

1 HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

2 * * * *
3 House Bills 2814, 2815, 2816, 2817, 2818
4 * * * *

5 House Insurance Committee
6 Subcommittee on Crime & Corrections
of the House Judiciary Committee

7 Matthew Ryan Office Building
8 Room 205
Harrisburg, Pennsylvania

9 Monday, August 7, 2006 - 1:00 p.m.

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10 BEFORE:

11 Honorable Nicholas Micozzie, Majority Chairman
12 Insurance Committee
13 Honorable Roy Baldwin
14 Honorable Patrick Fleagle
15 Honorable Robert Godshall
16 Honorable Tim Hennessey
17 Honorable Matthew Wright
18 Honorable Matthew Good
19 Honorable Douglas Reichley
20 Honorable Anthony DeLuca, Minority Chairman
Insurance Committee
21 Honorable Todd Eachus
22 Honorable Neal Goodman
23 Honorable Anthony Melio
24 Honorable Greg Vitali

25 IN ATTENDANCE:

Honorable Thomas Caltagirone

Key Reporters
keyreporters@suscom.net

1300 Garrison Drive, York, PA 17404
(717) 764-7801 Fax (717) 764-6367

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1 ALSO PRESENT:

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Kathy McCormac
Majority Executive Director
Insurance Committee

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5 Sheila Earhart
Majority Administrative Assistant

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7 Phyllis Gould
Majority Research Analyst

8 Insurance Committee

9

10 Kara Gundel
Majority Research Analyst
Insurance Committee

11

12 Sean Harris
Majority Special Projects

13

14 Rick Speese
Minority Executive Director
Insurance Committee

16

17 Diane Hain
Minority Research Analyst
Insurance Committee

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19 Michael Piecuch
Majority Chief Counsel
Judiciary Committee

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22 Mike Fink
Minority Research Analyst
Judiciary Committee

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(Written testimony submitted by: Kathleen Mebus, Vice President The Hospital & Healthsystem Association of PA)	

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9 CHAIRMAN MICOZZIE: Good afternoon,
10 everyone. It is 1:00. I call this hearing to
11 order. My name is Nick Micozzie, and I thank
12 all of you for attending our first in a series
13 of two public hearings on the subject of
14 insurance fraud and Representative Robert
15 Godshall's five-bill insurance fraud package.

16 In addition to today's hearing, the
17 House Insurance Committee and the Subcommittee
18 on Crime and Corrections of the House Judiciary
19 Committee will hold another hearing on August
20 the 25th.

21 MS. McCORMAC: The 29th.

22 CHAIRMAN MICOZZIE: I don't have my
23 glasses. The 29th in Harrisburg. Notices for
24 this hearing will be released in the very near
25 future.

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1 The five-bill package, which is the
2 subject of today's public hearing, consists of
3 House Bills 2814, 2815, 2816, 2817, and 2818.
4 House Bills 2816, 2817 and 2818 reside in the
5 House Insurance Committee. House Bills 2814 and
6 2815 reside in the Judiciary Committee.

7 It is my hope that this meeting will
8 provide committee members and the public the
9 background necessary to understand this
10 important issue and should further committee
11 attention be necessary in the future.

12 With that being said, I will ask that
13 you turn your attention to the Honorable
14 Representative Godshall for his comments.

15 REPRESENTATIVE GODSHALL: Thank you,
16 Mr. Chairman.

17 Insurance fraud is not a victimless
18 crime. In fact, it is a very serious crime that
19 affects most of us, especially when the cost for
20 insurance fraud affects the premium you and I
21 pay for all types of insurance: auto;
22 homeowner; workers' comp; health; commercial
23 lines of business; and some staged, when arson
24 or a staged auto accident can put innocent
25 people in physical danger.

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1 For the consumer, the key times for
2 fraud are during an application for coverage
3 when a material false statement is made in order
4 to either receive coverage and/or lower the
5 premium, or during the filing of an insurance
6 claim when written or oral material false
7 statements are made.

8 However, it is important to note that
9 it is not just consumers that commit insurance
10 fraud. Occurrences of fraud may also be
11 committed by individuals, such as health care
12 providers, attorneys, auto repairers, insurers,
13 insurance producers, and so forth.

14 In our Commonwealth, we have
15 excellent insurance crime fighters, among which
16 are the Office of the Pennsylvania Attorney
17 General, the Pennsylvania Insurance Department,
18 the Pennsylvania Automobile Theft Prevention
19 Authority, and the Insurance Fraud Prevention
20 Authority whose web site is
21 www.helpstopfraud.org.

22 I'd just like to say, my attention to
23 this problem was caused and developed through my
24 attending a number of NCOIL. NCOIL is National
25 Conference of Insurance Legislators, and it was

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1 there that they are developing a model bill to
2 try to address this whole problem.

3 How big is the problem? It's
4 estimated that \$95 billion is what insurance
5 fraud costs this country. It's also estimated
6 by our Attorney General that 25 cents on every
7 insurance dollar is, goes to, and towards
8 insurance fraud. So it is a major, major
9 problem, and it takes some major effort to
10 address it.

11 So what I've done here, with the five
12 bills which I'll just briefly go over, and what
13 I have done here with the five bills is model
14 them after a Florida's recent enacted law, which
15 again was really formulated and developed, or
16 helped to be developed by Howard Goldblatt, who
17 is going to be the first testifier.

18 And I know that we have some laws
19 that are covered here in Pennsylvania already.
20 Possibly, what we're going to be doing with this
21 legislation, is enhance those laws.

22 I know there is some duplication,
23 but, again, there are little changes that we can
24 look at if we can enhance our laws, which we
25 have done with fines, penalties and so forth.

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1 You know, this is what we're going to
2 do, so this is nothing written in stone, but
3 it's something to start from to develop a
4 comprehensive insurance program in the State of
5 Pennsylvania.

