

**THE GENERAL ASSEMBLY OF PENNSYLVANIA**

---

**HOUSE BILL**  
**No. 3**      **Session of**  
                 **2019**

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INTRODUCED BY CUTLER, DERMODY, PICKETT, DeLUCA, WHEELAND,  
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VITALI, WILLIAMS, DeLISSIO, ZIMMERMAN, SCHWEYER, DAWKINS,  
HERSHEY, SAMUELSON, B. MILLER, MADDEN, KENYATTA AND ECKER,  
JUNE 4, 2019

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SENATOR SCAVELLO, BANKING AND INSURANCE, IN SENATE, AS AMENDED,  
JUNE 24, 2019

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**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**

1       91. Preliminary Provisions

2       93. State-based Exchange

3       95. Reinsurance Program

4       97. Miscellaneous Provisions

5                    CHAPTER 91

6                    PRELIMINARY PROVISIONS

7       Sec.

8       9101. Scope of part.

9       9102. Purpose and intent.

10      9103. Definitions.

11      § 9101. Scope of part.

12      This part relates to health insurance markets oversight.

13      § 9102. Purpose and intent.

14      The General Assembly finds and declares as follows:

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

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

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

27      § 9103. Definitions.

28      Subject to additional definitions contained in subsequent  
29      provisions of this part which are applicable to specific  
30      provisions of this part, the following words and phrases when

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

3    "Affordable Care Act." The Patient Protection and Affordable  
4    Care Act (Public Law 111-148, 124 Stat. 119), as amended by the  
5    Health Care and Education Reconciliation Act of 2010 (Public Law  
6    111-152, 124 Stat. 1029).

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

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

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

15    "Children's Health Insurance Program." The children's health  
16    insurance program under Article XXIII-A of the act of May 17,  
17    1921 (P.L.682, No.284), known as The Insurance Company Law of  
18    1921.

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

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

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

26    "Eligible insurer." An insurer offering reinsurance-eligible  
27    health care plans to consumers in this Commonwealth.

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

1       "Exchange." A health insurance exchange as contemplated by  
2 section 1321(b) of the Affordable Care Act, established or           <--  
3 operating in this Commonwealth, that facilitates or assists in  
4 facilitating enrollment in qualified plans.

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

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

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

14       "Federal acts." The Affordable Care Act and any amendments  
15 thereto, and related provisions of the Public Health Service Act  
16 (58 Stat. 682, 42 U.S.C. § 201 et seq.).

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

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

21              (2) Coverage under Medicare Parts A and B or Medicare  
22 Advantage Part C under Title XVIII of the Social Security Act  
23 (49 Stat. 620, 42 U.S.C. § 1395 et seq.).

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

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

1               (5) The Commonwealth's medical assistance program  
2               established under the act of June 13, 1967 (P.L.31, No.21),  
3               known as the Human Services Code.

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

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

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

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

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

17              "Grandfathered health care plan." Individual or group health  
18              insurance coverage in which an individual was enrolled prior to  
19              the date of enactment of the Affordable Care Act, or as  
20              otherwise specified in section 1251 of the Affordable Care Act  
21              (42 U.S.C. § 18011).

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

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

29              (1) An accident only policy.

30              (2) A credit only policy.

- 1                   (3) A long-term care or disability income policy.
- 2                   (4) A specified disease policy.
- 3                   (5) A Medicare supplement policy.
- 4                   (6) A fixed indemnity policy.
- 5                   (7) An adult-only dental only policy.
- 6                   (8) A vision only policy.
- 7                   (9) A workers' compensation policy.
- 8                   (10) An automobile medical payment policy.
- 9                   (11) A policy under which benefits are provided by the
- 10                  Federal Government to active or former military personnel and
- 11                  their dependents.
- 12                  (12) Any other similar policies providing for limited
- 13                  benefits.
- 14                  "Hospital plan corporation." An entity organized and
- 15                  operating under Chapter 61 (relating to hospital plan
- 16                  corporations).
- 17                  "Individual market." The market for health insurance
- 18                  coverage offered to individuals other than in connection with a
- 19                  group.
- 20                  "Innovation waiver." A waiver applied for pursuant to
- 21                  section 1332 of the Affordable Care Act (42 U.S.C. §18052).
- 22                  "Insurance producer." The term has the meaning given to it
- 23                  in section 601-A of the act of May 17, 1921 (P.L.789, No.285),
- 24                  known as The Insurance Department Act of 1921.
- 25                  "Insurer." An entity that offers, issues or renews an
- 26                  individual or group health, accident or sickness insurance
- 27                  policy, contract or plan, and that is governed under any of the
- 28                  following:
- 29                  (1) Chapter 61.
- 30                  (2) Chapter 63 (relating to professional health services

1       plan corporations).

