

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3

Session of 2019

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 10, 2019

AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated
2 Statutes, providing for health insurance markets oversight;
3 and establishing the Pennsylvania Health Insurance Exchange
4 Fund.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Title 40 of the Pennsylvania Consolidated
8 Statutes is amended by adding a part to read:

9 PART V

10 HEALTH INSURANCE MARKETS OVERSIGHT

11 Chapter

12 91. Preliminary Provisions

1 93. State-based Exchange

2 95. Reinsurance Program

3 97. Miscellaneous Provisions

4 CHAPTER 91

5 PRELIMINARY PROVISIONS

6 Sec.

7 9101. Scope of part.

8 9102. Purpose and intent.

9 9103. Definitions.

10 § 9101. Scope of part.

11 This part relates to health insurance markets oversight.

12 § 9102. Purpose and intent.

13 The General Assembly finds and declares as follows:

14 (1) The Commonwealth intends to maintain the
15 Commonwealth's sovereignty over the regulation of health
16 insurance in this Commonwealth.

17 (2) The health insurance marketplace in this
18 Commonwealth is unique and unlike the marketplace in any
19 other state.

20 (3) It is necessary to maintain the Commonwealth's
21 sovereignty over the regulation of health insurance in this
22 Commonwealth as permitted by Federal law, including the
23 Federal acts. The provisions of this part are intended to
24 meet these requirements while retaining the Commonwealth's
25 authority to regulate health insurance in this Commonwealth.

26 § 9103. Definitions.

27 Subject to additional definitions contained in subsequent
28 provisions of this part which are applicable to specific
29 provisions of this part, the following words and phrases when
30 used in this part shall have the meanings given to them in this

1 section unless the context clearly indicates otherwise:

2 "Affordable Care Act." The Patient Protection and Affordable
3 Care Act (Public Law 111-148, 124 Stat. 119), as amended by the
4 Health Care and Education Reconciliation Act of 2010 (Public Law
5 111-152, 124 Stat. 1029).

6 "Attachment point." The threshold amount for claims costs
7 incurred by an eligible insurer for an enrolled individual's
8 covered benefits in a benefit year, above which the claims costs
9 for benefits are eligible for reinsurance payments under this
10 part.

11 "Benefit year." The calendar year during which an eligible
12 insurer provides coverage through a health care plan.

13 "Board." The governing body of the exchange authority.

14 "Children's Health Insurance Program." The children's health
15 insurance program under Article XXIII-A of the act of May 17,
16 1921 (P.L.682, No.284), known as The Insurance Company Law of
17 1921.

18 "Coinsurance rate." The percentage rate at which the
19 reinsurance program will reimburse an eligible insurer for
20 claims incurred for an enrollee's covered benefits in a benefit
21 year above the attachment point and below the reinsurance cap.

22 "Commissioner." The Insurance Commissioner of the
23 Commonwealth.

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

25 "Eligible insurer." An insurer offering reinsurance-eligible
26 health ~~insurance~~ CARE plans to consumers in this Commonwealth. <--

27 "Enrollee." A policyholder, certificate holder, subscriber,
28 covered person or other individual who is enrolled to receive
29 health care services pursuant to a health insurance policy.

30 "Exchange." A health insurance exchange as contemplated by

1 section 1321(b) of the Affordable Care Act, established or
2 operating in this Commonwealth, that facilitates or assists in
3 facilitating enrollment in qualified plans.

4 "Exchange assister." The term has the meaning given to it in
5 section 2 of the act of June 19, 2015 (P.L.25, No.7), known as
6 the Navigator and Exchange Assister Accessibility and Regulation
7 Act.

8 "Exchange authority." The Pennsylvania Health Insurance
9 Exchange Authority established under section 9302(a) (relating
10 to Pennsylvania Health Insurance Exchange Authority).

11 "Exchange fund." The Pennsylvania Health Insurance Exchange
12 Fund established under section 9312 (relating to exchange fund).

13 "Federal acts." The Affordable Care Act and any amendments
14 thereto, and related provisions of the Public Health Service Act
15 (58 Stat. 682, 42 U.S.C. § 201 et seq.).

16 "Government program." A program of government sponsored or
17 subsidized health care coverage, including:

18 (1) A premium tax credit or cost-sharing subsidy under
19 the Federal acts.

20 (2) Coverage under Medicare Parts A and B or Medicare
21 Advantage Part C under Title XVIII of the Social Security Act
22 (49 Stat. 620, 42 U.S.C. § 1395 et seq.).

23 (3) A TRICARE or other health care plan provided through
24 the Civilian Health and Medical Program of the Uniformed
25 Services (CHAMPUS) as defined under 10 U.S.C. § 1072
26 (relating to definitions).

27 (4) A health care plan provided through the Federal
28 Employees Health Benefits Program established under 5 U.S.C.
29 Ch. 89 (relating to health insurance).

30 (5) The Commonwealth's medical assistance program

1 established under the act of June 13, 1967 (P.L.31, No.21),
2 known as the Human Services Code.

3 (6) The Children's Health Insurance Program.

4 (7) Health care coverage provided by the Commonwealth, a
5 county, a city, or other State or local governmental entity
6 or an agency, subdivision or department of a governmental
7 entity, including:

8 (i) a corporation or other arrangement organized by
9 the entity for the provision of health care coverage and
10 subject to control by the entity or an instrumentality of
11 one or more of them;

12 (ii) the Pennsylvania Employee Benefit Trust Fund
13 for active and retired employees; and

14 (iii) benefit programs administered by the
15 Department of Corrections.

16 "Grandfathered health care plan." Individual or group health
17 insurance coverage in which an individual was enrolled prior to
18 the date of enactment of the Affordable Care Act, or as
19 otherwise specified in section 1251 of the Affordable Care Act
20 (42 U.S.C. § 18011).

21 "Health care plan." A package of coverage benefits with a
22 particular cost-sharing structure, network and service area that
23 is purchased through a health insurance policy.

24 "Health insurance policy." A policy, subscriber contract,
25 certificate or plan issued by an insurer that provides hospital
26 or medical/surgical health care coverage. The term does not
27 include any of the following:

28 (1) An accident only policy.

29 (2) A credit only policy.

30 (3) A long-term care or disability income policy.

- 1 (4) A specified disease policy.
- 2 (5) A Medicare supplement policy.
- 3 (6) A fixed indemnity policy.
- 4 (7) An adult-only dental only policy.
- 5 (8) A vision only policy.
- 6 (9) A workers' compensation policy.
- 7 (10) An automobile medical payment policy.
- 8 (11) A policy under which benefits are provided by the
9 Federal Government to active or former military personnel and
10 their dependents.
- 11 (12) Any other similar policies providing for limited
12 benefits.

13 "Hospital plan corporation." An entity organized and
14 operating under Chapter 61 (relating to hospital plan
15 corporations).

16 "Individual market." The market for health insurance
17 coverage offered to individuals other than in connection with a
18 group.

19 "Innovation waiver." A waiver applied for pursuant to
20 section 1332 of the Affordable Care Act (42 U.S.C. §18052).