6 I'd like to just go over the bills
7 briefly. House Bill 2816. This bill amends
8 Section 7 of Act 72 of '83, the Public Adjuster
9 Licensing Law, now can be addressed today. This
10 bill will make any violation of the provisions
11 of this act a felony of the third degree.
12 Currently, violating the provisions of this act
13 is a misdemeanor.

14 House Bill 2817. This bill amends
15 Sections 1122 and 1123 of Act 285 of 21, because
16 this bill will provide that the Insurance Fraud
17 Prevention Authority shall require health care
18 providers -- or facilities, rather, to place
19 posters announcing that a substantial award will
20 be paid to persons reporting insurance fraud
21 when the report leads to an arrest and
22 conviction.

23 The bill also provides that the
24 Insurance Fraud Prevention Trust Fund shall
25 receive the proceeds derived from forfeiture

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1 proceedings relating to insurance fraud.

2 Current law does not include these provisions.

3 We are unique in Pennsylvania with a
4 fraud authority, insurance fraud authority,
5 probably the only state in the country, you
6 know, with such an authority. What we're doing
7 here is enhancing again the ability of the
8 authority and also enhancing the penalties.

9 House Bill 2818 amends Section 808 of
10 Act 48 of '79, known as the Health Care
11 Facilities Act. This bill will provide that the
12 Department of Health not issue a license to a
13 health care provider unless the Department is
14 satisfied that the applicant has not been found
15 guilty of, or enter a plea of nolo contendere or
16 guilty, to any offense prohibited under the laws
17 of the Commonwealth for a felony or any
18 substantial comparable crime of another state
19 within the past ten years.

20 Additionally, each facility shall
21 disclose an arrest for a crime for which a court
22 disposition other than dismissal has been made
23 within the past ten years. Current law does not
24 include these provisions.

25 Finally, the two bills that are in

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1 the Judiciary Committee, House Bill 2814, amends
2 the Crimes Code section dealing with insurance
3 fraud by making it a separate criminal offense
4 when a person fraudulently files a car accident
5 report, produces fraudulent proof of insurance
6 documents, intentionally causes a motor vehicle
7 accident to collect the insurance money, or
8 offers bribes involving patient referrals for
9 treatment from a health care provider.

10 Two, imposes a new mandatory
11 three-year driver's license revocation for
12 anyone convicted of insurance fraud. After the
13 person's driver's license has been revoked, he
14 will have to pay a hundred fifty-dollar fee to
15 restore his operating privilege, following the
16 suspension or revocation of insurance fraud.

17 The bill also amends the Vehicle Code
18 to impose a civil penalty of \$500 for each day
19 that the insurer fails to timely file their
20 anti-fraud plans as required by the Insurance
21 Company Law. Any such fines will be deposited
22 into the Insurance Fraud Prevention Trust Fund.

23 Finally, the bill also amends Section
24 3751 by creating confidentiality provisions that
25 impose a 60-day blackout period on the release

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1 of certain identifying information from police
2 for accident traffic reports, traffic fines, and
3 traffic citations regarding car accidents, et
4 cetera, and with certain exceptions. That's
5 really to try to get at the runners that we have
6 out there that are chasing accidents.

7 House Bill 2815 adds victims and
8 their families of automobile crashes to the list
9 of persons that may be represented by the state
10 victim advocate. The victim advocate offers the
11 assistance to crime victims and receiving
12 services such as counseling, testifying in
13 court, and applying for compensation for losses
14 and injuries they have suffered. Presently,
15 Pennsylvania's law says victims and lists those
16 victims and their families.

17 It's a bunch of bills here that are
18 comprehensive, they are strong. And when you
19 look at what the cost is to the constituents of
20 Pennsylvania and to our residents in this
21 country, as I said, we're looking at \$95 billion
22 as the cost in the country, we're looking at
23 25 cents of every dollar spent for insurance in
24 Pennsylvania going to fight fraud.

25 So is it important? I think that

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1 answers the question itself.

2 And I am also pleased, as I said, I
3 know the Chairman will be calling Howard
4 Goldblatt up. But, as I said, he's the one that
5 has been working on this problem for the last
6 year -- two years, I guess, really, and even
7 more, and has started to work together -- or
8 started to work to put it together in Florida.
9 And, hopefully, we will be following Florida's
10 lead on this issue.

11 So, with that, Mr. Chairman, I say
12 thank you very much.

13 CHAIRMAN MICOZZIE: Thank you, Bob.
14 Any of the members have any comments they want
15 to make before we go into the hearing?

16 (No response.)

17 CHAIRMAN MICOZZIE: I call on Howard
18 Goldblatt, Director of Government Affairs,
19 Coalition Against Insurance Fraud.

20 Welcome, Howard, and you may begin.

21 MR. GOLDBLATT: Representative
22 Micozzie, and members of the committee, I want
23 to thank you for the opportunity to speak today
24 on several of the insurance fraud bills that are
25 before your committee and the Judiciary

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1 Committee.

2 I am Howard Goldblatt, the Director
3 of Government Affairs for the Coalition Against
4 Insurance Fraud. The coalition is a national
5 broad-based organization of insurers, consumer
6 organizations and government entities dedicated
7 to combating all forms of insurance fraud
8 through education and advocacy. One of our
9 major goals is to reduce the effect of fraud on
10 the cost of insurance that is paid by consumers.

11 We've worked closely with
12 legislators, regulators and other interested
13 parties in numerous states in all regions of the
14 nation. This year, alone, we've assisted in
15 helping anti-fraud laws being enacted in
16 Vermont, the District of Columbia, and the State
17 of Washington. Unfortunately, our help in Maine
18 and Virginia were not as successful.

19 We have worked with the National
20 Conference of Insurance Legislators on model
21 legislation dealing with insurance fraud,
22 anti-runner legislation and automobile insurance
23 fraud, a model bill that NCOIL has enacted or
24 has agreed to just several weeks ago at their
25 July meeting.

1 And we stand ready to work with this
2 committee, with this legislature and all the
3 interested parties in the Commonwealth to move
4 forward on an anti-fraud agenda here in
5 Pennsylvania. We applaud the legislature for
6 looking at these issues at this time.

