

# ISSUE BRIEF

## SENATE POLICY DEVELOPMENT AND RESEARCH OFFICE

PREPARED IN CONJUNCTION WITH THE SENATE REPUBLICAN POLICY COMMITTEE

### Health Care Legislation – 2007-08

According to the U.S. Census Bureau, in 2007, only seven states (Connecticut, Hawaii, Iowa, Maine, Massachusetts, Minnesota, and Wisconsin) had a higher percentage of their population covered by health insurance than Pennsylvania. According to these estimates, 9.5 percent of Pennsylvania's population (1.1 million) was without health insurance coverage. The majority of the uninsured population in Pennsylvania is between the ages of 18 and 34. To address this continuing need, the General Assembly considered a number of legislative proposals during the 2007-08 Session.

#### **HealthNET PA**

Senate Republicans introduced a comprehensive health care package designed to improve health care access and affordability by building on approaches with proven results that are working in a fiscally responsible way. HealthNET PA was a \$100 million blueprint to expand access to health care and medicines to 507,000 uninsured and low-income working Pennsylvanians. It proposed to utilize information technology to control costs and reduce health care-associated infections, and provide expanded insurance options for employers and families. The Senate GOP health care initiative included:

#### *Healthcare Access*

- [Senate Bill 5](#) (Erickson), known as the Community-Based Healthcare Program (CHC), would have provided for the expansion and site development of health care clinics across Pennsylvania to provide "medical homes" for the working poor, to be funded partially by an EITC-type credit for businesses which would receive tax credits for financially supporting community clinics. This approach was expected to ease pressure on hospital emergency rooms. (\$50 million earmarked for the program would have expanded services to over 175,000 new patients.) Senate Bill 5 was laid on the table in the Senate on October 8, 2008.
- [Senate Bill 1564](#) (Brubaker) would have established a Specialty Physician Volunteer Networking System to provide integrated care to approximately 159,000 uninsured low-income individuals, with a \$4 million appropriation. Senate Bill 1564 was laid on the table in the Senate on October 8, 2008.
- [Senate Bill 1451](#) (Browne) would have provided Continuing Medical Education (CME) Credits for health care providers, including dentists, who perform volunteer services at clinics and in their community for uninsured low-income residents. Senate Bill 1451 was referred to the Senate Consumer Protection and Professional Licensure Committee on September 18, 2008.
- [Senate Bill 1452](#) (Corman) would have improved access to healthcare by providing student loan forgiveness for physicians and dentists, who practice at least 7 years in Pennsylvania. (\$10 million was proposed to keep up to 1,500 new doctors and dentists to stay in Pennsylvania). Senate Bill 1452 was referred to the Senate Education Committee on September 4, 2008.
- [Senate Bill 379](#) (Vance) would have eliminated predatory pricing provisions to allow the sale of low-cost prescription drugs at retail establishment pharmacies. Senate Bill 379 was referred to the Senate Consumer Protection and Professional Licensure Committee on March 13, 2007.
- [Senate Bill 1455](#) (McIlhinney) would have created a Free Drug Program Registry for use by individuals, clinics and other health care providers to identify companies and drugs that provide access to these resources at a cost of \$1 million. Senate Bill 1455 was laid on the table in the Senate on October 8, 2008.

## *Healthcare Affordability*

- [Senate Bill 8](#) (Wonderling) would have provided \$10 million for hospital and physician office conversion to the use of Electronic Medical Records, including incentives for the use of evidence-based diagnosis and treatment protocols. Senate Bill 8 passed the Senate (47-0) and was referred to the House Health and Human Services Committee.
- [Senate Bill 819](#) (Wonderling) would have encouraged telemedicine expansion in Pennsylvania. Senate Bill 819 was referred to the Senate Consumer Protection and Professional Licensure Committee on April 27, 2007.
- [Senate Bill 1411](#) (D. White) would have provided for non-payment by private insurers for medical errors. Senate Bill 1411 was referred to the Senate Banking and Insurance Committee on May 23, 2008.
- [Senate Bill 1267](#) (Armstrong) would have required insurers to establish Healthy Living Discounts. Senate Bill 1267 was referred to the Senate Banking and Insurance Committee on February 4, 2008.
- [Senate Bill 1304](#) (D. White) would have provided oversight for the merger between Independence Blue Cross (IBC) of Philadelphia and Highmark, Inc. of Pittsburgh. Senate Bill 1304 was referred to the Senate Banking and Insurance Committee on April 9, 2008. (Provisions addressing the merger of the Blues plans were included in Act 62 of 2008 discussed later.)