21 "Insurance producer." The term has the meaning given to it
22 in section 601-A of the act of May 17, 1921 (P.L.789, No.285),
23 known as The Insurance Department Act of 1921.

24 "Insurer." An entity that offers, issues or renews an
25 individual or group health, accident or sickness insurance
26 policy, contract or plan, and that is governed under any of the
27 following:

28 (1) Chapter 61.

29 (2) Chapter 63 (relating to professional health services
30 plan corporations).

1 (3) The Insurance Company Law of 1921, including section
2 630 and Article XXIV.

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

5 "Medical assistance program." The Commonwealth's medical
6 assistance program established under the Human Services Code.

7 "Professional health services plan corporation." An entity
8 organized and operating under Chapter 63.

9 "Qualified enrollee." A qualified employee or qualified
10 individual, as defined in section 1312(f) of the Affordable Care
11 Act and regulations promulgated under that act.

12 "Qualified plan." A plan as defined in section 1301(a) of
13 the Affordable Care Act that provides health care or dental care
14 coverage that has been certified by the department as meeting
15 the criteria set forth in this part and any regulations issued
16 pursuant to this part.

17 "Reinsurance cap." The upper limit amount for claims costs
18 incurred by an eligible insurer for an enrolled individual's
19 covered benefits in a benefit year, over which the claims costs
20 for benefits are no longer eligible for reinsurance payments
21 under the reinsurance program.

22 "Reinsurance-eligible enrollee." An enrollee who is insured
23 in a reinsurance-eligible health care plan under this part.

24 "Reinsurance-eligible health care plan." A health care plan
25 that is not a grandfathered health care plan.

26 "Reinsurance payment." An amount paid by the reinsurance
27 program to an eligible insurer under the program.

28 "Reinsurance program." The Commonwealth Health Insurance
29 Reinsurance Program established under section 9502(b) (relating
30 to implementation of waiver and establishment of reinsurance

1 program).

2 "Small group market." The market for health insurance for
3 coverage offered through a group health insurance policy for a
4 group of AT least ~~two individuals~~ ONE EMPLOYEE and up to 50 <--
5 ~~individuals~~ EMPLOYEES, exclusive of dependents. <--

6 CHAPTER 93

7 STATE-BASED EXCHANGE

8 Sec.

9 9301. Scope of chapter.

10 9302. Pennsylvania Health Insurance Exchange Authority.

11 9303. Advisory council.

12 9304. Meetings and operation.

13 9305. Powers and duties of exchange authority.

14 9306. Limitations.

15 9307. Confidentiality and disclosure.

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18 9310. Audits.

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20 9312. Exchange fund.

21 9313. Federal guidance.

22 9314. Expiration.

23 § 9301. Scope of chapter.

24 This chapter relates to the Pennsylvania Health Insurance
25 Exchange Authority.

26 § 9302. Pennsylvania Health Insurance Exchange Authority.

27 (a) Establishment.--The Pennsylvania Health Insurance
28 Exchange Authority is established as a State-affiliated entity.
29 The powers and duties of the exchange authority shall be vested
30 in and exercised by a board, which shall have the sole power

1 under section 9305 (relating to powers and duties of exchange
2 authority) to employ staff, including an executive director.
3 Individuals employed by the exchange authority shall be
4 employees of the Commonwealth. The exchange authority may
5 contract with persons or entities, including legal counsel,
6 consultants or service providers, as deemed necessary in the
7 exchange authority's discretion.

8 (b) Purpose.--The purpose of the exchange authority shall be
9 to create, manage and maintain in this Commonwealth the
10 Pennsylvania Health Insurance Exchange to do all of the
11 following:

12 (1) Benefit the Pennsylvania health insurance market and
13 persons enrolling in health insurance policies.

14 (2) Facilitate or assist in facilitating the purchase of
15 on-exchange qualified plans by qualified enrollees in the
16 individual market or the individual and small group markets.

17 (c) Composition.--The board shall consist of the following
18 members:

19 (1) Three voting members who shall be the following
20 heads of agencies or a designee who shall be an employee of
21 the agency designated in writing by the head of the agency
22 prior to service:

23 (i) The commissioner, ex-officio.

24 (ii) The Secretary of Human Services, ex-officio.

25 (iii) The Secretary of Health, ex-officio.

26 (2) Four voting members appointed by the Governor:

27 (i) One member from among the insurers that offer
28 health insurance policies through the exchange that are a
29 hospital plan corporation, a professional health services
30 plan corporation or a parent, affiliate, subsidiary or

1 other associated entity or successor of a hospital plan
2 corporation or a professional health services plan.

3 (ii) One member from among the insurers that offer
4 health insurance policies through the exchange that are
5 not a hospital plan corporation, a professional health
6 services plan corporation or a parent, affiliate,
7 subsidiary or other associated entity or successor of a
8 hospital plan corporation or a professional health
9 services plan.

10 (iii) One member with experience in health care
11 public education and consumer assistance activities who
12 does not have a conflict of interest as described in
13 subsection (k).

14 (iv) One member who is a consumer representative.

15 (3) Four voting members appointed by the General
16 Assembly each with relevant experience in health benefits
17 administration, health care finance, health care plan
18 purchasing, health care delivery system administration,
19 public health or health policy related to the individual and
20 small group markets and the uninsured:

21 (i) One member appointed by the President pro
22 tempore of the Senate.

23 (ii) One member appointed by the Minority Leader of
24 the Senate.

25 (iii) One member appointed by the Speaker of the
26 House of Representatives.

27 (iv) One member appointed by the Minority Leader of
28 the House of Representatives.

29 (4) The executive director shall attend meetings of the
30 board but shall not be a member, may not vote and may not be

1 counted for purposes of establishing a quorum.

2 (d) Chairperson.--The commissioner or a designee shall serve
3 as chairperson.

4 (e) Compensation.--Board members shall not be entitled to
5 any compensation for their services as members, except that,
6 subject to the availability of funds, board members shall be
7 entitled to reimbursement for actual and necessary travel
8 expenses. The expenses shall be paid for by the exchange fund.

9 (f) Terms.--The terms of the board members shall be as
10 follows:

11 (1) A board member appointed under subsection ~~(e)(2)~~ (C) <--

12 (3) who:

13 (i) Is a member of the General Assembly shall serve
14 a term concurrent with their holding of public office.

15 (ii) Is not a member of the General Assembly shall
16 serve a term concurrent with their appointing official's
17 holding of public office.

18 (2) A board member appointed under subsection ~~(e)(3)~~ (C) <--

19 (2) shall serve a term of four years, not to exceed more than
20 two full consecutive four-year terms, except that the
21 following shall apply:

22 (i) Initial appointments shall be so staggered that
23 less than 50% of the membership shall expire each year.

24 (ii) A member's term shall continue until the
25 member's replacement is appointed.

26 (g) Vacancies.--Vacancies in appointed positions shall be
27 filled in the same manner as the original appointment. Members
28 shall serve until their successors are appointed and qualified.