7 But before I get into the specific
8 bills before this committee, let me explain
9 where these proposals come from and under what
10 circumstances they were moved in Florida.

11 Automobile insurance fraud, and
12 specifically no fault PIP fraud has been at
13 crisis levels for the last several years in
14 Florida. Staged automobile accident scams and
15 phony medical treatment of accident victims have
16 been prevalent throughout the State of Florida.

17 Several years ago the legislature
18 started a process of enacting stronger insurance
19 fraud laws targeting the fraud rings that have
20 operated in the state. They passed several
21 years ago laws tightening the ownership of
22 medical clinics that solely treat automobile
23 accident victims and restricted access to
24 accident reports in an attempt to stem the tide
25 of the auto fraud problem. To a small degree it

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1 helped.

2 Florida also enhanced the operation
3 of its insurance-department-based Insurance
4 Fraud Unit to investigate and assist in the
5 prosecution of insurance fraud cases.

6 The 2006 legislature again took up
7 these issues after passing anti-fraud laws in
8 the past three legislative sessions. The 2006
9 laws were meant to enhance the previous efforts;
10 in essence, to find out where the loopholes
11 opened up, where the side doors, the fraud rings
12 we're discovering and to close those avenues.

13 The major elements of the new
14 anti-fraud laws in Florida are similar to the
15 legislation that you're looking at today. Let
16 me give you a quick overview of Florida's laws
17 and why they went into place.

18 Florida already has a list of crimes
19 that revoke or suspend a driver's license. The
20 2006 law adds insurance fraud to that list. It
21 requires an enhancement of the normal fee that a
22 driver would have to pay to reinstate their
23 driver's license if the reason for the
24 suspension or revocation was insurance fraud.

25 They went further with their

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1 licensure of a medical clinic by requiring a
2 fraud reward poster to be posted in any clinic
3 that treats automobile accident victims. And on
4 the state law, there's a specific definition of
5 what a medical clinic is. The state already has
6 a law establishing a reward fund for
7 information -- a reward for information leading
8 to the arrest and conviction of insurance fraud.

9 It adds forfeiture to the Insurance
10 Department for assets. The state already has
11 allowed forfeiture to a number of agencies in
12 the state. The 2006 law adds the Insurance
13 Department as one of the agencies that would be
14 able to obtain forfeiture.

15 We realized that one of the loopholes
16 in the previous laws on creating the crime of a
17 staged automobile accident was basically saying
18 that if you create a paper accident; in essence,
19 simply filing the document as if an accident
20 occurred when it never even occurred, would mean
21 a lower threshold or lower penalty than staging
22 a real accident. So the 2006 law added or
23 bumped up the penalty for a paper accident to be
24 equal to any other type of staged automobile
25 accident.

1 The other provision dealing with
2 accident reports, Florida has a very strict open
3 records law, and several years ago they enacted
4 a 60-day restriction on access. What they
5 realized this year was that they opened
6 loopholes. For instance, it allowed for victim
7 assistance programs to obtain information within
8 the 60 days, and what they were discovering was
9 fraud rings were creating themselves as, quote,
10 victim assistance programs solely to get the
11 accident report.

12 So one of the reforms they made this
13 year was to require a victim assistance program
14 to be -- to have a 501(c)(3) federal tax
15 exception status, obviously something a fraud
16 ring would not go after or be able to obtain.

17 They also added a provision that made
18 it a rebuttal presumption that if an accident
19 report had a list of names of passengers in the
20 car, only those passengers would be considered
21 to be passengers. If somebody came -- showed up
22 at a later date and said they were in that car,
23 if they are not on the accident report under the
24 new federal -- a new Florida law, it is presumed
25 that they were not in the car. So they have to

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1 be listed at the time of the accident on the
2 accident report to be -- assumed to be a
3 passenger.

4 These are the highlights. This
5 committee is considering several bills that
6 Representative Godshall has introduced that
7 track this -- these two bills.

8 We applaud Representative Godshall
9 for his interest and desire to strengthen
10 Pennsylvania's anti-fraud effort. With that
11 said, let me raise a note of caution. These
12 provisions were drafted with specific problems
13 in mind in Florida. I'm not sure and it's
14 beyond my expertise to say whether the problems
15 that Florida has been attacking in the past
16 several years is comparable to the problem that
17 you have here with insurance fraud.

18 What I hope is that this committee
19 would work with the interested parties here in
20 Pennsylvania to work -- to ascertain what your
21 problems are and then to come to the decision of
22 what is necessary and what added tools would
23 help Pennsylvania fight its insurance fraud
24 game.

25 We're not in a position to answer

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1 those questions right now. But we're willing to
2 work with you and work with the interested
3 parties in the next few months or the next year
4 on these issues.

5 And with that, I will be able happy
6 to answer -- or try to answer any questions.

7 CHAIRMAN MICOZZIE: Thank you. Thank
8 you very much. A few years back, we were able
9 to get the -- establish the Fraud Prevention
10 Authority. And the Insurance Committee had
11 hearings on it and recognizing the problem
12 because the insurance industry pays, I think it
13 was \$10 million -- They pay \$10 million a year
14 to continue to investigate into fraud. And I
15 think that the Insurance Committee did a very
16 good job, and from time to time we do get
17 reports on how we're doing and the type of
18 investigation.

19 Anyone have any questions?

20 Representative Good.

21 REPRESENTATIVE GOOD: I guess my
22 question would be more directed to the prime
23 sponsor. Representative Godshall, do we have
24 any idea of the scope of the problem in
25 Pennsylvania with staged accidents, or is this

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1 kind of at a beginning stage?

2 REPRESENTATIVE GODSHALL: The only
3 information that I have, at this point, is what
4 the Attorney General's Office has told us, that
5 25 cents out of -- 25 percent of the money that
6 we're spending for insurance in Pennsylvania
7 goes for fraud, you know, so it is an intensive
8 problem.