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

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

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

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

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

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

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

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

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

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

29      "Reinsurance program." The Commonwealth Health Insurance  
30     Reinsurance Program established under section 9502(b) (relating

1 to implementation of waiver and establishment of reinsurance  
2 program).

3 "Small group market." The market for health insurance for  
4 coverage offered through a group health insurance policy for a  
5 group of at least one employee and up to 50 employees, exclusive  
6 of dependents.

7 CHAPTER 93

8 STATE-BASED EXCHANGE

9 Sec.

10 9301. Scope of chapter.

11 9302. Pennsylvania Health Insurance Exchange Authority.

12 9303. Advisory council.

13 9304. Meetings and operation.

14 9305. Powers and duties of exchange authority.

15 9306. Limitations.

16 9307. Confidentiality and disclosure.

17 9308. Not an entitlement.

18 9309. Nonliability.

19 9310. Audits.

20 9311. Reports.

21 9312. Exchange fund.

22 9313. Federal guidance.

23 9314. Expiration.

24 § 9301. Scope of chapter.

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

27 § 9302. Pennsylvania Health Insurance Exchange Authority.

28 (a) Establishment.--The Pennsylvania Health Insurance  
29 Exchange Authority is established as a State-affiliated entity.

30 The powers and duties of the exchange authority shall be vested

1   in and exercised by a board, which shall have the sole power  
2   under section 9305 (relating to powers and duties of exchange  
3   authority) to employ staff, including an executive director.

4   Individuals employed by the exchange authority shall be  
5   employees of the Commonwealth. The exchange authority may  
6   contract with persons or entities, including legal counsel,  
7   consultants or service providers, as deemed necessary in the  
8   exchange authority's discretion.

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

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

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

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

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

24              (i) The commissioner, ex-officio.

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

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

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

28              (i) One member from among the insurers that offer

29              health insurance policies through the exchange that are a  
30   hospital plan corporation, a professional health services

1       plan corporation or a parent, affiliate, subsidiary or  
2       other associated entity or successor of a hospital plan  
3       corporation or a professional health services plan.

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

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

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

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

22           (i) One member INDIVIDUAL appointed by the President      <--  
23      pro tempore of the Senate.

24           (ii) One member INDIVIDUAL appointed by the Minority      <--  
25      Leader of the Senate.

26           (iii) One member INDIVIDUAL appointed by the Speaker      <--  
27      of the House of Representatives.

28           (iv) One member INDIVIDUAL appointed by the Minority      <--  
29      Leader of the House of Representatives.

30       (4) The executive director shall attend meetings of the

1       board but shall not be a member, may not vote and may not be  
2       counted for purposes of establishing a quorum.

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

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

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

12      (1) A board member appointed under subsection (c) (3)  
13      who:

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

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

19      (2) A board member appointed under subsection (c) (2)  
20      shall serve a term of four years, not to exceed more than two  
21      full consecutive four-year terms, except that the following  
22      shall apply:

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

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

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

30      (h) Formation.--The exchange authority shall be formed

1 within 60 days of the effective date of this section. Prior to  
2 formation of the exchange authority, the commissioner may take  
3 action necessary to effect a timely transition from a federally  
4 administered exchange to the Pennsylvania Health Insurance  
5 Exchange.

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

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

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

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

23        (ii) (1) Except as provided under subparagraph (ii)            <--  
24 PARAGRAPH (2), a non-State employee board member shall not be <--  
25 subject to 65 Pa.C.S. Ch. 11 (relating to ethics standards  
26 and financial disclosure), including the requirements for  
27 filing statements of financial interests.