29 (h) Formation.--The exchange authority shall be formed
30 within 60 days of the effective date of this section. Prior to

1 formation of the exchange authority, the commissioner may take
2 action necessary to effect a timely transition from a federally
3 administered exchange to the Pennsylvania Health Insurance
4 Exchange.

5 (i) Quorum.--A majority of the appointed members of the
6 board shall constitute a quorum. Action may be taken by the
7 board at a meeting upon a vote of a quorum of its members
8 present in person or through electronic means. If a tie vote
9 occurs at any meeting, it shall be the duty of the chairperson
10 of the board to cast a second and deciding vote.

11 (j) Meetings.--The board shall meet at the call of the
12 chairperson or as may be provided in the bylaws of the board.
13 The board shall hold meetings at least quarterly, which shall be
14 subject to the requirements of 65 Pa.C.S. Ch. 7 (relating to
15 open meetings).

16 (k) Experience and interests.--For purposes of this chapter,
17 the board shall assure that it complies with section 1321 of the
18 Affordable Care Act (42 U.S.C. § 18041) and regulations
19 promulgated under the Affordable Care Act regarding conflicts of
20 interest and relevant experience.

21 (l) Conflict of interest.--The following apply:

22 (i) Except as provided under subparagraph (ii), a non-
23 State employee board member shall not be subject to 65
24 Pa.C.S. Ch. 11 (relating to ethics standards and financial
25 disclosure), including the requirements for filing statements
26 of financial interests.

27 (ii) A non-State employee board member may not engage in
28 conduct that, if that member were a State employee, would
29 constitute a conflict of interest under 65 Pa.C.S. Ch. 11.

30 (iii) A majority of the voting members of the board may

1 not have a conflict of interest as set forth in section 1321
2 of the Affordable Care Act and regulations promulgated under
3 the Affordable Care Act.

4 § 9303. Advisory council.

5 (a) Establishment.--An advisory council is created to advise
6 the exchange authority under section 9304(g) (relating to
7 meetings and operation).

8 (b) Composition.--The advisory council shall consist of the
9 following members, who may not be in the employ of the
10 Commonwealth:

11 (1) Four consumer representatives which include two
12 representatives appointed by the Governor at least one of
13 whom shall be a registered insurance exchange navigator or
14 assister, one appointed by the President pro tempore of the
15 Senate and one appointed by the Speaker of the House of
16 Representatives.

17 (2) One representative selected by the Hospital and
18 Healthsystem Association of Pennsylvania.

19 (3) One representative selected by the Pennsylvania
20 Medical Society.

21 (4) One representative selected by the Pennsylvania
22 Chamber of Business and Industry from a small group employer.

23 (5) One representative selected by the Pennsylvania
24 Association of Health Underwriters.

25 § 9304. Meetings and operation.

26 (a) Chairperson.--The members of the advisory council shall
27 annually elect a chairperson from among its membership.

28 (b) Terms of members.--Each member's term shall be four
29 years, not to exceed more than two full consecutive four-year
30 terms, except that:

1 (1) Initial appointments shall be staggered to ensure
2 less than 50% of the membership expire each year.

3 (2) A member's term shall continue until the member's
4 successor is appointed.

5 (c) Meetings.--All meetings of the advisory council shall be
6 conducted in accordance with 65 Pa.C.S. Ch. 7 (relating to open
7 meetings), except as provided in this section. Meetings must be
8 held in accordance with the following:

9 (1) The advisory council shall meet at least twice per
10 year, with each meeting held prior to a meeting of the board.
11 Additional meetings may be held upon reasonable notice at
12 times and locations selected by the board. The council shall
13 meet at the call of the chairperson or upon written request
14 of three members of the council.

15 (2) The executive director of the exchange authority, or
16 a designee, shall attend each meeting of the advisory
17 council.

18 (3) Meeting dates shall be set by a majority vote of
19 members of the advisory council or by call of the chairperson
20 upon seven days' notice to all members.

21 (4) The advisory council shall post notice of the
22 council's meetings on the exchange authority's publicly
23 accessible Internet website at least five days prior to each
24 meeting. The notice must specify the date, time and place of
25 the meeting and shall state that the council's meetings are
26 open to the general public.

27 (5) All action taken by the advisory council shall be
28 taken in open public session and may not be taken except upon
29 a majority vote of the members present at a meeting at which
30 a quorum is present.

1 (d) Compensation.--The members of the advisory council shall
2 not be entitled to any compensation for their services as
3 members, except that, subject to the availability of money, the
4 members of the advisory council shall be entitled to
5 reimbursement for actual and necessary travel expenses. The
6 expenses shall be paid for by the exchange fund.

7 (e) Vacancies.--Vacancies in appointed positions shall be
8 filled in the same manner as the original appointment. Members
9 shall serve until their successors are appointed and qualified.

10 (f) Quorum.--A majority of the advisory council members
11 shall constitute a quorum and a quorum may act for the advisory
12 council in all matters.

13 (g) Duties.--Upon request by the exchange authority, the
14 advisory council shall advise the exchange authority on the
15 following administrative and operational decisions:

16 (1) Initial operational decisions.

17 (2) Ongoing financing decisions.

18 (3) Other decisions as the exchange authority may deem
19 appropriate.

20 § 9305. Powers and duties of exchange authority.

21 (a) Corporate operations.--The exchange authority shall
22 exercise all powers and duties necessary and appropriate to
23 carry out its purpose, including the following:

24 (1) Adopt bylaws.

25 (2) Employ staff.

26 (3) Make, execute and deliver contracts.

27 (4) Apply for, solicit and receive money from any source
28 consistent with the purpose of this chapter.

29 (5) Establish priorities for, allocate and disburse
30 money received.

1 (6) Submit annually to the Appropriations Committee of
2 the Senate and the Appropriations Committee of the House of
3 Representatives, at the same time the exchange authority
4 submits its budget to the Governor, a copy of its budget
5 request and all subsequently revised budget requests for the
6 ensuing fiscal year. The budget shall include the amounts to
7 be appropriated out of the fund established under section
8 9312 (relating to exchange fund) necessary to administer the
9 provisions of this chapter and the conveyance of money to the
10 Reinsurance Fund established under section 9510 (relating to
11 Reinsurance Fund).

12 (7) Establish travel reimbursement policies for the
13 exchange authority, its board, and its advisory council.

14 (8) Coordinate with the appropriate Federal and State
15 agencies to seek waivers from statutory or regulatory
16 requirements as necessary to carry out the purposes of this
17 chapter.

18 (9) Enter into other arrangements, including without
19 limitation, interagency agreements with Federal agencies and
20 Commonwealth agencies or other states' agencies, as may be
21 necessary or appropriate to carry out the duties of the
22 exchange authority.

23 (10) Give reasonable public notice of any policies and
24 procedures the exchange authority may implement to accomplish
25 the operation of the exchange authority.

26 (11) Perform other operational activities necessary or
27 appropriate to further the purposes of this chapter.

28 (12) The board shall consider the advice of the advisory
29 council provided under section 9304(g) (relating to meetings
30 and operation).

