1) The eligibility requirements for a school employee  
12 and the employee's health care dependents to qualify for  
13 participation in the program.

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

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

21 (4) The designation of health care regions.

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

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

30 (7) Financial and accounting plans, including the



1 establishment of any necessary reserves or escrow accounts  
2 with carriers.

3 (8) The method to be used to compare costs and levels of  
4 health care benefits pursuant to section 332(d)(2).

5 (c) Transition procedures.--The description of the steps to  
6 phase in and implement the Statewide health benefits program  
7 shall at minimum include:

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

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

15 (3) The interim steps to aggregate public school  
16 entities into a Statewide pool or regional pools, including  
17 any best practice standards and benchmarks to be applied to  
18 new or existing consortia, or public school entities, or in  
19 any selection process to build a Statewide or regional pool.

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

23 (5) Transition rules to limit any negative financial  
24 impact on a public school entity required to purchase health  
25 care coverage through a Statewide or regional pool and to  
26 normalize contribution rates for all participating public  
27 school entities within the same health care region.

28 (d) Alternative measures program adoption.--Within three  
29 months of proceeding with consideration of an alternative  
30 measures program pursuant to section 322(c), the board shall

1 adopt a proposed plan for the implementation of an alternative  
2 measures program, pursuant to Subchapter E, that will result in  
3 reduction in the Statewide aggregate cost of the purchase of  
4 benefits or the rate of growth of such costs. The proposed plan  
5 shall be in writing and shall include a detailed description and  
6 the transition procedures necessary to phase in and implement  
7 the alternative measures program. The board's adoption of a  
8 proposed plan for implementation of an alternative measures  
9 program shall require approval by a qualified majority vote.

10 (e) Legislative and public review.--

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

20 (2) The board shall submit the provisions of any  
21 proposed plan adopted pursuant to this section to the  
22 chairman and minority chairman of the Education Committee of  
23 the Senate and the chairman and minority chairman of the  
24 Education Committee of the House of Representatives. The  
25 committees shall have 45 days to review the proposed plan and  
26 submit comments to the board.

27 (f) Final plan adoption.--Upon completion of the public  
28 hearings pursuant to subsection (e)(1) and expiration of the  
29 committee review pursuant to subsection (e)(2), the board shall  
30 review all the testimony and comments received regarding the

1 proposed plan. The board may, subject to a qualified majority  
2 vote, make changes and adjustments to the plan to effectuate  
3 this chapter. Within 90 days of publishing the proposed plan,  
4 pursuant to subsection (e)(1), the board shall publish the final  
5 plan, as adopted by the board, in the Pennsylvania Bulletin and  
6 on the Internet website of the Department of Education.

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

29 (h) Failure to reach consensus.--If the board fails to  
30 achieve agreement and approve a plan for implementing a

1 Statewide health benefits program by a qualified majority vote  
2 or if the board fails to achieve agreement and approve a plan  
3 for implementing an alternative measures program by a qualified  
4 majority vote, the board shall report as to its findings and  
5 reasons preventing agreement on a plan to the Governor, the  
6 President pro tempore of the Senate and the Speaker of the House  
7 of Representatives.

#### 8 SUBCHAPTER D

#### 9 STATEWIDE HEALTH BENEFITS PROGRAM

10 Section 331. Health benefits program.

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

14 (b) Program design.--The board shall design a program which  
15 follows the parameters of the plan and transition procedures as  
16 established in section 323. The board may develop and administer  
17 the program itself or operate through any legal entity  
18 authorized by law to do so, including consortia, and the program  
19 may be developed and administered differently within each health  
20 care region as long as a standard benefit package that is  
21 substantially equivalent in coverage, as determined by the  
22 board, is available to eligible individuals. The program may  
23 also be administered in whole or in part on a fully insured or  
24 self-funded basis at the board's sole discretion. The board  
25 shall seek no fewer than three proposals for the administration  
26 of the program.

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

28 (1) Establish pools for selected areas of coverage, such  
29 as pharmacy services, transplants, stop-loss insurance,  
30 health care management or other possible areas that in the

1 board's judgment can be offered Statewide or regionally on a  
2 more stable and cost-effective basis. The board may offer  
3 separate plans to public school entities and consortia prior  
4 to the phase-in of the standard benefit package.