## *Expanded Insurance Coverage*

- [Senate Bill 1422](#) (D. White) would have established Mini-Cobra coverage for employers with two to nineteen employees to assist 150,000 individuals. This legislation passed the Senate (50-0) and was re-referred to the House Appropriations Committee on October 6, 2008.
- [Senate Bill 1453](#) (Corman) would have extended to group policyholders the option of dependent coverage up to age 30. This extension was expected to assist approximately 15,000 young adults. This legislation passed the Senate (50-0) and was re-referred to the House Appropriations Committee on October 6, 2008.
- [Senate Bill 1454](#) (Folmer) would have created a High Risk Pool to provide health care coverage for individuals with pre-existing conditions who cannot access private coverage. Senate Bill 1454 was referred to the Senate Banking and Insurance Committee on September 4, 2008.
- [Senate Bill 1182](#) (Folmer) would have established \$5 million in state tax credits for the use of health saving accounts. Senate Bill 1182 was referred to the Senate Finance Committee on March 18, 2008.

## **Pennsylvania Access to Basic Care (PA ABC)**

In January of 2007, Governor Rendell proposed Prescription for Pennsylvania, a health care reform plan. A key part of that plan was Cover All Pennsylvanians (CAP), a program that would provide access to health care to uninsured adults (approximately 431,000). No legislative action was taken on this specific proposal. However, in March of 2008, the House passed a modified version of CAP (Senate Bill 1137, as amended) and called it Pennsylvania Access to Basic Care, or PA ABC reportedly to provide coverage to approximately 272,000 adults. In addition to the PA ABC provisions, [Senate Bill 1137](#) (D. White) would have also made changes to the MCARE Program. The legislation would have continued the abatements under the program for ten years with gradual increases in the coverage limits until providers were purchasing their entire coverage limit in the private market in 2018. Negotiations between Senate Republicans and the Governor's Office ended in a stalemate with Senate Bill 1137 remaining in the Senate Banking and Insurance Committee at the end of the legislative session. Senate Republicans expressed reservations that a decline in state revenues, in combination with the national economic crisis, would make it difficult to afford and sustain an expansion of health care to the degree that the Governor was recommending.

## **Health Care Cost Containment Act and MCARE Act**

[Senate Bill 1372](#) (Fontana) would have amended the Health Care Cost Containment Act to extend the sunset date of the Health Care Cost Containment Council from June 30, 2008 to June 30, 2013 and made a number of structural and administrative changes to the Council. In addition, Senate Bill 1372 would have extended the Health Care Provider Retention Program originally established under the MCARE Act for two years. House Bill 1372 passed in the Senate (50-0) on June 28, 2008 and was referred to the House Insurance Committee.

[House Bill 489](#) (Schroder) would have extended the MCARE abatement program and the Health Care Provider Retention Program for one year. House Bill 489 passed the Senate (49-0) on December 11, 2007 and was referred to the House Rules Committee. The bill was reported as amended with the MCARE language removed on March 31, 2008. The bill was removed from the table in the House on November 12, 2008, but no further action was taken before the end of the 2007-08 Session.

[House Bill 2648](#) (Eachus) would have amended the Health Care Cost Containment Act to make changes similar to those included in Senate Bill 1372. House Bill 2648 passed the Senate (48-2) on July 3, 2008 and was referred to the House Rules Committee.