9 And the other thing that I'm aware of
10 I believe at this point is the fact that the
11 Attorney General's Office will be at our next
12 meeting, along with the Insurance Department.
13 So it's got to be -- When 25 percent of your
14 insurance dollar is going for fraud, you know
15 that it's got to be an extensive problem.

16 REPRESENTATIVE GOOD: Thank you.

17 MR. GOLDBLATT: Could I just
18 interject one thing on that? We know
19 anecdotally that staged automobile accidents
20 are a problem in Maryland, in Virginia, in the
21 District of Columbia, in New Jersey, very much
22 so in New York. So the fact that the states
23 around Pennsylvania are having those problems, I
24 would be shocked if you were not having staged
25 automobile accident problems.

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1 REPRESENTATIVE GOOD: When you refer
2 to Florida, could you give us an idea of the
3 scope of the problem there that they were
4 addressing?

5 MR. GOLDBLATT: Florida, the -- The
6 best way to describe it is that automobile
7 insurance rates in Florida is one of the highest
8 in the nation, and part of that is the cost of
9 the problem. You go into parts of Miami and it
10 is almost a given that the clinic you might see
11 on the street is involved in a fraud ring.
12 They've been cracking down on those clinics. So
13 it has been helpful.

14 Miami-Dade has a special prosecutor
15 whose sole purpose is to prosecute insurance
16 fraud. They've added a second prosecutor to
17 that office, so they now have two prosecutors
18 solely dealing in the Miami-Dade area, which
19 would be Miami, Miami Beach, I believe Hollywood
20 and that area of southern Florida solely to
21 prosecute insurance fraud, and they don't see
22 any reason that they have to cut back on
23 prosecutors.

24 REPRESENTATIVE GOOD: Thank you.

25 CHAIRMAN MICOZZIE: Representative

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1 Melio.

2 REPRESENTATIVE MELIO: Yeah. Robert,
3 could you tell the people who may not know what
4 NCOIL is because you mentioned about the model
5 laws?

6 REPRESENTATIVE GODSHALL: I'm sorry,
7 that was addressed to me? NCOIL is the National
8 Conference of Insurance Legislators, and it is
9 made up of legislators from basically about
10 two-thirds of the states, maybe three-quarters
11 of the states in the country, who get together
12 on a regular basis to discuss common problems
13 and develop common -- or model legislation that
14 can help all states. So it's a gathering of
15 legislators that are involved in the insurance
16 area, and they're trying to solve the problems
17 of the insurance industry and help our
18 constituents in doing it.

19 CHAIRMAN MICOZZIE: Representative
20 Melio.

21 REPRESENTATIVE MELIO: Yeah. Robert,
22 I remember in one of the conferences that it was
23 brought up that there was a bus accident and
24 people rushed on the bus to get into the act so
25 that they could say they were hurt after they

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1 saw the accident happen. Is there anything in
2 this bill that would help that?

3 REPRESENTATIVE GODSHALL: I just want
4 to mention on that, I think at this point SEPTA
5 in Philadelphia, Southeastern Pennsylvania
6 Transportation Authority, going outside of
7 Philadelphia put cameras on their buses. Any
8 kind of an accident of a bus, there could be two
9 or three riders on the bus and all of a sudden
10 you would have 40 claims, injury claims. And
11 that beyond the SEPTA problem that we do have
12 that's a mass transit problem, we also have the
13 bump and run. And the bump-and-run accidents
14 down in the southeastern Pennsylvania are
15 numerous and happen continuously.

16 So it's a serious problem that we
17 have, and I am sure that that's where a lot of
18 our -- my constituents' insurance money is
19 going.

20 REPRESENTATIVE MELIO: Thank you, Mr.
21 Chairman.

22 CHAIRMAN MICOZZIE: Now wait a
23 minute. Wait a minute. It's not just a set
24 place. That would be Pittsburgh and them other
25 places.

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1 REPRESENTATIVE GODSHALL: Well, I'm
2 not familiar exactly what happens in Pittsburgh,
3 but I know what happens down in my neck of the
4 woods.

5 CHAIRMAN MICOZZIE: Anybody else have
6 any questions?

7 REPRESENTATIVE GODSHALL: I have
8 another one.

9 CHAIRMAN MICOZZIE: Go ahead.

10 REPRESENTATIVE GODSHALL: I'd just
11 like to say a comment on what you said about,
12 we're putting something out here on the table
13 which we can work from, and that was the full
14 intent of what we have here, knowing that there
15 was going to duplication. We have the fraud
16 authority, which, as I mentioned, is one of the
17 only states in country with that.

18 MR. GOLDBLATT: The only.

19 REPRESENTATIVE GODSHALL: The only.
20 Okay. So, you know, we're ahead of -- We're not
21 in back of the line on this issue, but there's a
22 lot of things we can do, and there's a lot of
23 things we should be able to do to address the
24 problem to save our consumers' money.

25 MR. GOLDBLATT: I don't want to

1 disparage any other state, but the reality is
2 that the mere fact that you're having this
3 hearing, the mere fact that you have these
4 bills, outward discussion is a better sign
5 that -- of quite a number of states who need
6 this type of discussion and they're not having
7 it. So, in that, you are quite right. This is
8 a good step for Pennsylvania.

9 REPRESENTATIVE GODSHALL: Thank you.

10 CHAIRMAN MICOZZIE: Representative
11 Reichley.

12 REPRESENTATIVE REICHLEY: I have a
13 question about the revocation of the licenses.
14 Does it apply under the Florida law just to ones
15 related to falsification of motor vehicle
16 accidents? If I'm a recurrent plaintiff in
17 medical claims or worker's comp fraud, do I get
18 a license suspension if I'm convicted of those?

19 MR. GOLDBLATT: It's only for
20 automobile insurance fraud, so if you use
21 your -- you drive your car to commit insurance
22 fraud, meaning a staged accident, or you commit
23 automobile insurance fraud, which would also
24 include application fraud or you may not need to
25 use your car, but if it's defined as automobile

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1 insurance fraud, then you could lose your
2 license.