1 (b) Programmatic duties.--The exchange authority shall
2 perform all duties necessary or appropriate to advance its
3 purpose, including the following:

4 (1) Educate consumers, including through outreach, a
5 navigator program and postenrollment support.

6 (2) Assist individuals to access income-based assistance
7 for which they may be eligible, including premium tax
8 credits, cost-sharing reductions and government programs.

9 (3) Take into consideration the need for consumer choice
10 in rural, urban and suburban areas across the Commonwealth.

11 (4) Assess and collect fees from on-exchange insurers to
12 support the operation of the exchange under this chapter and
13 the reinsurance program established under section 9502(b)
14 (relating to implementation of waiver and establishment of
15 reinsurance program), except that the exchange authority may
16 not assess or collect any form of obligation other than an
17 exchange user fee on total monthly premiums for on-exchange
18 policies and unless approved by unanimous consent of the
19 board, the fee may not exceed 3% of total monthly premiums
20 for on-exchange policies.

21 (5) Disburse receipted fees, including to benefit the
22 reinsurance program established under section 9502(b).

23 (c) Enforcement and State sovereignty.--The exchange
24 authority shall ensure that the exchange complies with the
25 Federal acts and rules and regulations that may be imposed by
26 the Federal Government pursuant to the Federal acts in a manner
27 that maintains State sovereignty over the health insurance
28 market in this Commonwealth. Enforcement responsibilities shall
29 be delegated to the appropriate State agency and shall be
30 sufficient to prevent a determination by the United States

1 Secretary of Health and Human Services that the Commonwealth has
2 failed to substantially enforce any provision of the Federal
3 acts.

4 § 9306. Limitations.

5 Except as expressly provided in this chapter, nothing in this
6 chapter shall be construed to limit or supersede the exchange <--
7 authority vested in a Commonwealth agency, including:

8 (1) The Insurance Department, including the department's
9 authority to regulate the business of insurance within this
10 Commonwealth, including health insurance policies whether
11 offered on or off the exchange.

12 (2) The Department of Human Services, including with
13 respect to the medical assistance program or the Children's
14 Health Insurance Program.

15 (3) The Department of Health.

16 (4) The Office of Attorney General.

17 § 9307. Confidentiality and disclosure.

18 (a) General rule.--Except as provided in this chapter, all
19 working papers, recorded information, documents and copies of
20 working papers, recorded information and documents produced by,
21 obtained by or disclosed to the exchange authority or any other
22 person in the course of the exercise of the exchange authority's
23 powers and duties under this chapter:

24 (1) shall be confidential;

25 (2) shall not be subject to subpoena;

26 (3) shall not be subject to the act of February 14, 2008
27 (P.L.6, No.3), known as the Right-to-Know Law;

28 (4) shall not be subject to discovery or admissible in
29 evidence in any private civil action; and

30 (5) may not be made public by the exchange authority or

1 any other person.

2 (b) Personal health and financial information.--The exchange
3 authority shall protect personally identifiable health and
4 financial information in accordance with all applicable Federal
5 and State laws and regulations, including the Health Insurance
6 Portability and Accountability Act of 1996 (Public Law 104-191,
7 110 Stat. 1936), the Health Information Technology for Economic
8 and Clinical Health Act (Public Law 111-5, 123 Stat. 226-279 and
9 467-496) and implementing regulations.

10 (c) Information disclosure.--Subject to the confidentiality
11 provisions of this section:

12 (1) Information shall be shared, as appropriate, for the
13 purpose of determining and coordinating the eligibility of
14 individuals for the exchange or any government program,
15 including the Children's Health Insurance Program and medical
16 assistance program, or for compliance with Federal law:

17 (i) Among the exchange authority and departments,
18 including:

19 (A) The department.

20 (B) The Department of Aging.

21 (C) The Department of Drug and Alcohol Programs.

22 (D) The Department of Health.

23 (E) The Department of Human Services.

24 (F) The Department of Labor and Industry.

25 (G) The Department of Revenue.

26 (ii) Between the exchange authority and Federal
27 agencies, including:

28 (A) The Centers for Medicare and Medicaid
29 Services.

30 (B) The Treasury Department.

1 (2) Information may be disclosed:

2 (i) As necessary to comply with the audit
3 requirements of section 9310 (relating to audits) and the
4 reporting requirements of section 9311 (relating to
5 reports), only in an aggregated and de-identified form.

6 (ii) In any circumstance, other than those described
7 in paragraph (1) or subparagraph (i), only if the prior
8 written consent of the company or person to which the
9 information pertains has been obtained.

10 (d) Construction.--Nothing in this section shall be
11 construed to prohibit the exchange authority from accessing the
12 information necessary to carry out its responsibilities in
13 accordance with law.

14 § 9308. Not an entitlement.

15 Nothing in this chapter shall constitute an entitlement
16 derived from the Commonwealth or a claim on any money of the
17 Commonwealth.

18 § 9309. Nonliability.

19 (a) General rule.--Except as provided under subsection (b),
20 there shall be no liability on the part of and no cause of
21 action of any nature may arise against the exchange authority,
22 board or advisory council or members thereof, the commissioner,
23 the department, an insurer, insurance producer or an exchange
24 assister or an authorized representative, agent or employee
25 thereof, for the use of information furnished pertaining to:

26 (1) An application for, inquiry concerning, or
27 enrollment or disenrollment in a health insurance policy or
28 government program, including an inquiry regarding
29 eligibility for enrollment or eligibility for a government
30 program, relevant to health insurance available through an

1 exchange or health care coverage or other benefits through a
2 government program.

3 (2) A charge, assessment or fee imposed on or received
4 from a person or entity relevant to the exchange.

5 (b) Limitation.--Subsection (a) shall apply only insofar as
6 the person or entity is acting within the scope of the person's
7 or entity's duties and responsibilities under this chapter.

8 § 9310. Audits.

9 (a) Annual audit.--The accounts and books of the exchange
10 authority shall be examined and audited annually by an
11 independent certified public accounting firm. The audit shall at
12 a minimum:

13 (1) Assess compliance with the requirements of this
14 chapter.

15 (2) Identify any material weaknesses or significant
16 deficiencies and identify ways to correct the material
17 weaknesses or deficiencies.

18 (b) Sharing of audit.--By December 31 of each year, the
19 exchange authority shall electronically share the audit of the
20 preceding fiscal year required under subsection (a) and related
21 documents by:

22 (1) Posting the following on the exchange authority's
23 publicly accessible Internet website:

24 (i) The audit.

25 (ii) A summary of the audit, including any material
26 weakness or significant deficiency identified and how the
27 exchange authority intends to correct the material
28 weakness or significant deficiency.

29 (2) Providing an electronic link to the posted audit
30 under paragraph (1)(i) to the Secretary of the Senate and the

1 Chief Clerk of the House of Representatives.

2 (3) Providing an electronic link to the posted audit
3 under paragraph (1)(i) to the department.

4 (c) Payment.--The cost of the annual audit required under
5 subsection (a) shall be paid for from money in the exchange
6 fund.