28        (ii) (2) A non-State employee board member may not            <--  
29 engage in conduct that, if that member were a State employee,  
30 would constitute a conflict of interest under 65 Pa.C.S. Ch.

1       11.

2           (iii) (3) A majority of the voting members of the board <--  
3       may not have a conflict of interest as set forth in section  
4       1321 of the Affordable Care Act and regulations promulgated  
5       under the Affordable Care Act.

6       § 9303. Advisory council.

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

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

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

19           (2) One representative selected by the Hospital and  
20       Healthsystem Association of Pennsylvania.

21           (3) One representative selected by the Pennsylvania  
22       Medical Society.

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

25           (5) One representative selected by the Pennsylvania  
26       Association of Health Underwriters.

27       § 9304. Meetings and operation.

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

30           (b) Terms of members.--Each member's term shall be four

1   years, not to exceed more than two full consecutive four-year  
2   terms, except that:

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

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

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

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

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

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

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

29           (5) All action taken by the advisory council shall be  
30   taken in open public session and may not be taken except upon

1       a majority vote of the members present at a meeting at which  
2       a quorum is present.

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

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

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

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

18       (1) Initial operational decisions.

19       (2) Ongoing financing decisions.

20       (3) Other decisions as the exchange authority may deem  
21      appropriate.

22      § 9305. Powers and duties of exchange authority.

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

26       (1) Adopt bylaws.

27       (2) Employ staff.

28       (3) Make, execute and deliver contracts.

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

1               (5) Establish priorities for, allocate and disburse  
2       money received.

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

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

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

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

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

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

30               (12) The board shall consider the advice of the advisory

1       council provided under section 9304(g) (relating to meetings  
2       and operation).

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

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

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

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

13          (4) Assess and collect fees from on-exchange insurers to  
14          support the operation of the exchange under this chapter and  
15          the reinsurance program established under section 9502(b)  
16          (relating to implementation of waiver and establishment of  
17          reinsurance program), except that the exchange authority may  
18          not assess or collect any form of obligation other than an  
19          exchange user fee on total monthly premiums for on-exchange  
20          policies and unless approved by unanimous consent of the  
21          board, the fee may not exceed 3% of total monthly premiums  
22          for on-exchange policies. IN NO CASE MAY THE FEE EXCEED 3.5%. <--

23          (5) Disburse received fees, including to benefit the  
24          reinsurance program established under section 9502(b).

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

1   be delegated to the appropriate State agency and shall be  
2   sufficient to prevent a determination by the United States  
3   Secretary of Health and Human Services that the Commonwealth has  
4   failed to substantially enforce any provision of the Federal  
5   acts.

6   § 9306. Limitations.

7   Except as expressly provided in this chapter, nothing in this  
8   chapter shall be construed to limit or supersede the authority  
9   vested in a Commonwealth agency, including:

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

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

17    (3)   The Department of Health.

18    (4)   The Office of Attorney General.

19   § 9307. Confidentiality and disclosure.

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

26      (1)   shall be confidential;

27      (2)   shall not be subject to subpoena;

28      (3)   shall not be subject to the act of February 14, 2008

29      (P.L. 6, No. 3), known as the Right-to-Know Law;

30      (4)   shall not be subject to discovery or admissible in

1           evidence in any private civil action; and

2           (5) may not be made public by the exchange authority or  
3           any other person.

4           (b) Personal health and financial information.--The exchange  
5           authority shall protect personally identifiable health and  
6           financial information in accordance with all applicable Federal  
7           and State laws and regulations, including the Health Insurance  
8           Portability and Accountability Act of 1996 (Public Law 104-191,  
9           110 Stat. 1936), the Health Information Technology for Economic  
10          and Clinical Health Act (Public Law 111-5, 123 Stat. 226-279 and  
11          467-496) and implementing regulations.

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

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

19           (i) Among the exchange authority and departments,  
20           including:

21           (A) The department.

22           (B) The Department of Aging.

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

24           (D) The Department of Health.

25           (E) The Department of Human Services.

26           (F) The Department of Labor and Industry.

27           (G) The Department of Revenue.