3 REPRESENTATIVE REICHLEY: Okay. Are
4 there some scenarios where you can get
5 slip-and-fall cases brought in under your
6 insurance policy?

7 MR. GOLDBLATT: Well, slip and fall
8 would be, but not under the automobile policy.

9 REPRESENTATIVE REICHLEY: Okay, not
10 under an auto policy.

11 MR. GOLDBLATT: Not that I know of.

12 REPRESENTATIVE REICHLEY: Right. I'm
13 just trying to envision all the possible
14 scenarios.

15 And then, lastly, you mentioned about
16 the rebuttal presumption of the passengers
17 listed on a police accident report in the open
18 records provision. In Florida, are police
19 officers required to list every person in a
20 vehicle?

21 MR. GOLDBLATT: Yes.

22 REPRESENTATIVE REICHLEY: As they
23 come upon the scene, if people are outside the
24 vehicle, what do they do in that situation?

25 MR. GOLDBLATT: As I understand it,

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1 the way this provision would work is that,
2 there's a requirement that an accident report be
3 filed. I believe there's a certain amount of
4 time after the accident to do that. And it is
5 at that point, if anyone comes forward after the
6 filing of the report to say they were a
7 passenger in the car, if they are not mentioned
8 in the report, then it is presumed that they
9 were not a passenger.

10 REPRESENTATIVE REICHLEY: Okay. But
11 if I have an accident, the police officer comes
12 on the scene and I've gone into the 7-Eleven to
13 get ice to treat allegedly a cut on my head, the
14 cop doesn't write my name down on the report, do
15 I have 48 hours, a week?

16 MR. GOLDBLATT: Well, I would assume
17 that the police would write the report based on
18 questioning of the people involved in the
19 accident. So you would probably have an
20 opportunity at that time. But I believe you
21 have an opportunity and can -- Well, I do have
22 it. Bear with me a second.

23 According to House Bill 7035 in
24 Florida, the driver of a vehicle which is in any
25 manner involved in a crash resulting in bodily

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1 injury (and I will leave out the part about
2 death) and/or damage to any vehicle or other
3 property in an apparent amount of at least \$500
4 shall, within 10 days after the crash, forward a
5 written report of such crash to the department
6 or traffic records center.

7 So you have 10 days.

8 REPRESENTATIVE REICHLEY: Okay. And
9 what is the rationale behind the restriction on
10 access to the accident reports? What do you
11 mean when it says the accident reports remain
12 open for any purpose before the law was
13 strengthened in Florida?

14 MR. GOLDBLATT: Florida law has a
15 very strict open record law. As I understand
16 it--and I'm not an attorney--but as I understand
17 it, unless it's precluded in law, anything that
18 could be a public record is open.

19 And a prime example is when Dale
20 Earnhart was killed at Daytona in the accident.
21 They had to pass a special law in the State of
22 Florida to keep his autopsy photos out of public
23 record. Because under state law, unless they
24 passed a special law, his autopsy reports would
25 have been open for public review. And so

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1 given -- That's an example.

2 So what they did with accident
3 reports, is that--because they perceived fraud
4 rings were using access to accident reports to
5 get information that they could use to then go
6 out and get victims, try to hire, pay victims to
7 file fraudulent claims--they restricted who
8 could get access.

9 And the access, under the law, is the
10 victim of the accident. So the people involved
11 in it:

12 The representatives of the victims,
13 so the attorney, insurance agent, company, et
14 cetera;

15 Legitimate media, so you have to have
16 media where it is general public media so that
17 it's not a newsletter whose sole purpose is to
18 list victims of accidents;

19 And then, victim assistance programs,
20 that are now restricted, that you have to have
21 tax-exempt status under the federal IRS code to
22 have access within the 60 days. After 60 days,
23 it then becomes public record.

24 And the presumption then is, if you
25 have a claim filed on the 63rd day after an

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1 accident for an injury, that's a red flag for
2 possible fraud. Because if you've been injured
3 in an accident, why did you wait 63 days to file
4 a claim?

5 And I'm not saying that it is fraud.
6 It just means that it's a red flag for the
7 insurer to say this could be something more than
8 just a simple claim.

9 REPRESENTATIVE REICHLEY: All right.
10 Thank you, Mr. Chairman.

11 CHAIRMAN MICOZZIE: Representative
12 Godshall.

13 REPRESENTATIVE GODSHALL: I'd just
14 like to add to that. I think the main purpose
15 of that--to your last question, Representative
16 Reichley--was to try to cut out some of these
17 accident runners that we have.

18 And as far as the number of people
19 that are identified, again this would stop the
20 SEPTA problem and any other problem. If there's
21 an accident and there's two or three people in
22 the car and all of a sudden--it doesn't have to
23 be mass transit; it can be anything--there's six
24 people that were in the car, so I think there's
25 logic behind knowing who was in the car or in

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1 the vehicle at the time of the accident.

2 MR. GOLDBLATT: It also gets back to
3 some suggestions insurers have for consumers
4 that they have disposable cameras in their car,
5 that if they get into an accident, they can take
6 photographs that could show the damage to the
7 car, and to a certain degree, how many people
8 were involved in the accident. And so,
9 basically, what the Florida law is doing and
10 what Representative Godshall's bill is doing is
11 to codify the suggestion of companies that the
12 consumer be proactive in identifying the
13 problems of an accident.

14 CHAIRMAN MICOZZIE: Anyone else have
15 any questions?

16 (No response.)

17 CHAIRMAN MICOZZIE: Thank you.

18 We have with us the democratic
19 chairman, Representative DeLuca. Would you like
20 to say a few words?

21 REPRESENTATIVE DeLUCA: Thank you,
22 Mr. Chairman.

23 CHAIRMAN MICOZZIE: Next to testify
24 is the Insurance Federation, John Doubman,
25 Secretary and Counsel. Good afternoon and

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1 welcome.