7 § 9311. Reports.

8 (a) Report.--The exchange authority shall prepare an annual
9 report on the activities of the exchange authority for the year
10 and:

11 (1) Electronically transmit the report to:

12 (i) The Governor.

13 (ii) The President pro tempore of the Senate.

14 (iii) The Minority Leader of the Senate.

15 (iv) The Speaker of the House of Representatives.

16 (v) The Minority Leader of the House of

17 Representatives.

18 (vi) The chair and minority chair of:

19 (A) The Appropriations Committee of the Senate.

20 (B) The Appropriations Committee of the House of
21 Representatives.

22 (C) The Banking and Insurance Committee of the
23 Senate.

24 (D) The Insurance Committee of the House of
25 Representatives.

26 (E) The Health and Human Services Committee of
27 the Senate.

28 (F) The Health Committee of the House of
29 Representatives.

30 (2) Post the report on the exchange authority's publicly

1 accessibility Internet website.

2 (b) Federal compliance.--The exchange authority shall comply
3 with applicable Federal reporting requirements.

4 (c) Department notification.--The exchange authority shall
5 provide a copy of or electronic link to the report provided
6 under subsection (a) or (b) to the department.

7 § 9312. Exchange fund.

8 (a) Establishment.--The Pennsylvania Health Insurance
9 Exchange Fund is established as a special fund within the State
10 Treasury. The exchange fund shall be administered by the
11 exchange authority for the purposes set forth in this chapter,
12 including the deposit of money that may be received pursuant to
13 and disbursements permitted by this chapter.

14 (b) Deposit and use of money.--The following apply:

15 (1) Money deposited into the exchange fund shall be held
16 for the purposes set forth in this chapter and may not be
17 considered a part of the General Fund.

18 (2) Money in the exchange fund may only be used to
19 effectuate the purposes of this chapter as determined by the
20 exchange authority.

21 (3) All interest earned from the investment or deposit
22 of money in the exchange fund shall be deposited into the
23 exchange fund.

24 (4) All accrued and future earnings from money invested
25 by the exchange authority and other accrued and future
26 earnings from nonappropriated money, including, but not
27 limited to, money obtained from the Federal Government and
28 fees, shall be available to the exchange authority and shall
29 be deposited into the State Treasury and may be utilized at
30 the discretion of the board for carrying out any of the

1 corporate purposes of the exchange authority.

2 (5) Placement of money by the State Treasurer in
3 depositories or investments shall be consistent with
4 guidelines approved by the board.

5 (6) For the purpose of administration, the exchange
6 authority shall be subject to sections 610, 613 and 614 of
7 act of April 9, 1929 (P.L.177, No.175), known as The
8 Administrative Code of 1929.

9 (c) Nonlapsing and revolving fund.--The exchange fund shall
10 be a nonlapsing fund. All money in the exchange fund and
11 interest accrued are appropriated to the exchange authority for
12 expenditure consistent with this chapter.

13 § 9313. Federal guidance.

14 Until the exchange authority promulgates regulations, the
15 exchange authority shall operate the exchange pursuant to:

16 (1) any applicable Federal rules, regulations or
17 guidance; or

18 (2) interim State guidelines consistent with this
19 chapter.

20 § 9314. Expiration.

21 Upon publication of the notice under section 9703(b)
22 (relating to action by commissioner), the exchange authority
23 shall initiate steps to cease operations of the exchange
24 authority and shall cease operations not later than 15 months
25 after publication of the notice.

26 CHAPTER 95

27 REINSURANCE PROGRAM

28 Sec.

29 9501. Application.

30 9502. Implementation of waiver and establishment of reinsurance

- 1 program.
- 2 9503. Administration and operation of reinsurance program.
- 3 9504. Reinsurance parameters.
- 4 9505. Insurer eligibility and duties.
- 5 9506. Payment of coverage and administrative costs.
- 6 9507. Not an entitlement.
- 7 9508. Annual audit.
- 8 9509. Annual report of operations.
- 9 9510. Reinsurance Fund.
- 10 9511. Procurements within one year.
- 11 9512. Access to information and records.
- 12 9513. Confidentiality and information disclosure.
- 13 9514. Immunity.
- 14 9515. Regulation of insurers.
- 15 9516. Expiration.
- 16 § 9501. Application.

17 (a) Application.--The department is authorized to apply to
18 the United States Secretary of Health and Human Services under
19 section 1332 of the Affordable Care Act for a state innovation
20 waiver to:

21 (1) Waive any applicable provisions of the Affordable
22 Care Act with respect to health insurance coverage in this
23 Commonwealth.

24 (2) Establish a reinsurance program in accordance with
25 an approved waiver.

26 (3) Maximize Federal funding for the reinsurance program
27 for plan years beginning on or after implementation of the
28 program.

29 (b) Public review.--On or before 180 days after the
30 effective date of this section, the department shall make a

1 draft application available for a 30-day public review and
2 comment period. The department shall consider any comments in
3 its final submitted application.

4 (c) Amendment.--The department may amend the waiver
5 application as necessary to carry out the provisions of this
6 chapter.

7 (d) Notification.--The department shall notify the chair and
8 minority chair of the Appropriations Committee of the Senate,
9 the chair and minority chair of the Appropriations Committee of
10 the House of Representatives, the chair and minority chair of
11 the Banking and Insurance Committee of the Senate and the chair
12 and minority chair of the Insurance Committee of the House of
13 Representatives promptly of any amendment to the waiver
14 application and of any Federal actions regarding the waiver
15 application.

16 § 9502. Implementation of waiver and establishment of
17 reinsurance program.

18 (a) Implementation.--Upon approval of the department's
19 application for an innovation waiver by the United States
20 Department of Health and Human Services, the department shall
21 implement a reinsurance program.

22 (b) Establishment.--Contingent upon Federal approval, the
23 Commonwealth Health Insurance Reinsurance Program is established
24 in the department for the purposes of stabilizing the rates and
25 premiums for health insurance policies in the individual market
26 and providing greater financial certainty to consumers of health
27 insurance in this Commonwealth. The reinsurance program shall be
28 considered a reinsurance entity to carry out a reinsurance
29 program under the Federal acts.

30 (c) Operation.--Operation of a reinsurance program shall be

1 contingent on Federal approval of the waiver application
2 submitted pursuant to section 9501 (relating to application).
3 § 9503. Administration and operation of reinsurance program.

4 (a) General rule.--The department shall take all actions
5 necessary to administer the approved reinsurance program in a
6 manner consistent with applicable Federal and State law.

7 (b) Functions.--The department shall perform all functions
8 necessary and appropriate to carry out the operation of the
9 reinsurance program and to effectuate the purposes for which the
10 reinsurance program is organized, in accordance with the
11 approved waiver. The functions include:

12 (1) Establishing procedures for and performing
13 administrative and accounting operations of the reinsurance
14 program.

15 (2) Seeking and receiving funding for the reinsurance
16 program and to maximize Federal funding for the reinsurance
17 program, including from:

18 (i) The exchange authority.