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

7 (d) Eligibility requirements.--The board shall have full  
8 authority to determine eligibility requirements for benefits and  
9 to adopt rules and regulations setting forth the same which will  
10 be binding on all eligible individuals. No coverage shall be  
11 provided for eligible individuals without payment being made,  
12 except under circumstances as may be established by the board  
13 under reasonable guidelines.

14 (e) Coverage and plan selection.--The board shall have full  
15 authority to select and contract with insurance carriers, health  
16 maintenance organizations, pharmacy benefit managers, third-  
17 party administrators, reinsurers and any other entities  
18 necessary to provide a range of benefit packages to eligible  
19 individuals through the program. The board shall have full  
20 authority to determine the nature, amount and duration and  
21 discontinuation of coverage to be provided.

22 (f) Standard and optional benefits.--

23 (1) A standard benefit package shall be established by  
24 the board that shall include coverage for medical and  
25 hospital services, prescription drugs and may include  
26 supplemental and other benefits in amounts to be determined  
27 by the board.

28 (2) Within each health care region, the board shall  
29 approve and make available to each eligible individual  
30 affiliated with a public school entity which is participating

1 in the program the following:

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

5 (ii) One or more alternate health care plans or plan  
6 designs which in the board's judgment contain benefits  
7 equivalent to the standard benefit package in paragraph  
8 (1). The deductibles and copayments for each alternate  
9 health care plan shall be set and annually adjusted so  
10 that the cost of providing the coverage for the  
11 Commonwealth and a public school entity is no greater  
12 than the cost incurred for the health plan in  
13 subparagraph (i).

14 (iii) One or more optional benefit plans, as  
15 approved by the board, which allow an eligible individual  
16 to purchase coverage that is not included in the standard  
17 benefit package, provided that any cost over and above  
18 the cost of the health care plan in subparagraph (i) is  
19 to be paid by the member except as otherwise provided in  
20 section 338(f)(1)(ii).

21 (3) The detailed basis on which payment of benefits is  
22 to be made shall be specified in writing. The benefits  
23 provided in this chapter are subject to change or  
24 modification by the board from time to time as the board, in  
25 its discretion, may determine. All changes or modifications  
26 shall be specified in writing and communicated to members  
27 within a reasonable period of time.

28 Section 332. Participation.

29 (a) Mandatory participation.--The board shall have the  
30 authority to require public school entities to participate in

1 the program on a Statewide basis or may phase in and require  
2 participation on a regional basis. Except as provided under  
3 subsections (c), (d), (e) and (f), public school entities in any  
4 health care region designated by the board shall be required to  
5 participate in the program.

6 (b) Transition plan.--When the board determines pursuant to  
7 subsection (a) that a public school entity shall be required to  
8 participate in the program, the public school entity or  
9 consortium in which the public school entity is a participant  
10 shall, within a reasonable period of time as determined by the  
11 board, present to the board a transition plan with a schedule  
12 for the eventual migration of school employees into the program.  
13 The board shall review the transition plan with the public  
14 school entity or consortium and make any necessary modifications  
15 before granting approval of the plan. A public school entity or  
16 consortium shall be subject to adherence to the transition plan  
17 approved by the board.

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

23 (1) A public school entity that participates in a  
24 consortium where an extension of time is necessary for the  
25 rundown and proper termination of the consortium's health  
26 care program.

27 (2) A public school entity that participates in a  
28 consortium where the withdrawal of the public school entity  
29 may undermine the financial stability of the consortium.

30 (3) A public school entity or a consortium which will

1 incur a significant financial penalty under terms of a  
2 contract with an insurance carrier or other provider of  
3 health care coverage for a contract in existence on or before  
4 January 1, 2010.

5 (4) A public school entity or consortium which will  
6 incur a significant financial cost, including fees, penalties  
7 or other contractual financial obligations, related to the  
8 termination of coverage under a contract of insurance or, in  
9 the case of a public school entity that self-insures,  
10 insufficient reserves to pay claims incurred during the  
11 previous coverage year, if the obligation relates to a plan  
12 of coverage that was in existence on or before January 1,  
13 2010, and the public school entity or consortium provides the  
14 board with a financial plan for meeting these obligations.