28           (ii) Between the exchange authority and Federal  
29           agencies, including:

30           (A) The Centers for Medicare and Medicaid

1                   Services.

2                   (B) The Treasury Department.

3                   (2) Information may be disclosed:

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

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

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

16                  § 9308. Not an entitlement.

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

20                  § 9309. Nonliability.

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

28                  (1) An application for, inquiry concerning, or  
29                  enrollment or disenrollment in a health insurance policy or  
30                  government program, including an inquiry regarding

1       eligibility for enrollment or eligibility for a government  
2       program, relevant to health insurance available through an  
3       exchange or health care coverage or other benefits through a  
4       government program.

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

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

10      § 9310. Audits.

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

15       (1) Assess compliance with the requirements of this  
16       chapter.

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

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

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

26           (i) The audit.

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

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

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

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

9       § 9311. Reports.

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

13      (1) Electronically transmit the report to:

14       (i) The Governor.

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

16       (iii) The Minority Leader of the Senate.

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

18       (v) The Minority Leader of the House of  
19       Representatives.

20       (vi) The chair and minority chair of:

21           (A) The Appropriations Committee of the Senate.

22           (B) The Appropriations Committee of the House of  
23       Representatives.

24           (C) The Banking and Insurance Committee of the  
25       Senate.

26           (D) The Insurance Committee of the House of  
27       Representatives.

28           (E) The Health and Human Services Committee of  
29       the Senate.

30           (F) The Health Committee of the House of

1                   Representatives.

2                   (2) Post the report on the exchange authority's publicly  
3                   accessibility ACCESSIBLE Internet website.

<--

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

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

9                   § 9312. Exchange fund.

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

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

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

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

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

26                  (4) All accrued and future earnings from money invested  
27                  by the exchange authority and other accrued and future  
28                  earnings from nonappropriated money, including, but not  
29                  limited to, money obtained from the Federal Government and  
30                  fees, shall be available to the exchange authority and shall

1       be deposited into the State Treasury and may be utilized at  
2       the discretion of the board for carrying out any of the  
3       corporate purposes of the exchange authority.

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

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

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

15      § 9313. Federal guidance.

16      Until the exchange authority promulgates regulations, the  
17      exchange authority shall operate the exchange pursuant to:

18       (1) any applicable Federal rules, regulations or  
19       guidance; or

20       (2) interim State guidelines consistent with this  
21       chapter.

22      § 9314. Expiration.

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

28                    CHAPTER 95

29                    REINSURANCE PROGRAM

30      Sec.

1   9501. Application.

2   9502. Implementation of waiver and establishment of reinsurance

3         program.

4   9503. Administration and operation of reinsurance program.

5   9504. Reinsurance parameters.

6   9505. Insurer eligibility and duties.

7   9506. Payment of coverage and administrative costs.

8   9507. Not an entitlement.

9   9508. Annual audit.

10   9509. Annual report of operations.

11   9510. Reinsurance Fund.

12   9511. Procurements within one year.

13   9512. Access to information and records.

14   9513. Confidentiality and information disclosure.

15   9514. Immunity.

16   9515. Regulation of insurers.

17   9516. Expiration.

18   § 9501. Application.

19         (a) Application.--The department is authorized to apply to

20         the United States Secretary of Health and Human Services under

21         section 1332 of the Affordable Care Act for a state innovation

22         waiver to:

23             (1) Waive any applicable provisions of the Affordable

24             Care Act with respect to health insurance coverage in this

25             Commonwealth.

26             (2) Establish a reinsurance program in accordance with

27             an approved waiver.

28             (3) Maximize Federal funding for the reinsurance program

29             for plan years beginning on or after implementation of the

30             program.

1       (b) Public review.--On or before 180 days after the  
2 effective date of this section, the department shall make a  
3 draft application available for a 30-day public review and  
4 comment period. The department shall consider any comments in  
5 its final submitted application.

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

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

18       § 9502. Implementation of waiver and establishment of  
19                   reinsurance program.

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

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

1 program under the Federal acts.

2       (c) Operation.--Operation of a reinsurance program shall be  
3 contingent on Federal approval of the waiver application  
4 submitted pursuant to section 9501 (relating to application).