19 (ii) Federal funding that is or becomes available to
20 states to support administration and implementation of
21 state-based reinsurance programs.

22 (iii) Other available sources.

23 (3) Collecting data submissions and reinsurance payment
24 requests by eligible insurers.

25 (4) Making reinsurance payments to eligible insurers.

26 (5) Resolving disputes related to the amount of
27 reinsurance payments.

28 (6) Suing or being sued, including taking any legal
29 action necessary or proper for the recovery of money for
30 reinsurance payments.

1 (7) Submitting invoices or other requests for money as
2 may be necessary and appropriate under the innovation waiver.

3 (c) Delegation.--Except as prohibited by applicable Federal
4 law and regulation, and as may be necessary or appropriate to
5 carry out department duties, the department may administer the
6 reinsurance program directly or through:

7 (1) Other Federal agencies, Commonwealth agencies or
8 other states' agencies.

9 (2) Contracted persons or entities, including with
10 legal, actuarial, economic, third-party administrator or
11 other persons or entities, as the department deems
12 appropriate, to provide consultation services and technical
13 assistance in operating the reinsurance program. Contracted
14 persons or entities shall submit regular reports to the
15 department regarding the person's or entity's performance,
16 the frequency, content and form of which shall be determined
17 by the department.

18 (d) Coordination with exchange authority.--The department
19 shall coordinate with the exchange authority as may be necessary
20 to fund and operate the reinsurance program.

21 § 9504. Reinsurance parameters.

22 (a) Adoption of reinsurance terms.--The department shall,
23 after consultation with all insurers then currently
24 participating in the exchange, and not less than 60 days before
25 final rates for health insurance policies are required to be
26 submitted each year, determine and adopt the attachment point,
27 reinsurance cap and coinsurance rate applicable to the
28 reinsurance program for the following year.

29 (b) Parameters.--In determining the attachment point,
30 reinsurance cap and coinsurance rate applicable to the

1 reinsurance program for the following year, the department shall
2 seek to:

3 (1) Manage the program within the amount of total
4 program funding available to the department.

5 (2) With respect to the individual market:

6 (i) Mitigate the impact of high-cost claims on
7 premium rates.

8 (ii) Stabilize or reduce premium rates.

9 (iii) Increase participation.

10 (c) Publication and notice.--The department shall transmit
11 notice of the adopted attachment point, reinsurance cap and
12 coinsurance rate to the Legislative Reference Bureau for
13 publication in the Pennsylvania Bulletin and shall:

14 (1) Post notice on the department's publicly accessible
15 Internet website.

16 (2) Electronically send notice to the chair and minority
17 chair of the Banking and Insurance Committee of the Senate
18 and the chair and minority chair of the Insurance Committee
19 of the House of Representatives.

20 (3) Electronically send notice to each participating
21 insurer via a contact person or electronic mailing address,
22 as identified by the insurer.

23 (d) Limitation.--After the department adopts the attachment
24 point, reinsurance cap and coinsurance rate for the next year,
25 the department may not, before or during that benefit year,
26 change the attachment point, reinsurance cap or coinsurance rate
27 in a manner less favorable to the insurers participating in the
28 exchange at the time of adoption.

29 § 9505. Insurer eligibility and duties.

30 (a) Eligibility for payment.--An insurer shall be eligible

1 for a reinsurance payment if:

2 (1) The claims costs for a reinsurance-eligible
3 enrollee's covered benefits in a benefit year exceed the
4 attachment point.

5 (2) The eligible insurer has implemented and documented
6 reasonable care management practices for enrollees who are
7 the subject of reinsurance claims through the reinsurance
8 program.

9 (3) The eligible insurer makes its requests for
10 reinsurance payments in accordance with any requirements
11 established by the department including requirements related
12 to the format, structure and timing for submission of claims
13 for reinsurance payments.

14 (4) THE ELIGIBLE INSURER PARTICIPATED IN THE EXCHANGE, <--
15 OR IS AFFILIATED WITH AN ENTITY THAT PARTICIPATED IN THE
16 EXCHANGE, IN THE BENEFIT YEAR IN WHICH THE CLAIMS COSTS FOR
17 WHICH A REINSURANCE PAYMENT IS SOUGHT WERE INCURRED.

18 (b) Reporting requirement.--An insurer that seeks
19 reinsurance payments under this chapter must report to the
20 department, in the form and manner prescribed by the department,
21 information about reinsurance-eligible enrollees insured by the
22 insurer as necessary for the department to calculate reinsurance
23 payments.

24 (c) Confidentiality.--Reinsurance claims submitted under
25 this section are confidential and are not subject to public
26 disclosure, except as provided under section 9514 (relating to
27 immunity).

28 (d) Consideration for rate filings.--In a rate filing for a
29 health insurance policy to be offered through the exchange, the
30 impact of reinsurance payments under this chapter shall be

1 identified.

2 (e) Limitation.--The calculation of reinsurance payments due
3 to an eligible insurer shall be net of all other available
4 insurance payments applicable to a claim, including insurance
5 accessible through subrogation or coordination of benefits.
6 § 9506. Payment of coverage and administrative costs.

7 (a) General rule.--Consistent with Federal requirements, the
8 department shall pay the following from the Reinsurance Fund:

9 (1) Administrative expenses of the reinsurance program,
10 including the annual audit required under section 9508
11 (relating to annual audit).

12 (2) Reinsurance payments for coverage of reinsurance-
13 eligible enrollees.

14 (b) Operations.--The department may promulgate regulations
15 necessary and appropriate to establish processes for the
16 settlement of reinsurance coverage claims and disbursement of
17 reinsurance money.

18 (c) Request for review.--An insurer that is aggrieved by a
19 determination of the department relating to the amount of
20 reinsurance payments due to the insurer may file a request for
21 administrative review of the decision. The procedures and
22 requirements of 2 Pa.C.S. Ch. 5 Subch. A (relating to practice
23 and procedure of Commonwealth agencies) shall apply to requests
24 for review filed under this section. Notwithstanding otherwise
25 applicable time limitations, in order to permit timely
26 finalization of rates for the open enrollment period for the
27 exchange, a challenge to the department's determination of the
28 attachment point, reinsurance cap and coinsurance rate published
29 in the Pennsylvania Bulletin under section 9504(c) (relating to
30 reinsurance parameters) must be made within 10 business days of

1 the date of publication.

2 § 9507. Not an entitlement.

3 (a) No entitlement.--The provision of reinsurance program
4 money or benefits accrued through the Reinsurance Fund may not
5 constitute an entitlement derived from the Commonwealth or a
6 claim on any other money of the Commonwealth.

7 (b) Contingency with respect to Federal money.--

8 Notwithstanding any provision of this chapter, the department
9 shall have no responsibility to pay reinsurance amounts that
10 would be payable out of Federal money if the Federal Government
11 does not transmit sufficient money for the Reinsurance Fund to
12 fully recompense those actions.

13 § 9508. Annual audit.

14 (a) Annual audit.--The reinsurance program shall be examined
15 and audited annually by an independent certified public
16 accounting firm. The audit shall, at a minimum:

17 (1) Assess compliance with the requirements of this
18 chapter.