15 (d) Rejection of participation.--Within 60 days of creation  
16 of the health benefits program under section 331(a), a public  
17 school entity may reject participation in the program under the  
18 following conditions:

19 (1) the governing body of the school entity and the  
20 school employee union representing the greatest number of  
21 school employees in the school entity that would be covered  
22 by the program when it is fully operational execute a  
23 memorandum of understanding rejecting participation in the  
24 program that is approved by a majority of the members of the  
25 governing body and a majority of the employees that would be  
26 covered by the program; and

27 (2) the memorandum of understanding demonstrates that  
28 participation in the program would result in:

29 (i) payment by the school entity on behalf of school  
30 employees and their eligible health care dependents that



1 would exceed the cost, excluding any employee cost-  
2 sharing, of providing, purchasing and administering  
3 health care benefits to members who are school employees  
4 and their eligible health care dependents in the year  
5 before implementation of the program;

6 (ii) a reduction in the coverage of health care  
7 benefits for school employees; provided that, if more  
8 than one plan is available to school employees in the  
9 school entity, this comparison shall be with the health  
10 care plan that covers the greatest number of bargaining  
11 unit members; or

12 (iii) both (i) and (ii).

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

22 (f) Prohibited membership.--A public school entity that, on  
23 the effective date of this chapter, participates in the  
24 Pennsylvania Employees' Benefit Trust Fund shall be prohibited  
25 from participating in the program, and employees of the public  
26 school entity shall not have the right to elect membership in  
27 the program.

28 (g) Transition of employees.--A public school entity that  
29 provides some or all of its employees with health benefits  
30 through another health care plan by virtue of one or more

1 collective bargaining agreements, entered into prior to the  
2 effective date of this chapter, shall not be required to join  
3 the program until expiration of the collective bargaining  
4 agreements. The public school entity and some or all of its  
5 employees or bargaining representatives of its employees may by  
6 mutual agreement and approval of the board join the program at  
7 an earlier date. Renewal or extension of a collective bargaining  
8 agreement shall constitute its expiration for the purpose of  
9 this subsection.

10 Section 333. Continuation of coverage and transfer employees.

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

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

30 (2) For an annuitant, other than an annuitant qualified

1 for coverage under paragraph (1), payments shall be made on  
2 the same basis as an annuitant qualified for coverage under  
3 paragraph (1), except as determined as follows:

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

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

26 (b) Separation from service.--The board shall determine the  
27 eligibility of members, other than annuitants covered by  
28 subsection (a), to elect continuation of coverage in the program  
29 upon separation from service as a school employee. The member  
30 shall be responsible to pay the full cost of the coverage in the

1 member's health care region, plus an administrative fee to be  
2 set by the board. The board shall, at minimum, provide  
3 continuation of coverage eligibility that meets the requirements  
4 of Title X of the Employee Retirement Income Security Act of  
5 1974 (Public Law 99-272, 29 U.S.C. § 1161 et seq.) and provide  
6 the continuation of coverage options required pursuant to 51  
7 Pa.C.S. § 7309 (relating to employment discrimination for  
8 military membership or duty) for members on military leave.

9 (c) Transfer employees.--The board may, in its discretion,  
10 approve the participation of transfer employees in the program,  
11 provided that any position for which a transfer employee who is  
12 provided health benefits in a health care plan sponsored by a  
13 public school entity through an agreement that was in existence  
14 on or before January 1, 2010, with the transfer employee's  
15 employer shall be allowed to participate in the program. The  
16 board shall set the terms and conditions necessary for  
17 participation in the program, including the cost of coverage to  
18 be paid by the third-party entity which shall be based on the  
19 full cost of coverage in the health care region as determined by  
20 the board, plus an administrative fee. The sponsoring public  
21 school entity shall be responsible to the board for the  
22 collection of the payments for transfer employees from the  
23 third-party entity.

24 Section 334. Partnership for stable benefits funding.

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

1 and in each region the payments due from public school entities,  
2 from members and from the Commonwealth.

3 (b) Determination of contribution rate.--The board shall  
4 determine for each plan year the total amount of the  
5 contributions by the Commonwealth, public school entities and  
6 school employees required to provide projected benefits for that  
7 plan year under the standard benefit package on behalf of each  
8 school employee member and the employee's eligible health care  
9 dependents. The contribution rate shall consist of the amount  
10 required to provide the standard benefit package, including  
11 appropriate reserves and administrative expenses, and shall be  
12 adjusted for each health care region to reflect the cost of  
13 benefits in that region. The contribution rates may  
14 differentiate between single coverage for members only and types  
15 of family coverage, as determined by the board.