### **Treatment of Autism Spectrum Disorders, Insurance Coverage for Colorectal Cancer Screening, and Oversight of the Merger or Consolidation of Blues Insurance Plans**

[Act 62 of 2008](#) (House Bill 1150 - D. O'Brien) amended the Insurance Company Law of 1921 to make a number of changes. Among other modifications, the measure required health insurance policies offered, issued or renewed on or after July 1, 2009 and government programs to provide coverage for the diagnosis and treatment of autism spectrum disorders for individuals under 21 years of age. Individuals and small group employers with 50 or fewer employees are exempt from the requirement. The coverage is subject to a maximum benefit of \$36,000 per year, but is not subject to any limits on the number of visits to an autism service provider. Payments made by an insurer for treatment of a health condition unrelated to or distinguishable from the individual's autism spectrum disorder cannot be applied toward any maximum benefit. Coverage is subject to copayment, deductible and coinsurance provisions. After December 30, 2011, the Insurance Commissioner will adjust the limit for inflation annually. On January 1, 2011, insurers will be required to report to the Insurance Department on the implementation of the legislation.

The measure also provided coverage for colorectal cancer screening except to the extent already covered under another policy. Coverage for non-symptomatic individuals who are 50 years of age or older would include, but not be limited to, an annual fecal occult blood test, a sigmoidoscopy, a screening barium enema, or a test consistent with approved medical standards and practices to detect colon cancer at least once every five years, and a colonoscopy at least once every ten years. Coverage for symptomatic individuals would include a colonoscopy, sigmoidoscopy, or any combination of colorectal cancer screening tests at a frequency determined by a treating physician. Coverage for non-symptomatic individuals who are at high or increased risk for colorectal cancer who are under 50 years of age would include a colonoscopy or any combination of colorectal cancer screening tests in accordance with the American Cancer Society guidelines on screening for colorectal cancer published as of January 1, 2008. Coverage would be subject to annual deductible, coinsurance, and copayment requirements. Individuals and small group employers with 50 or fewer employees would be exempt from the requirement.

The legislation also added provisions to the Act to ensure the Insurance Department has appropriate oversight of the merger or consolidation of Blues plans. The Senate Banking and Insurance Committee and the House Insurance Committee were also authorized to receive and review all filings submitted to the Insurance Department and provide written comments and recommendations on the filings. The Department is required to provide a detailed written response to each comment and recommendation. The Insurance Commissioner and Insurance Department personnel are to be available to provide testimony to the committees. The bill established the Insurance Restructuring Restricted Receipt Account to receive all net economic benefits from a consolidation or merger which are to be paid to the Commonwealth. Monies from the account would have to be appropriated by the General Assembly. Blues plans are required to submit a plan annually to the Department setting forth the manner in which they will provide proposed community health reinvestment activities during the next fiscal year. House Bill 1150 was signed into law on July 9, 2008.

### **Smoke Free Environment**

[Act 27 of 2008](#) (Senate Bill 246 – Greenleaf) created the Clean Indoor Air Act to prohibit smoking, with certain exceptions, in public places. Nothing in the Act precludes the owner of a public or private property from prohibiting smoking on the property. The exceptions to the prohibition include:

- a private home, residence, or vehicle except when used at the time for the provision of child-care services, adult day-care services, or services related to the care of children and youth in state or county custody;
- up to 25 percent of designated sleeping rooms within a lodging establishment;
- designated quarters within a full-service truck stop;
- tobacco shops;
- workplaces of a manufacturer, importer or wholesaler of tobacco products, or a tobacco leaf dealer or processor, and all tobacco storage facilities;
- long term care facilities regulated under 42 CFR 483.15 or similar regulation;
- separate enclosed rooms or designated smoking rooms in residential adult care facilities, community mental health care facilities, drug and alcohol facilities, and facilities that provide day treatment programs;
- cigar bars;
- 25 percent of a gaming floor of a licensed gaming facility, which could be expanded up to 50 percent based on gross terminal revenue per slot machine unit;
- private clubs, except where the club is open to the public through general advertisement for a club-sponsored event or leased or used for a private event which is not club-sponsored;
- licensed drinking establishments with annual food sales of 20 percent or less which do not permit individuals under 18 years of age;
- certain charitable fundraising events;
- under certain conditions, exhibit halls, conference rooms, or similar facilities used for a tobacco-related event; and,
- designated outdoor smoking areas within the confines of a sports or recreational facility, theater or performance establishment.