2 MR. DOUBMAN: Good afternoon,
3 Chairman Micozzie. Thank you for the
4 opportunity to testify today. I am John
5 Doubman, the secretary and counsel of the
6 Insurance Federation of Pennsylvania. The
7 federation is a non-profit trade association,
8 which represents insurers which do business in
9 Pennsylvania in legislative and regulatory
10 affairs.

11 Our members include over 200
12 insurers, which supply the funding through their
13 annual assessments under Act 166 of 1994 for the
14 Insurance Fraud Prevention Authority, the
15 insurance fraud units of the Attorney General,
16 the Philadelphia District Attorney's Office, and
17 the various regional insurance fraud
18 prosecutorial units.

19 We want to thank the sponsor of this
20 five-bill package, Representative Godshall, and
21 the leadership of both of these committees for
22 taking the time and effort to introduce and
23 concern themselves with anti-insurance fraud
24 legislation. It's neither sexy stuff for your
25 constituents, nor a silver bullet that

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1 automatically will slay substantial cost
2 increases in any specific line of insurance,
3 whether personal lines or health or workers'
4 comp.

5 But legislation like this is the kind
6 of slogging, one piece at a time attack that
7 serious and concerned legislators and regulators
8 have to make on an intractable problem. There's
9 no other way. Legislators and regulators in
10 Pennsylvania, like yourselves, have realized
11 this over the years, and we thank you for
12 continuing in the struggle.

13 Insurance fraud remains a significant
14 problem and a contributor to the cost of
15 insurance in almost all lines. The federation
16 is not a statistical agency, and insurance fraud
17 being covert in its nature, there's no
18 definitive calculation of how much it costs.
19 Indeed, there are no Pennsylvania specific
20 studies, and with arguments still going on about
21 how to define insurance fraud within the
22 industry, I don't know that we'll ever get a
23 completely satisfactory answer.

24 Nevertheless, there's a lot of
25 insurance fraud by any calculation. Twelve

1 years ago when the federation was lobbying to
2 enact the initial fraud package, industry
3 experts opined that somewhere between five and
4 ten percent of all property/casualty and health
5 claims contained some fraudulent elements.

6 Suffice it to say, we have a lot of
7 insurance fraud in Pennsylvania and our attacks
8 on it must not diminish. In the ten years since
9 the IFPA got up and running in '96, those
10 efforts have yielded 3,500 arrests, 2,073
11 convictions, over \$1.4 million in court-ordered
12 fines, \$1.7 million in civil penalties, and
13 \$17 million in restitution. It's estimated that
14 perpetrators of these prosecuted activities
15 alone caused over \$65 million in victim loss.

16 Whatever the true dimensions of
17 insurance fraud, it remains large enough that
18 legislators and insurers are justified in
19 sharpening the weapons to be employed against
20 it.

21 The federation is enthusiastic about
22 the initiatives in these bills and looks forward
23 to working with the committees to tailor them
24 for maximum effectiveness in Pennsylvania.
25 Allow me to briefly comment on House Bills 2814,

1 2816 and 2817, as these are the most significant
2 additions to current anti-fraud legislation.

3 House Bill 2814 amends the crimes and
4 transportation titles to add 11 provisions
5 strengthening them as anti-insurance fraud
6 measures, including defining six specific fraud
7 crimes. In the main, these changes will assist
8 prosecutors in directly prosecuting phony
9 accident schemes, kickback arrangements, and
10 false financial responsibility marketing. They
11 are all excellent ideas.

12 In all candor, the Attorney General
13 and the District Attorney's Office are the
14 experts in assessing the value of defining these
15 offenses so specifically. It's been some time
16 since we spoke with either of those offices
17 about troubling case law which requires
18 defendants to be charged with the most specific
19 less serious crime. We would not want to
20 inadvertently downgrade any of these offenses
21 through this legislation.

22 Now we also have several questions
23 about three specific provisions in House Bill
24 2814.

25 The addition of a new Section 4117

1 (9) making it a crime to violate an Insurance
2 Department emergency rule or order, may well
3 present some constitutional difficulties;
4 particularly as such an order can only be
5 directed at insurers over whom the Department
6 has jurisdiction.

7 The addition of 4117(b)(5), making it
8 a crime for an insurer to waive the deductible
9 or copay by a service provider is confusing.
10 The fraud problem with deductibles and copays,
11 as we understand it, is that some health or
12 physical damage service providers will
13 overcharge or fraudulently charge for services
14 not provided in order to allow the insured to
15 collect an amount equal or greater than the
16 deductible or copay (sometimes with a kickback).
17 The fraud problem does not seem to be lessened
18 by hamstringing insurers from forgiving
19 deductibles or copays in appropriate situations.

20 Finally, the imposition in Section
21 1815 of Title 75 of a separate \$500 per day
22 penalty for insurers failing to file fraud plans
23 is probably intended to raise funds for the
24 rewards program in House Bill 2817. The
25 difficulty is that to our knowledge Pennsylvania

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1 has no recalcitrant insurers and, to the extent
2 they develop, the Insurance Department has more
3 than ample authority to require compliance.
4 This provision seems unnecessary.

5 Turning to House Bill 2816, the
6 federation is supportive of increasing the
7 severity of a violation of the Adjuster
8 Licensing Law from a misdemeanor to a felony.
9 As the language deleted from existing law by the
10 bill permits prosecution for that offense to be
11 instituted by the Insurance Commissioner, we
12 interpret the change as committing enforcement
13 solely to the Attorney General. The federation
14 supports the changes regardless, but this should
15 be clarified, especially if that is not the
16 intent.

17 Tightening the Public Adjuster Act is
18 a good idea. When the Insurance Department
19 redid its adjuster regulation in 2002, the
20 Insurance Federation made numerous suggestions
21 to regulate adjusters more tightly. However,
22 many of our best suggestions were rejected on
23 the basis that the Department lacks statutory
24 authority to embody them in regulations.