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

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

30 (1) the projected carry-over balance for the plan year

1 in the employer contribution account after all required  
2 transfers have been made to the employee benefits account for  
3 the prior year; and

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

5 (e) Budget submission and appropriation.--If the board  
6 determines that the requirements of subsection (d) have been  
7 met, all of the following shall occur:

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

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

21 (f) Limitation on Commonwealth contribution.--

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

28 (i) 50% of the amount that the board determines is  
29 necessary to meet the increase in the contribution rate  
30 on behalf of members who are school employees determined

1           pursuant to subsection (b); and

2           (ii) the product of the total revenue transferred in  
3           the prior plan year from the employer contribution  
4           account to the employee benefits account and the most  
5           recent annual percent change in the per enrollee private  
6           health insurance premium for all benefits, as defined in  
7           the National Health Expenditure Data published by the  
8           Centers for Medicare and Medicaid Services, Department of  
9           Health and Human Services.

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

16          (g) Additional optional contribution.--Notwithstanding the  
17          limitation in subsection (f), the General Assembly may  
18          appropriate additional revenue to the employer contribution  
19          account in any fiscal year.

20          (h) Allocation of Commonwealth contribution.--Any  
21          contribution made by the Commonwealth under this section shall  
22          be used to offset an increase in the contribution rate paid in a  
23          health care region by public school entities on behalf of  
24          members who are school employees and their eligible health care  
25          dependents and to maintain any offset that was paid in a prior  
26          year. The Commonwealth contribution shall be allocated to offset  
27          a portion of each participating public school entity's cost of  
28          coverage on a per-member basis, for members who are school  
29          employees and their eligible health care dependents, based on  
30          the public school entity's market value/income aid ratio using

1 the most recent data provided by the Department of Education.  
2 For any public school entity that is not assigned a market  
3 value/income aid ratio by the Department of Education, the  
4 Commonwealth contribution shall not be adjusted based on a  
5 market value/income aid ratio. For the purpose of this  
6 subsection, "market value/income aid ratio" shall have the same  
7 meaning given to it in the Public School Code.

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

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



1 (k) Transition.--Until any transition pursuant to section  
2 323(c)(5) has been completed, the payments made by each public  
3 school entity shall be no less than the total amount paid by the  
4 public school entity to provide, purchase and administer health  
5 care benefits to members who are school employees and their  
6 eligible health care dependents in the year before  
7 implementation of the program. Any contributions received by the  
8 public school entity from school employees in the form of cost-  
9 sharing payments for health care coverage shall be excluded from  
10 the amount.

11 (l) Referendum exception.--

12 (1) In addition to the exceptions provided for in  
13 section 333(f) of the act of June 27, 2006 (1st Sp.Sess.,  
14 P.L.1873, No.1), known as the Taxpayer Relief Act, the costs  
15 specified in paragraph (2) shall constitute an exception to  
16 the referendum requirements of section 333(c) of the Taxpayer  
17 Relief Act subject to department approval pursuant to section  
18 333(j) of the Taxpayer Relief Act.

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

1 Section 335. Powers and duties of board.

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

6 (1) Determine appropriate geographic health care regions  
7 for the administration of the program and make changes to the  
8 regions as necessary; provided, that a school district of the  
9 first class shall be designated as its own health care  
10 region.

11 (2) Formulate and establish the conditions of  
12 eligibility, including eligibility for health care dependent  
13 coverage for members, to include consideration if a member or  
14 health care dependent is covered, or eligible for coverage,  
15 under another employer-sponsored group health insurance plan;  
16 provisions for payment of benefits; and all other provisions  
17 that may be required or necessary to carry out the intent and  
18 purpose of the program.

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

21 (4) Establish copayments, annual deductibles,  
22 coinsurance levels, exclusions, formularies and other  
23 coverage limitations and payment responsibilities of members  
24 incurred at the time of service.

25 (5) Set and adjust member cost-sharing contributions to  
26 be expressed as a target percentage of overall program costs  
27 or individually determined as a percentage of salary. The  
28 board shall determine whether member cost-sharing shall be  
29 uniform on a Statewide basis or shall vary by health care  
30 region.

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

2           (7)   Determine enrollment procedures.

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

6           (9)   Establish a plan with the retirement system to  
7 coordinate health care coverage for annuitants between the  
8 program established by this chapter and the group health  
9 insurance program sponsored by the retirement system under  
10 the provisions of 24 Pa.C.S. Ch. 89 (relating to group health  
11 insurance program) and to coordinate the sharing of  
12 information pertaining to premium assistance payment  
13 transfers.