Drinking establishments, cigar bars and tobacco shops are required to submit a letter, accompanied by verifiable supporting documentation, to the Department of Health claiming an exception. These entities are required to make available all books, accounts, etc., to the Department of Health or other agency as necessary to enforce the act. Private clubs are required to take and record a vote of their officers under their bylaws to address smoking in the private club's facilities. An owner or operator of an area where smoking is regulated is required to post and properly maintain "smoking" or "no smoking" signs or the international "no smoking" symbol in the area where smoking is regulated.

A county can elect to have its board of health enforce the act by providing written notification to the Department of Health. A complaint regarding a possible violation of the Act will be made to the appropriate enforcement agency or to the Department of Health. If the public place is subject to licensure by the Commonwealth, the Department will refer the complaint to the appropriate licensing agency for investigation and enforcement. If a complaint is made to the Department regarding a public place in a county which has opted to enforce the act, the complaint will be referred to the county. If a complaint is made to a law enforcement agency regarding a public place, the agency is directed to investigate the complaint and enforce the act. In all other situations, the Department of Health investigates the complaint and enforces the Act. A first violation is punishable by a fine not to exceed \$250, a second violation within one year by a fine not to exceed \$500, and each additional violation occurring within one year by a fine not to exceed \$1,000.

The act supersedes any local ordinance or rule or regulation. This provision would not apply to Philadelphia, but Philadelphia could not change or amend its existing ordinance to conflict with any provision of the act. The Department is required to report annually to the Chairmen and Minority Chairmen of the Senate Public Health and Welfare Committee and the House Health and Human Services Committee on the number of violations, the number of enforcement actions, a description of the enforcement activities and other information relating to the administration and implementation of the act. Section 10.1 of the Fire and Panic Act was repealed. Senate Bill 246 was signed into law on June 13, 2008.

### **Mandatory Overtime for Nurses**

[Act 102 of 2008](#) (House Bill 834 - Surra) created the Prohibition of Excessive Overtime in Health Care Act to prohibit any health care facility from forcing nurses to work overtime, except for “unforeseeable emergent circumstances” as defined in the act. If employees are required to work more than 12 hours pursuant to the exceptions, they must be given at least 10 consecutive hours of off-duty time. Health care facilities violating the Act can be fined not less than \$100 or greater than \$1,000 for each violation. House Bill 834 was signed into law on October 9, 2008.

### **Scope of Practice**

[Act 45 of 2008](#) (House Bill 1804 - Yudichak) amended the Medical Practice Act to provide for licensure for respiratory therapists and to expand the scope of practice for physician assistants who act within the supervision and direction of a supervising physician. House Bill 1804 was signed into law on July 4, 2008.

[Act 46 of 2008](#) (House Bill 2088 - Adolph) amended the Osteopathic Medical Practice Act to provide for licensure for respiratory therapists and to expand the scope of practice for physician assistants, who act within the supervision and direction of a supervising physician. House Bill 2088 was signed into law on July 4, 2008.

### **Physical Therapy Assistants**

[Act 38 of 2008](#) (House Bill 1199 - Thomas) amended the Physical Therapy Practice Act to change the classification and practice requirements for physical therapy assistants. House Bill 1199 was signed into law on July 4, 2008.

### **Licensing of Perfusionists**

[Act 19 of 2008](#) (House Bill 500 - Santoni) amended the Medical Practice Act of 1985 to provide for the licensing of perfusionists. “Perfusion” is defined as the functions necessary for the support, treatment, measurement or supplementation of the cardiovascular systems or other organs, or a combination of those functions, and for ensuring the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under the supervision of a licensed physician. Two years from the effective date of the act, it will be unlawful for any person to hold himself out to the public as a perfusionist or to practice perfusion unless the person holds a valid and current license issued by the State Board of Medicine or the State Board of Osteopathic Medicine. House Bill 500 was signed into law on June 11, 2008.