5 § 9503. Administration and operation of reinsurance program.

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

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

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

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

20              (i) The exchange authority.

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

24              (iii) Other available sources.

25           (3) Collecting data submissions and reinsurance payment  
26 requests by eligible insurers.

27           (4) Making reinsurance payments to eligible insurers.

28           (5) Resolving disputes related to the amount of  
29 reinsurance payments.

30           (6) Suing or being sued, including taking any legal

1       action necessary or proper for the recovery of money for  
2       reinsurance payments.

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

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

9       (1) Other Federal agencies, Commonwealth agencies or  
10      other states' agencies.

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

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

23      § 9504. Reinsurance parameters.

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

1       (b) Parameters.--In determining the attachment point,  
2 reinsurance cap and coinsurance rate applicable to the  
3 reinsurance program for the following year, the department shall  
4 seek to:

5           (1) Manage the program within the amount of total  
6 program funding available to the department.

7           (2) With respect to the individual market:

8              (i) Mitigate the impact of high-cost claims on  
9 premium rates.

10             (ii) Stabilize or reduce premium rates.

11             (iii) Increase participation.

12       (c) Publication and notice.--The department shall transmit

13 notice of the adopted attachment point, reinsurance cap and

14 coinsurance rate to the Legislative Reference Bureau for

15 publication in the Pennsylvania Bulletin and shall:

16           (1) Post notice on the department's publicly accessible  
17 Internet website.

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

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

25       (d) Limitation.--After the department adopts the attachment

26 point, reinsurance cap and coinsurance rate for the next year,

27 the department may not, before or during that benefit year,

28 change the attachment point, reinsurance cap or coinsurance rate

29 in a manner less favorable to the insurers participating in the

30 exchange at the time of adoption.

1    § 9505. Insurer eligibility and duties.

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

3        for a reinsurance payment if:

4            (1) The claims costs for a reinsurance-eligible

5            enrollee's covered benefits in a benefit year exceed the

6            attachment point.

7            (2) The eligible insurer has implemented and documented

8            reasonable care management practices for enrollees who are

9            the subject of reinsurance claims through the reinsurance

10          program.

11            (3) The eligible insurer makes its requests for

12            reinsurance payments in accordance with any requirements

13            established by the department including requirements related

14            to the format, structure and timing for submission of claims

15          for reinsurance payments.

16            (4) The eligible insurer participated in the exchange,

17            or is affiliated with an entity that participated in the

18            exchange, in the benefit year in which the claims costs for

19            which a reinsurance payment is sought were incurred.

20        (b) Reporting requirement.--An insurer that seeks

21        reinsurance payments under this chapter must report to the

22        department, in the form and manner prescribed by the department,

23        information about reinsurance-eligible enrollees insured by the

24        insurer as necessary for the department to calculate reinsurance

25        payments.

26        (c) Confidentiality.--Reinsurance claims submitted under

27        this section are confidential and are not subject to public

28        disclosure, except as provided under section 9514 (relating to

29        immunity).

30        (d) Consideration for rate filings.--In a rate filing for a

1 health insurance policy to be offered through the exchange, the  
2 impact of reinsurance payments under this chapter shall be  
3 identified.

4 (e) Limitation.--The calculation of reinsurance payments due  
5 to an eligible insurer shall be net of all other available  
6 insurance payments applicable to a claim, including insurance  
7 accessible through subrogation or coordination of benefits.

8 § 9506. Payment of coverage and administrative costs.

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

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

14 (2) Reinsurance payments for coverage of reinsurance-  
15 eligible enrollees.

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

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

1   in the Pennsylvania Bulletin under section 9504(c) (relating to  
2   reinsurance parameters) must be made within 10 business days of  
3   the date of publication.

4   § 9507. Not an entitlement.

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

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

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

15   § 9508. Annual audit.

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

19           (1) Assess compliance with the requirements of this  
20   chapter.

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

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

28           (1) Posting the following on the department's publicly  
29   accessible Internet website:

30              (i) The audit.

1                   (ii) A summary of the audit, including any material  
2                   weakness or significant deficiency identified and how the  
3                   department intends to correct the material weakness or  
4                   significant deficiency.