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

18          (11)   Set and adjust costs for members electing to  
19 continue coverage upon retirement or separation from  
20 employment. The board may establish different cost rates to  
21 be charged for different categories of members electing to  
22 continue coverage.

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

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

29          (14)   Issue self-liquidating debt or borrow against  
30 contributions, payments or other accounts receivable for the

1 purposes of prepaying any health benefits, establishing  
2 reserves or otherwise lowering the cost of coverage.

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

6 (16) Receive and collect all contributions due and  
7 payable to the accounts or delegate to a public school entity  
8 or claims processor the right to receive contributions,  
9 payments or perform ministerial functions required to assert  
10 the board's rights. In so doing, the board shall have the  
11 right to:

12 (i) maintain any and all actions and legal  
13 proceedings necessary for the collection of  
14 contributions; and

15 (ii) prosecute, defend, compound, compromise,  
16 settle, abandon or adjust any actions, suits,  
17 proceedings, disputes, claims, details and things related  
18 to the accounts and program.

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

21 (18) Promulgate rules and regulations regarding the  
22 administration of the program, including the establishment of  
23 the plan year.

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

28 (20) Seek and take all necessary steps to retain  
29 eligibility for the members, public school entities and the  
30 Commonwealth to receive tax-preferred or tax-free treatment

1 under the IRC for contributions to and earnings of the trust  
2 fund.

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

7 (22) Perform and do any and all such actions and things  
8 that may be properly incidental to the exercising of powers,  
9 rights, duties and responsibilities of the board.

10 (23) Determine best practice standards and benchmarks  
11 for consortia in any selection process to build a Statewide  
12 pool or regional pools, including the power to require a  
13 consortium to merge with another consortium. The board shall  
14 have the power to require consortia, as a condition of  
15 continued participation in the program, to accept any public  
16 school entity applying to join and participate in a  
17 consortium.

18 (24) Enter into agreements with any public school entity  
19 or consortium to implement the program developed pursuant to  
20 this chapter and delegate powers necessary to administer  
21 coverage for health benefits.

22 (b) Administrative duties of board.--In addition to other  
23 duties of the board provided in this chapter, the following  
24 duties shall be afforded to the board for the implementation of  
25 this section.

26 (c) Regulations and procedures.--The board shall, with the  
27 advice of the Office of General Counsel and the actuary, adopt  
28 and promulgate rules and regulations for the uniform  
29 administration of the program. The actuary shall approve in  
30 writing all computational procedures used in the calculation of

1 contributions and the cost of benefits, and the board shall by  
2 resolution adopt the computational procedures prior to their  
3 application by the board. The rules, regulations and  
4 computational procedures as so adopted from time to time and as  
5 in force and effect at any time, together with tables that are  
6 adopted as necessary for the calculation of contributions and  
7 the cost of benefits, shall be effective as if fully set forth  
8 in this chapter.

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

17 (e) Annual financial statement.--The board shall prepare and  
18 have published within six months following the end of each plan  
19 year a financial statement showing the condition of the trust  
20 fund as of the end of the previous plan year. The board shall  
21 submit said financial statement to the Governor and shall make  
22 copies available to public school entities for the use of the  
23 school employees and the public.

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

27 (g) Manual of regulations.--The board shall, with the advice  
28 of the Office of General Counsel and the actuary, prepare within  
29 six months of the commencement of a program adopted under this  
30 chapter a manual incorporating rules and regulations consistent

1 with the provisions of this chapter for each participating  
2 public school entity that shall make information contained in  
3 the manual available to school employees. The board shall  
4 thereafter advise public school entities within 90 days of any  
5 changes in rules and regulations due to changes in the law or  
6 due to changes in administrative policies.

7 (h) Annual budget.--The board shall establish an annual  
8 budget for the program and make disbursements from the trust  
9 fund that are consistent with the budget.

10 (i) Program assistance.--The board may solicit and accept  
11 grants, loans and other aid from any person, corporation or  
12 other legal entity or from the Federal, State or local  
13 government and participate in any Federal, State or local  
14 government program if necessary for prudent management of the  
15 program.

16 (j) Functions.--The board shall perform other functions as  
17 are required for the execution of this chapter and shall have  
18 the right to inspect employment records of public school  
19 entities.