25 We would be remiss in not mentioning

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1 that there are more than a half dozen additional
2 proposals for reform of the adjuster law that
3 would help address abuses in that activity. The
4 top six we hear from our companies would be: a
5 fee cap of twelve and a half percent; a
6 cooling-off period; more extensive applicant
7 testing; continuing education requirements; a
8 fraud warning on paperwork; and, an obligation
9 for prompt communication to insurers and
10 insureds of developments and offers.

11 House Bill 2817 contains the element
12 of a mandatory reward system for reporting
13 insurance fraud. This is an excellent idea,
14 although it may be that additional provisions
15 are needed, particularly when it comes to
16 funding. Certainly, insurers are all for
17 creating incentives to report fraud because
18 unfortunately many people yield to the
19 temptation to commit it.

20 The IFPA does have a rewards program
21 on a somewhat small scale. I thought, perhaps,
22 Howard would get into that in some more detail
23 about the Florida program. However, it is clear
24 that wider posting, for example, in health care
25 facilities of notice of a reward would be a

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1 positive step.

2 We're not sure that the IFPA, which
3 is not a governmental agency, should be the
4 entity to require this. You may also hear from
5 the providers about this.

6 The logical question about the
7 proposal is why a fraudulent medical mill is
8 going to post that notice, when many of the
9 people coming in for treatment will have already
10 decided to join the scam or, perhaps, they are
11 just innocent patients. Apparently, clinics
12 post it in Florida because all such facilities
13 have to be registered with the state, and have
14 the posters displayed as well. If they don't,
15 insurers need not pay their claims. Whether a
16 program lacking that incentive will produce high
17 compliance or not is worth further
18 consideration.

19 As to the funding for a rewards
20 program, we appreciate that the proposers of the
21 bill attempted to bolster the Insurance Fraud
22 Prevention Trust Fund by adding Section
23 1123(d)(1) which devotes the proceeds of
24 forfeiture proceedings related to insurance
25 fraud to the fund.

1 Apparently, in Florida there are some
2 forfeiture proceedings authorized in the law to
3 seize the property of fraudulent operations. We
4 don't have those provisions in Pennsylvania, so
5 this provision would not be effective as a
6 funding vehicle for the rewards program here.

7 Finally, the federation can't pass up
8 an opportunity to present two additional
9 suggestions to you, whose attendance today
10 evidences your commitment to fighting insurance
11 fraud. All of you, and especially
12 Representative Godshall, have been champions in
13 enacting and supporting the original Act 6
14 provisions on cutting fraud and medical costs
15 under auto insurance. The following suggestions
16 are oriented toward reducing fraud in auto
17 insurance.

18 The first proposal is to require that
19 auto insurers be allowed to access the PennDOT
20 driver registration data base to get lists of
21 drivers by household. Over 20 other states
22 permit this. It helps prevent undisclosed
23 drivers and rate evasion, both of which wind up
24 being subsidized by honest, responsible
25 policyholders. Since policies cover all

1 household residents, undisclosed drivers living
2 there are frequently being insured without
3 premium.

4 The second suggestion is based on the
5 very successful Regulation 68 in New York, which
6 requires medical providers to bill auto insurers
7 for medical claims within 45 days of providing
8 the treatment. A similar mechanics would be
9 useful in wage claims, under which claimant
10 policyholders would have to notify their auto
11 insurer of a wage loss claim within 90 days of
12 the date when the wage loss is incurred.

13 As both these requirements would be
14 imposed, insurers would exclude cases in which
15 there were clear justification for missing the
16 deadline. However, absent such justification,
17 the claims would not be eligible for payment.
18 This would prevent some adjunctive health care
19 providers from delaying claims to hinder claims
20 review, and from prejudicing review of such
21 claims for fraud by reason of records and
22 memories becoming stale. Remember, auto
23 insurers are under a timely payment obligation.

24 In conclusion, we again compliment
25 the sponsor and committees on your legislative

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1 efforts. The federation will be happy to work
2 with any of you on crafting any required
3 corrections or adding new provisions, which will
4 help insurers or the law enforcement combat
5 fraud.

6 Thank you for the opportunity to
7 testify. If I can answer any questions, I'd be
8 happy to do so.

9 CHAIRMAN MICOZZIE: Thank you, John.
10 Anyone have any? Representative DeLuca.

11 REPRESENTATIVE DeLUCA: Thank you,
12 Mr. Chairman. And I'm sorry I came in a little
13 late. I had a little problem with the turnpike.
14 But I want to commend the sponsor of the bill,
15 Representative Godshall, for putting this
16 package of bills together. It's certainly
17 something that we needed to do.

18 Let me ask you, John, you mentioned
19 the fact about all of this money that we're
20 saving--3,473 arrests, 2,000 convictions, over
21 1.4 million in court ordered fines--let me ask
22 you, could this be more than which we have the
23 statistics for?

24 Because, a lot of times, we see the
25 district attorneys playing games with plea

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1 bargaining. Is this going to take into
2 consideration some of these D.A.s who play games
3 with this stuff?

4 When I say play games, they have been
5 going after a lot of things. We pass laws and
6 all of a sudden we --

7 John, on these statistics, would they
8 be higher because the fact is that some of our
9 district attorneys out here use the plea
10 bargaining situation to plea bargain these cases
11 down, and sometimes they just get tapped on the
12 wrist with the laws we pass?

13 MR. DOUBMAN: Well, Representative, I
14 make two points on that. One is probably yes,
15 one is probably no. First of all, let me say,
16 my understanding is--and I am not a prosecutor--
17 that many of these prosecutions are not easy
18 cases to make. They work at golf clubs from the
19 trunk. I mean, they're tough to investigate,
20 they're pretty labor intensive, and I think our
21 prosecutors do a real good job trying to tag as
22 many people as they can.