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

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

11                  § 9509. Annual report of operations.

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

19                  (1) Money deposited into the Reinsurance Fund.

20                  (2) Requests for reinsurance payments received from  
21                  eligible insurers.

22                  (3) Reinsurance payments made to eligible insurers.

23                  (4) Administrative and operational expenses incurred for  
24                  the reinsurance program.

25                  (B) COMPARATIVE REPORT.--NO LATER THAN 60 DAYS AFTER      <--

26                  INDIVIDUAL MARKET HEALTH INSURANCE RATES ARE FINAL, THE  
27                  DEPARTMENT SHALL PREPARE A REPORT SUMMARIZING THE QUANTIFIABLE  
28                  IMPACT OF THE REINSURANCE PROGRAM ON INDIVIDUAL MARKET HEALTH  
29                  INSURANCE RATES FOR THE FOLLOWING PLAN YEAR.

30                  (b) (C) Distribution of report REPORTS.--The department      <--

1 shall:

2 (1) Electronically transmit the report under subsection <--

3 (a) to: REPORTS UNDER THIS SECTION TO: <--

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

5 (ii) The Minority Leader of the Senate.

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

7 (iv) The Minority Leader of the House of  
8 Representatives.

9 (v) The chair and minority chair of the  
10 Appropriations Committee of the Senate and the chair and  
11 minority chair of the Appropriations Committee of the  
12 House of Representatives.

13 (vi) The chair and minority chair of the Banking and  
14 Insurance Committee of the Senate and the chair and  
15 minority chair of the Insurance Committee of the House of  
16 Representatives.

17 (2) Post the report under subsection (a) REPORTS UNDER <--

18 THIS SECTION on the department's publicly accessible Internet  
19 website.

20 § 9510. Reinsurance Fund.

21 (a) Establishment and administration of Reinsurance Fund.--

22 The Reinsurance Fund is established as a special fund within the  
23 State Treasury. The Reinsurance Fund shall be administered by  
24 the department for the purposes set forth in this chapter,  
25 including the deposit of Federal money and all other money  
26 received pursuant to and disbursements permitted by this  
27 chapter.

28 (b) Exclusive purpose.--The Reinsurance Fund shall be  
29 dedicated exclusively for the reinsurance program established  
30 under section 9502(b) (relating to implementation of waiver and

1 establishment of reinsurance program).

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

3 (1) Expenditures from the Reinsurance Fund shall be used  
4 to:

5 (i) Implement and operate the reinsurance program.

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

9 (2) In making expenditures from the Reinsurance Fund,  
10 available Federal money must be expended first.

11 (3) Pending disbursement, money in the Reinsurance Fund  
12 shall be invested or reinvested in the same manner as money  
13 in the custody of the State Treasurer. All earnings received  
14 from the investment or reinvestment of money shall be  
15 credited to the Reinsurance Fund.

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

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

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

25 (2) Nothing in this section shall prevent money in the  
26 Reinsurance Fund from being used as a revolving fund to cover  
27 necessary expenditures if Federal money is requested and  
28 committed but not yet received or if other money is committed  
29 but not yet received.

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

1           (1) In each fiscal year, the total amount of annual  
2 expenditures from the Reinsurance Fund, including  
3 administrative and consulting expenses, may not exceed the  
4 amount of expected Federal and other money budgeted for  
5 deposit in the Reinsurance Fund in that fiscal year.

6           (2) Notwithstanding any general or specific powers  
7 granted to the department under this chapter, whether express  
8 or implied, the department may not pledge, in favor of the  
9 reinsurance program, the credit or taxing power of the  
10 Commonwealth or any political subdivision.

11 § 9511. Procurements within one year.

12       Notwithstanding any other provision of law and for the  
13 limited purpose of fulfilling the requirements under this  
14 chapter, procurement of contracts and agreements for the  
15 implementation and operation of the reinsurance program  
16 initiated within one year of the effective date of this section  
17 shall not be subject to the provisions of 62 Pa.C.S. (relating  
18 to procurement). No contract or agreement entered into under  
19 this section may exceed a term of five years.