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

23 (1) The plan to implement the program adopted pursuant  
24 to section 323(f).

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

27 (3) Membership eligibility criteria.

28 (4) The addition, deletion or significant change in  
29 status of an insurance carrier, benefits administrator or  
30 other major contractor in the administration of benefits, or

1 the addition, deletion or significant change in status of a  
2 health care provider network.

3 (5) Any determination on the use of excess fund  
4 payments.

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

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

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

11 (9) Changes in trust document, bylaws or any major  
12 internal operating policies or procedures, such as claims  
13 appeal procedures, not to include routine ministerial  
14 functions.

15 (10) The alternative measures program created pursuant  
16 to section 351(a).

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

19 (1) Duties conferred upon secretary.--The secretary of the  
20 board shall supervise a staff of administrative, technical and  
21 clerical employees engaged in recordkeeping and clerical  
22 processing activities in maintaining files of members,  
23 accounting for contributions, processing payments, preparing  
24 required reports and counseling.

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

26 (a) Establishment of trust fund.--The Public School  
27 Employees' Benefit Trust Fund is established in the State  
28 Treasury. The moneys of the trust fund are appropriated on a  
29 continuing basis and shall be used exclusively for the purposes  
30 set forth in this chapter. All of the assets of the trust fund



1 shall be maintained and accounted for, separate from all other  
2 funds and moneys of the Commonwealth. The Treasury Department  
3 shall credit to the trust fund all moneys received from the  
4 Department of Revenue arising from the contributions required  
5 under this chapter and all earnings from investments or moneys  
6 of the trust fund. There shall be established and maintained by  
7 the board the several ledger accounts, including:

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

23       (2) Reserve account.

24               (i) A restricted reserve account, or more than one  
25       account if the board determines it necessary to have  
26       segregated accounts, is established within the trust fund  
27       for the purpose of establishing and maintaining a reserve  
28       or separate reserves sufficient:

29                       (A) to pay the expected claims experience of the  
30       program in the event the board elects to self-fund

1 all or a portion of the program for any plan years;

2 (B) to prefund the accrued liability for any  
3 postretirement health care benefits earned by  
4 employees enrolled in the program pursuant to section  
5 333(a)(1) as the benefit is earned by the employees;  
6 and

7 (C) to amortize the unfunded actuarial accrued  
8 liability for postretirement health care benefits  
9 already earned by employees and annuitants pursuant  
10 to section 333(a)(1) in the event the board elects to  
11 assume all or a portion of the liability. The board  
12 shall use an amortization period that does not exceed  
13 30 years for this purpose.

14 (ii) The board shall annually establish through an  
15 actuary retained by the board the amount necessary, if  
16 any, to establish and maintain a reserve or separate  
17 reserves sufficient for the purposes of this paragraph.  
18 Any moneys needed to maintain the reserve or separate  
19 reserves established under this paragraph shall be  
20 collected through the adjustment of the contribution rate  
21 established pursuant to section 334(b) and (c) or through  
22 other available sources.

23 (iii) The moneys in any reserve account may be  
24 invested by the board separate from other moneys of the  
25 trust fund. All earnings derived from investment of the  
26 assets of any reserve account shall be credited to the  
27 reserve account.

28 (3) The employer contribution account shall be the  
29 ledger account to which shall be credited all contributions  
30 made by the Commonwealth as determined in accordance with

1 section 334(e) and payments from public school entities as  
2 determined in accordance with section 334(i), as well as all  
3 earnings derived from the investment of the assets of the  
4 employer contribution account. The total amount of the  
5 Commonwealth and public school entity contributions required  
6 to provide the standard benefit package on behalf of all  
7 members who are school employees and their eligible health  
8 care dependents shall be transferred on a monthly basis to  
9 the employee benefits account.

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

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

14 (2) Any other money, public or private, appropriated or  
15 made available to the board for the trust fund or any reserve  
16 account from any source and all interest, earnings and  
17 additions thereto.

18 (c) Administration of trust and associated funds.--The  
19 assets of the trust fund shall be preserved, invested and  
20 expended solely pursuant to and for the purposes set forth in  
21 this chapter.

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

23 (1) The board shall have exclusive control and  
24 management of the trust fund and full power to invest and  
25 manage the assets of each account of the trust fund as a  
26 prudent investor would, by considering the purposes, terms  
27 and other circumstances of each account and by pursuing an  
28 overall investment strategy reasonably suited to the trust  
29 fund.