19 (2) Identify any material weaknesses or significant
20 deficiencies and identify and implement solutions to correct
21 the the material weaknesses or deficiencies.

22 (b) Sharing of audit.--By December 31 of each year, the
23 department shall electronically share the audit of the preceding
24 fiscal year required under subsection (a) and related documents
25 by:

26 (1) Posting the following on the department's publicly
27 accessible Internet website:

28 (i) The audit.

29 (ii) A summary of the audit, including any material
30 weakness or significant deficiency identified and how the

1 department intends to correct the material weakness or
2 significant deficiency.

3 (2) Providing an electronic link to the posted audit
4 under paragraph (1)(i) to the Secretary of the Senate and the
5 Chief Clerk of the House of Representatives.

6 (c) Payment.--The cost of the annual audit required under
7 subsection (a) shall be paid for from money in the Reinsurance
8 Fund.

9 § 9509. Annual report of operations.

10 (a) Report.--No later than November 1 of the year following
11 the applicable benefit year or 60 calendar days following the
12 final disbursement of reinsurance payments for the applicable
13 benefit year, whichever is later, the department shall prepare a
14 financial report for the applicable benefit year. The report
15 must include, at a minimum, the following information for the
16 benefit year that is the subject of the report:

17 (1) Money deposited into the Reinsurance Fund.

18 (2) Requests for reinsurance payments received from
19 eligible insurers.

20 (3) Reinsurance payments made to eligible insurers.

21 (4) Administrative and operational expenses incurred for
22 the reinsurance program.

23 (b) Distribution of report.--The department shall:

24 (1) Electronically transmit the report under subsection

25 (a) to:

26 (i) The President pro tempore of the Senate.

27 (ii) The Minority Leader of the Senate.

28 (iii) The Speaker of the House of Representatives.

29 (iv) The Minority Leader of the House of
30 Representatives.

1 (v) The chair and minority chair of the
2 Appropriations Committee of the Senate and the chair and
3 minority chair of the Appropriations Committee of the
4 House of Representatives.

5 (vi) The chair and minority chair of the Banking and
6 Insurance Committee of the Senate and the chair and
7 minority chair of the Insurance Committee of the House of
8 Representatives.

9 (2) Post the report under subsection (a) on the
10 department's publicly accessible Internet website.

11 § 9510. Reinsurance Fund.

12 (a) Establishment and administration of Reinsurance Fund.--
13 The Reinsurance Fund is established as a special fund within the
14 State Treasury. The Reinsurance Fund shall be administered by
15 the department for the purposes set forth in this chapter,
16 including the deposit of Federal money and all other money
17 received pursuant to and disbursements permitted by this
18 chapter.

19 (b) Exclusive purpose.--The Reinsurance Fund shall be
20 dedicated exclusively for the reinsurance program established
21 under section 9502(b) (relating to implementation of waiver and
22 establishment of reinsurance program).

23 (c) Use.--The following apply:

24 (1) Expenditures from the Reinsurance Fund shall be used
25 to:

26 (i) Implement and operate the reinsurance program.

27 (ii) Make reinsurance payments to eligible insurers
28 under the reinsurance program. Payments to insurers shall
29 be calculated and made on a pro rata basis.

30 (2) In making expenditures from the Reinsurance Fund,

1 available Federal money must be expended first.

2 (3) Pending disbursement, money in the Reinsurance Fund
3 shall be invested or reinvested in the same manner as money
4 in the custody of the State Treasurer. All earnings received
5 from the investment or reinvestment of money shall be
6 credited to the Reinsurance Fund.

7 (d) Expenses.--All costs and expenses of the reinsurance
8 program shall be paid from the Reinsurance Fund, including
9 compensation of employees and any independent contractors or
10 consultants hired by the department.

11 (e) Nonlapsing and revolving fund.--The following apply:

12 (1) The Reinsurance Fund shall be a nonlapsing fund. All
13 money placed in the Reinsurance Fund and interest accrued are
14 appropriated to the department for expenditure consistent
15 with the provisions of this chapter.

16 (2) Nothing in this section shall prevent money in the
17 Reinsurance Fund from being used as a revolving fund to cover
18 necessary expenditures if Federal money is requested and
19 committed but not yet received or if other money is committed
20 but not yet received.

21 (f) Limitations.--The following limitations apply:

22 (1) In each fiscal year, the total amount of annual
23 expenditures from the Reinsurance Fund, including
24 administrative and consulting expenses, may not exceed the
25 amount of expected Federal and other money budgeted for
26 deposit in the Reinsurance Fund in that fiscal year.

27 (2) Notwithstanding any general or specific powers
28 granted to the department under this chapter, whether express
29 or implied, the department may not pledge, in favor of the
30 reinsurance program, the credit or taxing power of the

1 Commonwealth or any political subdivision.

2 § 9511. Procurements within one year.

3 Notwithstanding any other provision of law and for the
4 limited purpose of fulfilling the requirements under this
5 chapter, procurement of contracts and agreements for the
6 implementation and operation of the reinsurance program
7 initiated within one year of the effective date of this section
8 shall not be subject to the provisions of 62 Pa.C.S. (relating
9 to procurement). No contract or agreement entered into under
10 this section may exceed a term of five years.

11 § 9512. Access to information and records.

12 (a) Reports and access.--An insurer shall, without charge,
13 report information and provide access to and furnish records as
14 the department requests in order for the department to:

15 (1) Prepare the State innovation waiver application
16 submitted under section 9501(a) (relating to application).

17 (2) Determine reinsurance parameters under section 9504
18 (relating to reinsurance parameters).

19 (3) Determine the reinsurance payments due to each
20 insurer.

21 (4) Monitor costs and revenues associated with the
22 reinsurance program.

23 (5) Administer the reinsurance program.

24 (6) Assure compliance with applicable Federal and State
25 law.

26 (b) Time period.--The information and records requested
27 under subsection (a) shall be provided to the department within
28 30 days of receipt by an insurer of the written request, unless
29 required at an earlier date for department compliance with a
30 request from a Federal or other State agency.

1 (c) Use.--Information and records provided to the department
2 under subsection (a) may only be used for the purposes specified
3 in subsection (a).

4 (d) Exemptions.--Any instructions, forms or reports issued
5 by the department and required to be completed by an insurer
6 under this section shall not be subject to:

7 (1) The act of July 31, 1968 (P.L.769, No.240), referred
8 to as the Commonwealth Documents Law.

9 (2) The act of October 15, 1980 (P.L.950, No.164), known
10 as the Commonwealth Attorneys Act.

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

13 § 9513. Confidentiality and information disclosure.

14 (a) General rule.--Except as provided for in this section,
15 all working papers, recorded information, documents and copies
16 of working papers, recorded information and documents produced
17 by, obtained by or disclosed to the department or any other
18 person in the course of exercising the department's powers and
19 duties under this chapter:

20 (1) shall be confidential;

21 (2) shall not be subject to subpoena;

22 (3) shall not be subject to the act of February 14, 2008
23 (P.L.6, No.3), known as the Right-to-Know Law;

24 (4) shall not be subject to discovery or admissible in
25 evidence in any private civil action; and

26 (5) may not be made public by the department or any
27 other person.