20 § 9512. Access to information and records.

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

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

26           (2) Determine reinsurance parameters under section 9504  
27 (relating to reinsurance parameters).

28           (3) Determine the reinsurance payments due to each  
29 insurer.

30           (4) Monitor costs and revenues associated with the

1       reinsurance program.

2           (5) Administer the reinsurance program.

3           (6) Assure compliance with applicable Federal and State  
4       law.

5       (b) Time period.--The information and records requested  
6       under subsection (a) shall be provided to the department within  
7       30 days of receipt by an insurer of the written request, unless  
8       required at an earlier date for department compliance with a  
9       request from a Federal or other State agency.

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

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

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

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

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

22      § 9513. Confidentiality and information disclosure.

23      (a) General rule.--Except as provided for in this section,  
24      all working papers, recorded information, documents and copies  
25      of working papers, recorded information and documents produced  
26      by, obtained by or disclosed to the department or any other  
27      person in the course of exercising the department's powers and  
28      duties under this chapter:

29          (1) shall be confidential;

30          (2) shall not be subject to subpoena;

1           (3) shall not be subject to the act of February 14, 2008  
2       (P.L.6, No.3), known as the Right-to-Know Law;  
3           (4) shall not be subject to discovery or admissible in  
4       evidence in any private civil action; and  
5           (5) may not be made public by the department or any  
6       other person.

7       (b) Personal health and financial information.--The  
8       department shall protect personally identifiable health and  
9       financial information in accordance with Federal and State laws  
10      and regulations, including the Health Insurance Portability and  
11      Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936),  
12      the Health Information Technology for Economic and Clinical  
13      Health Act (Public Law 111-5, 123 Stat. 226-279 and 467-496) and  
14      implementing regulations.

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

17           (1) Information shall be shared as follows:

18              (i) Between the department and the Centers for  
19       Medicare and Medicaid Services for purposes of compliance  
20       with the Federal acts.

21              (ii) Between the department and each insurer  
22       participating in the reinsurance program.

23              (iii) Between the department and the exchange  
24       authority.

25           (2) Information may be disclosed as follows:

26              (i) As necessary to comply with the audit  
27       requirements of section 9508 (relating to annual audit)  
28       and the reporting requirements of section 9509 (relating  
29       to annual report of operations), only in an aggregated  
30       and de-identified form.

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

5                         (d) Construction.--Nothing in this section shall be  
6                         construed to prohibit the department from accessing the  
7                         information reasonably required to carry out its  
8                         responsibilities in accordance with law.

9                         § 9514. Immunity.

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

21                         (b) Exception.--This section shall not prohibit legal  
22                         actions against the reinsurance program to enforce the  
23                         reinsurance program's statutory or contractual duties or  
24                         obligations.

25                         § 9515. Regulation of insurers.

26                         Nothing in this chapter shall be construed to limit or  
27                         supersede the regulatory authority vested with the department to  
28                         regulate the business of insurance within this Commonwealth,  
29                         including health insurance policies offered on or off the  
30                         exchange.

1    § 9516. Expiration.

2    Upon publication of the notice under section 9703(b)  
3    (relating to action by commissioner), the department shall  
4    initiate steps to cease operation of the reinsurance program and  
5    shall cease operation of the reinsurance program no later than  
6    15 months after publication of the notice.

7                         CHAPTER 97

8                         MISCELLANEOUS PROVISIONS

9    Sec.

10    9701. Regulations.

11    9702. Enforcement.

12    9703. Action by commissioner.

13    § 9701. Regulations.

14    (a) Authority to promulgate.--The department and the  
15    exchange authority may promulgate regulations as may be  
16    necessary and appropriate to carry out the provisions of this  
17    part.

18    (b) Temporary regulations. The following apply:                         <--

19    (1) Notwithstanding any other provision of law, in order  
20    to facilitate the prompt implementation of this part, the  
21    department and the exchange authority may issue temporary  
22    regulations which shall expire no later than two years  
23    following publication of the temporary regulations in the  
24    Pennsylvania Bulletin. The temporary regulations shall be  
25    exempt from the following:

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

29    (ii) Sections 204(b) and 310(10) of the act of  
30    October 15, 1980 (P.L.950, No.164), known as the

1           Commonwealth Attorneys Act.

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

4           (2) The authority of the department and the exchange  
5           authority to issue temporary regulations under this  
6           subsection shall expire two years from the effective date of  
7           this section. Regulations adopted after the two year period  
8           shall be promulgated as provided by statute.