30 (2) The board may invest in every kind of property and

1 type of investment, including, but not limited to, mutual  
2 funds and similar investments, consistent with this  
3 subsection.

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

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

8 (ii) the liquidity and payment requirements of the  
9 account;

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

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

14 (v) the reasonable diversification of assets, taking  
15 into account the purposes, terms and other circumstances  
16 of the trust fund and the requirements of this section.

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

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

28 (g) Payment from trust fund.--All payments from the trust  
29 fund shall be made by the State Treasurer in accordance with  
30 requisitions signed by the secretary of the board or the

1 secretary's designee. The board shall reimburse the State  
2 Treasurer for the cost of making disbursements from the trust  
3 fund.

4 (h) Fiduciary status of board.--Board members, employees of  
5 the board and agents thereof shall stand in a fiduciary  
6 relationship to the members regarding the investments and  
7 disbursements of any of the moneys of the trust fund and shall  
8 not profit either directly or indirectly with respect thereto.

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

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

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

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

28 (3) Settle, compromise or submit to arbitration all  
29 claims or damages due from or to the accounts, commence or  
30 defend any legal, equitable or administrative proceedings

brought in connection with the program and represent the trust fund in all proceedings under this paragraph.

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

Section 337. Misrepresentation, refusal to cooperate and fraud.

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

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

1 board's rights.

2 (c) Penalty for fraud.--In any case in which the board finds  
3 that an eligible individual is receiving benefits based on false  
4 information, the additional amounts received predicated on the  
5 false information, together with interest doubled and compounded  
6 and legal fees, shall be due from the member. To secure payment  
7 of funds, the board shall have the right to garnish or attach  
8 all or a portion of any compensation payable to the party by the  
9 party's employer, any annuity payable to the party by the  
10 retirement system, any accumulated deductions held by the  
11 retirement system in the party's account or any process  
12 whatsoever.

13 Section 338. Miscellaneous provisions.

14 (a) Construction of chapter.--

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

24 (2) The provisions of this chapter are severable and if  
25 any of its provisions shall be held to be unconstitutional,  
26 the decision of the court shall not affect or impair any of  
27 the remaining provisions. It is hereby declared to be the  
28 legislative intent that this chapter would have been adopted  
29 had the unconstitutional provisions not been included.

30 (3) This subsection shall not apply to policies designed

1 primarily to provide coverage payable on a per diem, fixed  
2 indemnity or nonexpense incurred basis, or policies that  
3 provide accident only coverage, where payment for such policy  
4 is made solely by the school employee.

5 (b) Hold harmless.--Neither the Commonwealth nor the board,  
6 including their respective officers, directors and employees,  
7 shall be liable for any claims, demands, actions or liability of  
8 any nature, including, but not limited to, attorney fees and  
9 court costs, based upon or arising out of the operations of the  
10 program, whether incurred directly or indirectly. The eligible  
11 individuals who enroll and participate in the program shall be  
12 deemed to agree, on behalf of themselves and their heirs,  
13 successors and assigns, to hold harmless the Commonwealth and  
14 the board, including their respective officers, directors and  
15 employees, from any claims, demands, actions or liability of any  
16 nature, whether directly or indirectly, including attorney fees  
17 and court costs, based upon or arising out of the operation of  
18 the program.

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

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

30 (e) Collective bargaining, mediation and binding



1 arbitration.--Except as otherwise provided in subsection (f),  
2 nothing in this chapter or in any other law shall be construed  
3 to permit, authorize or require collective bargaining, mediation  
4 or binding arbitration to create, alter or modify health  
5 benefits set forth in this chapter or administered by the board  
6 for school employees and their health care dependents. Further,  
7 except as otherwise provided in subsection (f), nothing in this  
8 chapter or in any other law shall be construed to permit,  
9 authorize or require a public school entity, through collective  
10 bargaining, mediation or binding arbitration, or otherwise, to  
11 establish, create, alter or modify a health benefits plan or pay  
12 health benefits set forth in this chapter or administered by the  
13 board that modify or supplement in any way the health benefits  
14 set forth in this chapter for school employees and their health  
15 care dependents.

16 (f) Exceptions.--

17 (1) The parties may:

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

1 consideration the need for the public school entity to  
2 properly terminate any existing health benefits  
3 arrangements.