28 (b) Personal health and financial information.--The
29 department shall protect personally identifiable health and
30 financial information in accordance with Federal and State laws

1 and regulations, including the Health Insurance Portability and
2 Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936),
3 the Health Information Technology for Economic and Clinical
4 Health Act (Public Law 111-5, 123 Stat. 226-279 and 467-496) and
5 implementing regulations.

6 (c) Information disclosure.--Subject to the confidentiality
7 provisions of this section:

8 (1) Information shall be shared as follows:

9 (i) Between the department and the Centers for
10 Medicare and Medicaid Services for purposes of compliance
11 with the Federal acts.

12 (ii) Between the department and each insurer
13 participating in the reinsurance program.

14 (iii) Between the department and the exchange
15 authority.

16 (2) Information may be disclosed as follows:

17 (i) As necessary to comply with the audit
18 requirements of section 9508 (relating to annual audit)
19 and the reporting requirements of section 9509 (relating
20 to annual report of operations), only in an aggregated
21 and de-identified form.

22 (ii) In any circumstance other than as described in
23 paragraph (1) or subparagraph (i), only if the prior
24 written consent of the company or person to which the
25 information pertains is obtained.

26 (d) Construction.--Nothing in this section shall be
27 construed to prohibit the department from accessing the
28 information reasonably required to carry out its
29 responsibilities in accordance with law.

30 § 9514. Immunity.

1 (a) General rule.--Except as provided in subsection (b), the
2 department, a Commonwealth agency or person or entity under
3 contract with the department for the reinsurance program, or an
4 authorized representative, agent or employee of any of them may
5 not be subject to civil or criminal liability and no cause of
6 action of any nature shall arise for any action taken or not
7 taken, including any discretionary decision or failure to make a
8 discretionary decision, when the action or inaction is done in
9 good faith and in the performance of the powers and duties under
10 this chapter, or for the reasonable and good faith use of any
11 information pertaining to the reinsurance program.

12 (b) Exception.--This section shall not prohibit legal
13 actions against the reinsurance program to enforce the
14 reinsurance program's statutory or contractual duties or
15 obligations.

16 § 9515. Regulation of insurers.

17 Nothing in this chapter shall be construed to limit or
18 supersede the regulatory authority vested with the department to
19 regulate the business of insurance within this Commonwealth,
20 including health insurance policies offered on or off the
21 exchange.

22 § 9516. Expiration.

23 Upon publication of the notice under section 9703(b)
24 (relating to action by commissioner), the department shall
25 initiate steps to cease operation of the reinsurance program and
26 shall cease operation of the reinsurance program no later than
27 15 months after publication of the notice.

28 CHAPTER 97

29 MISCELLANEOUS PROVISIONS

30 Sec.

1 9701. Regulations.

2 9702. Enforcement.

3 9703. Action by commissioner.

4 § 9701. Regulations.

5 (a) Authority to promulgate.--The department and the
6 exchange authority may promulgate regulations as may be
7 necessary and appropriate to carry out the provisions of this
8 part.

9 (b) Temporary regulations.--The following apply:

10 (1) Notwithstanding any other provision of law, in order
11 to facilitate the prompt implementation of this part, the
12 department and the exchange authority may issue temporary
13 regulations which shall expire no later than two years
14 following publication of the temporary regulations in the
15 Pennsylvania Bulletin. The temporary regulations shall be
16 exempt from the following:

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

20 (ii) Sections 204(b) and 310(10) of the act of
21 October 15, 1980 (P.L.950, No.164), known as the
22 Commonwealth Attorneys Act.

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

25 (2) The authority of the department and the exchange
26 authority to issue temporary regulations under this
27 subsection shall expire two years from the effective date of
28 this section. Regulations adopted after the two-year period
29 shall be promulgated as provided by statute.

30 § 9702. Enforcement.

1 (a) General rule.--Upon satisfactory evidence of a violation
2 of this part by an insurer or other person, one or more of the
3 following penalties may be imposed at the commissioner's
4 discretion:

5 (1) Suspension or revocation of the license of the
6 insurer or other person.

7 (2) Refusal, for a period not to exceed one year, to
8 issue a new license to the insurer or other person.

9 (3) A fine of not more than \$5,000 for each violation.

10 (4) A fine of not more than \$10,000 for each willful
11 violation.

12 (b) Limitation.--

13 (1) Fines imposed against an individual insurer under
14 this part may not exceed \$500,000 in the aggregate during a
15 single calendar year.

16 (2) Fines imposed against any other person under this
17 part may not exceed \$100,000 in the aggregate during a single
18 calendar year.

19 (c) Additional remedies.--The enforcement remedies imposed
20 under this subsection are in addition to any other remedies or
21 penalties that may be imposed under any other applicable law of
22 this Commonwealth, including:

23 (1) The act of July 22, 1974 (P.L.589, No.205), known as
24 the Unfair Insurance Practices Act. Violations of this part
25 shall be deemed to be an unfair method of competition and an
26 unfair or deceptive act or practice under the Unfair
27 Insurance Practices Act.

28 (2) The act of June 25, 1997 (P.L.295, No.29), known as
29 the Pennsylvania Health Care Insurance Portability Act.

30 (d) Administrative procedure.--The administrative provisions

1 of this section shall be subject to 2 Pa.C.S. Ch. 5 Subch. A
2 (relating to practice and procedure of Commonwealth agencies). A
3 party against whom penalties are assessed in an administrative
4 action may appeal to Commonwealth Court as provided in 2 Pa.C.S.
5 Ch. 7 Subch. A (relating to judicial review of Commonwealth
6 agency action).

7 § 9703. Action by commissioner.

8 (a) Sunset.--This act shall sunset immediately if any of the
9 following occur:

10 (1) The Congress of the United States repeals or
11 defunds, in whole or in part, the Affordable Care Act in a
12 manner that renders impossible to perform the duties of the
13 exchange authority established under Chapter 93 (relating to
14 State-based Exchange) or the reinsurance program established
15 under Chapter 95 (relating to reinsurance program).

16 (2) A court of the United States with competent
17 jurisdiction invalidates, in whole or in part, the Affordable
18 Care Act in a manner that renders impossible to perform the
19 duties of the exchange authority established under Chapter 93
20 or the reinsurance program established under Chapter 95.

21 (3) The Executive Branch of the United States repeals or
22 defunds, in whole or in part, the Affordable Care Act and its
23 subsequent regulations in a manner that renders impossible to
24 perform the duties of the exchange authority established
25 under Chapter 93 or the reinsurance program established under
26 Chapter 95.

27 (b) Notice.--If this part sunsets pursuant to subsection
28 (a), the commissioner shall transmit notice of that action to
29 the Legislative Reference Bureau for publication in the
30 Pennsylvania Bulletin.

1 Section 2. This act shall take effect immediately.