[Act 20 of 2008](#) (House Bill 501 - Santoni) amended the Osteopathic Medical Practice Act to provide for the licensing of perfusionists. Two years from the effective date of the act, it will be unlawful for any person to hold himself out to the public as a perfusionist or to practice perfusion unless the person holds a valid and current license issued by the State Board of Osteopathic Medicine or the State Board of Medicine. House Bill 501 was signed into law on June 11, 2008.

### **Cancer Drug Repository Program**

[Act 14 of 2008](#) (Senate Bill 638 - Wonderling) created the Cancer Drug Repository Program Act. The measure requires the State Board of Pharmacy to establish a Cancer Drug Repository Program to permit pharmacies,

approved by the Board, to re-dispense unused cancer drugs to indigent patients. Participation in the program is voluntary. An entity that is part of a “closed drug delivery system” as defined in the act can return unused cancer drugs to an approved participating pharmacy. To be returned, a drug must be in its original, unopened packaging and cannot be accepted or dispensed by the pharmacy if the expiration date is earlier than six months after the date the drug was restocked or if the drug is adulterated or misbranded. Drugs to be re-dispensed under the program must be dispensed by a pharmacist per a prescription and in accordance with state law. A pharmacy is permitted to charge a handling fee as established by the Board. Immunity for civil or criminal liability or professional disciplinary action is provided to an individual or entity, acting in good faith, who exercises reasonable care in donating, accepting, distributing, dispensing or manufacturing the medications donated. Other states with successful cancer drug repositories include Wisconsin, Colorado, Nebraska, and Kansas. Senate Bill 638 was signed into law on May 13, 2008.

### **Senior Citizens - Prescriptions**

[Act 69 of 2008](#) (Senate Bill 4 - Rhoades) prevented PACE and PACENET enrollees from losing prescription benefits due to cost of living adjustments. Any individual enrolled in PACE as of December 31, 2008 or enrolled in PACENET as of December 31, 2007 remains eligible for their program if they exceed the maximum income limit due solely to a Social Security cost of living adjustment (COLA). The exemption is in effect until December 31, 2010. Senate Bill 4 was signed into law on July 9, 2008.

[Act 114 of 2008](#) (House Bill 2034 - Bear) created the Long-Term Care Patient Access to Pharmaceuticals Act to allow authorized pharmacists and pharmacies associated with nursing homes to relabel, repackage and dispense prescription drugs to nursing home residents entitled to acquire these drugs through the Veterans’ Administration. Persons authorized to dispense drugs under the act would be immune from civil liability arising out of the dispensing of a drug if the person properly repackages and re-labels the drug based on information received from the original drug source facility. House Bill 2034 was signed into law on October 9, 2008.

### **Newborn Testing**

[Act 36 of 2008](#) (House Bill 883 - Kenney) amended the Newborn Child Testing Act to expand from six to 28, the number of genetic diseases for which newborns who test “positive” must be reported to the Department of Health for follow-up services such as case management, referrals, confirmatory testing, assessment and diagnosis in an attempt to avert mental retardation, permanent disabilities or death. The provision prohibiting a screening test if a parent or guardian dissents on the grounds that the test conflicts with a religious belief or practice was retained in the act. House Bill 883 was signed into law on July 4, 2008.

### **Website Information on Nursing Homes, Personal Care Homes, and Domiciliary Care Homes**

[Senate Bill 811](#) (Vance) would have required the creation of a website, maintained by the Pennsylvania Department of Aging, with licensing and certification information on nursing homes, personal care homes and domiciliary care homes. This data would include information on violations of statutes or regulations by the facility and any corrective action taken. This legislation passed the Senate (50-0) on June 26, 2007 and was referred to the House Committee on Aging and Older Adult Services.