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

7 (2) Nothing contained in this chapter shall restrict a  
8 public school entity from negotiating or otherwise agreeing  
9 to make payment for postretirement health benefits for  
10 members or as may be provided for in Subchapter F.

#### 11 SUBCHAPTER E

#### 12 ALTERNATIVE MEASURES FOR COST REDUCTION

13 Section 351. Alternative measures program.

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

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

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

30 (2) Assistance in the formation of consortia to serve

1 public school entities that do not have the option of joining  
2 an existing consortium.

3 (3) Development of best practice standards and  
4 benchmarks for public school entities and consortia-  
5 sponsoring health care plans for school employees.

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

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

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

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

24 (e) Transition plan.--If the board determines that a public  
25 school entity or consortium shall be required to participate in  
26 the alternative measures program, the public school entity or  
27 consortium shall, within a reasonable period of time as  
28 determined by the board, present to the board a transition plan  
29 with a schedule for the public school entity or consortium to  
30 join the alternative measures program. The board shall review

1 the transition plan with the public school entity or consortium  
2 and make any necessary modifications before granting approval of  
3 the plan. A public school entity or consortium shall be subject  
4 to adherence to the transition plan approved by the board.

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

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

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

27 (i) Optional membership.--No school district of the first  
28 class, as classified pursuant to section 202 of the Public  
29 School Code, shall be required to participate in the alternative  
30 measures program, except as may be agreed upon under the terms

1 of a collective bargaining agreement covering a majority of  
2 employees of the school district. Upon a school district of the  
3 first class entering participation in the alternative measures  
4 program pursuant to a collective bargaining agreement, continued  
5 participation in the alternative measures program shall become  
6 mandatory.

## 7 SUBCHAPTER F

### 8 RETIREMENT HEALTH SAVINGS PLAN

9 Section 361. Retirement health savings plan.

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

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

21 (2) Determination of the structure of the retirement  
22 health savings accounts available to eligible school  
23 employees.

24 (3) Determination of enrollment procedures.

25 (b) Contracting authorized.--The board is authorized to  
26 administer the retirement health savings plan and to contract  
27 with any lawfully authorized entities to provide investment  
28 services, recordkeeping, benefit payments and other functions  
29 necessary for the administration of the retirement health  
30 savings plan. The board may contract with the retirement system

1 to invest funds in an account that shall be maintained and  
2 accounted for separately from the funds of the retirement system  
3 and invested in a prudent manner intended to maximize the safety  
4 of the capital, with all earnings derived from investment of the  
5 assets to be credited to the retirement health savings plan.

6 Costs and expenses incurred by the retirement system in  
7 administering the investment option shall be paid by the  
8 retirement health savings plan.

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

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

20 (e) Contributions.--

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

29 (i) A mandatory school employee contribution  
30 established as a fixed percentage of compensation may be

1 established through a collective bargaining agreement  
2 between a public school entity and a bargaining group  
3 representing school employees. The retirement health  
4 savings plan contribution rate does not have to be  
5 uniform for all groups of school employees.

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

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

23 (2) The following contributions shall be made into a  
24 retirement health savings plan on behalf of a school  
25 employee:

26 (i) For an employee who elects participation in the  
27 retirement health savings plan, the employee's employer  
28 shall make a contribution to the employee's account equal  
29 to the public school entity's savings in Social Security  
30 and Medicare taxes resulting from the tax-preferred or

1 tax-free treatment of contributions made by the school  
2 employee under this subsection. Additional contributions  
3 by a public school entity may be established through a  
4 collective bargaining agreement between a public school  
5 entity and a bargaining group representing school  
6 employees.

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

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

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

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



1 expenses of the participant's eligible health care  
2 dependents.

3 (2) If a school employee dies prior to exhausting the  
4 balance in the employee's retirement health savings plan  
5 account, the employee's health care dependents are eligible  
6 to seek reimbursement for IRC-qualifying health-related  
7 expenses from the account.

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

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

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

24 (i) Advisory committee.--

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

27 (i) One representative appointed by each Statewide  
28 union that represents bargaining groups of school  
29 employees participating in the plan.

30 (ii) One representative of each Statewide

organization representing at least 10% of annuitants.

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

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

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

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

## CHAPTER 5

### MISCELLANEOUS PROVISIONS

#### Section 501. Feasibility Report.

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

#### Section 502. Effective date.

This act shall take effect immediately.