9           (B) OMISSION OF PROPOSED RULEMAKING.--THE GENERAL ASSEMBLY    <--  
10          FINDS AND DECLARES AS FOLLOWS:

11          (1) THIS PART IS ESSENTIAL TO:

12          (I) THE PROVISION OF HEALTH CARE FOR THE CITIZENS OF  
13          THIS COMMONWEALTH; AND

14          (II) THE FINANCIAL VIABILITY OF THE HEALTH CARE  
15          SYSTEM IN THIS COMMONWEALTH.

16          (2) THE FINDING AND DECLARATION UNDER PARAGRAPH (1)  
17          CONSTITUTES GOOD CAUSE FOR THE OMISSION OF NOTICE OF PROPOSED  
18          RULEMAKING UNDER SECTION 204(3) OF THE ACT OF JULY 31, 1968  
19          (P.L. 769, NO. 240), REFERRED TO AS THE COMMONWEALTH DOCUMENTS  
20          LAW.

21          § 9702. Enforcement.

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

26          (1) Suspension or revocation of the license of the  
27          insurer or other person.

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

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

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

3        (b) Limitation.--

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

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

10       (c) Additional remedies.--The enforcement remedies imposed  
11      under this subsection are in addition to any other remedies or  
12      penalties that may be imposed under any other applicable law of  
13      this Commonwealth, including:

14           (1) The act of July 22, 1974 (P.L.589, No.205), known as  
15        the Unfair Insurance Practices Act. Violations of this part  
16        shall be deemed to be an unfair method of competition and an  
17        unfair or deceptive act or practice under the Unfair  
18        Insurance Practices Act.

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

21        (d) Administrative procedure.--The administrative provisions  
22      of this section shall be subject to 2 Pa.C.S. Ch. 5 Subch. A  
23      (relating to practice and procedure of Commonwealth agencies). A  
24      party against whom penalties are assessed in an administrative  
25      action may appeal to Commonwealth Court as provided in 2 Pa.C.S.  
26      Ch. 7 Subch. A (relating to judicial review of Commonwealth  
27      agency action).

28      § 9703. Action by commissioner.

29        (a) Sunset.--This act PART shall sunset immediately if any    <--  
30      of the following occur:

1           (1) The Congress of the United States repeals or  
2 ~~defunds, in whole or in part, THOSE PROVISIONS OF the~~       <--  
3 ~~Affordable Care Act in a manner that renders impossible to~~    <--  
4 ~~perform the duties of INTEGRAL TO the exchange authority~~    <--  
5 ~~established under Chapter 93 (relating to State-based~~  
6 ~~Exchange) or the reinsurance program established under~~  
7 ~~Chapter 95 (relating to reinsurance program).~~

8           (2) A court of the United States with competent  
9 ~~jurisdiction invalidates, in whole or in part, THE PROVISIONS~~ <--  
10 ~~OF the Affordable Care Act in a manner that renders~~       <--  
11 ~~impossible to perform INTEGRAL TO the duties of the exchange~~ <--  
12 ~~authority established under Chapter 93 or the reinsurance~~  
13 ~~program established under Chapter 95.~~

14           (3) The Executive Branch of the United States repeals or  
15 ~~defunds, in whole or in part, THE PROVISIONS OF the~~       <--  
16 ~~Affordable Care Act and its subsequent regulations in a~~    <--  
17 ~~manner that renders impossible to perform INTEGRAL TO the~~    <--  
18 ~~duties of the exchange authority established under Chapter 93~~  
19 ~~or the reinsurance program established under Chapter 95.~~

20           (b) Notice.--If this part sunsets pursuant to subsection  
21 (a), the commissioner shall transmit notice of that action to  
22 the Legislative Reference Bureau for publication in the  
23 Pennsylvania Bulletin.

24           Section 2. This act shall take effect immediately.