23 So the answer to your -- I don't mean
24 to say that we can't do any better. But I would
25 say, overall, I don't think that the --

1 Basically, the court proceedings are
2 probably where our programs here in Pennsylvania
3 get their best savings. And in this, I have to
4 compliment the people that have been running the
5 fraud authority. I think the signs you see on
6 the turnpike and the wide public relations
7 effort that is made to try to dissuade people
8 from committing insurance fraud in the first
9 place is probably a number you're never going to
10 get.

11 But I honestly do believe, and I
12 think maybe when you hear later from people
13 connected with the authority or some of the -- a
14 prosecutorial group, I think maybe they will
15 feel that they at least have some evidence that
16 people have been dissuaded from getting involved
17 in this.

18 Now, if you've got a hard-core ring,
19 there's no dissuading them because that's,
20 unfortunately, a business they have decided to
21 go into.

22 Sometimes if they took half the
23 effort they have used working out these schemes
24 to make an honest living, we wouldn't have a
25 problem; but that's another issue.

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1 REPRESENTATIVE DeLUCA: Well, give me
2 a couple examples of these 3,400 that were --

3 MR. DOUBMAN: Of the arrests?

4 REPRESENTATIVE DeLUCA: Yes. What
5 type of arrests were they? Give me a couple
6 examples of what type of arrests we're talking
7 about, since it's hard to make these type of
8 cases. Tell me what type you're on.

9 MR. DOUBMAN: Well, the most recent
10 Attorney General success was of a, I think a
11 family-oriented ring up in northern
12 Pennsylvania. And I think they got the highest
13 sentences that they've had so far, the several
14 people that were at the heart of the ring. I'd
15 like to be able to recite some facts, but --

16 REPRESENTATIVE DeLUCA: I understand.

17 MR. DOUBMAN: But those people were
18 engaged in all facets of it. They were phony
19 accidents, they were -- Actually, I guess most
20 of them were slip and fall, which is actually an
21 insurance that we -- I don't know that we're
22 necessarily focusing on here.

23 You know, Philadelphia, you hear more
24 about a lot of the fraud that's committed
25 against SEPTA, who's always been a big ally of

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1 ours in this. With the jump-in accidents, any
2 time a bus with five people on it winds up in a
3 fender-bender, we have 30 insurance fraud
4 claims.

5 REPRESENTATIVE DeLUCA: So what
6 you're saying is, the majorities are like rings
7 or individuals who do it for a business, is that
8 what you're telling me?

9 MR. DOUBMAN: You know, I think
10 they've also taken down some medical mills that
11 have submitted a series of bills for phony
12 treatment, and so, that they have cheated the
13 health insurers. I don't know that there's too
14 much on the first-party medical.

15 But really, understand, we don't --
16 We haven't really tried to track -- We don't
17 purport to be experts in this. I mean, they are
18 really good questions, Tony. And I think they
19 should probably be asked of either the
20 prosecutorial authorities or the Fraud
21 Prevention Authority when they get in front of
22 you.

23 REPRESENTATIVE DeLUCA: The reason I
24 asked that, John, because of the fact is I
25 know -- And I'm not talking about the medical

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1 mills and stuff like that. I'm talking about
2 some of the physicians out there, who, you go to
3 a physician--let's not kid ourselves--you say
4 put a brace on so that you can sue and that
5 there, and that's a big part of driving health
6 care costs up and the insurance costs.

7 MR. DOUBMAN: That's right. I agree
8 with that.

9 REPRESENTATIVE DeLUCA: We need to do
10 a better job of scrutinizing some of these
11 professionals out there because it's a business.

12 MR. DOUBMAN: I would agree with
13 that. But that's not easy work. You know that.

14 REPRESENTATIVE DeLUCA: No, it's not
15 easy work, but we're passing legislation. We
16 need to look at it.

17 The other thing that confuses me
18 is -- A little bit. Maybe I don't understand
19 this part. It's one of your suggestions here.
20 Since policies cover all household residents,
21 undisclosed drivers living there are frequently
22 being insured without premiums. I thought we
23 insured the car, not the driver.

24 MR. DOUBMAN: No. Your policy, for
25 example, and the most obvious example, is

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1 youngsters coming of age.

2 REPRESENTATIVE DeLUCA: Okay.

3 MR. DOUBMAN: They're covered -- Our
4 policies, by their terms, cover them. They're
5 household residents.

6 Now, you should let whoever is
7 insuring you, Nationwide, or whoever, they
8 should know when people are coming of age. And
9 there's too much tolerance in our -- According
10 to most polls, there's an awful lot of tolerance
11 in our society for saying, well, I'm just not
12 going to let the company know. Now they're not
13 necessarily the most egregious cases. I mean,
14 that is they are -- Those folks are not paying
15 the proper rate for the exposure they have.

16 But there are other situations where
17 there are family combinations, and it would help
18 in the underwriting cycle to make sure that you
19 have an idea who is on the policy, if you can
20 find who is in the household and who are the
21 licensed drivers living there.

22 REPRESENTATIVE DeLUCA: You're
23 talking about permanent residents in the
24 household?

25 MR. DOUBMAN: Yeah.

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1 REPRESENTATIVE DeLUCA: Is that what
2 you're talking about?

3 MR. DOUBMAN: Yeah.

4 REPRESENTATIVE DeLUCA: That's all,
5 Mr. Chairman. Thank you.

6 CHAIRMAN MICOZZIE: Representative
7 Hennessey.

8 REPRESENTATIVE HENNESSEY: Thank you,
9 Mr. Chairman.

10 Mr. Doubman, on page 4 of your
11 testimony, you had indicated some case law that
12 it required defendants to be charged with the
13 most specific, least serious crime. Is that a
14 case -- I'm familiar with the first, that you
15 have to be charged with a specific crime if
16 there's a specific definition in another statute
17 with a general definition.

18 Is there a second case out there that
19 says you have to be charged with the least
20 serious crime? I'm not familiar with that.

21 MR. DOUBMAN: Representative, I may
22 well be talking to somebody who has been a
23 prosecutor. I don't know your background. But
24 you clearly know more than I do. I thought I
25 would mention that only in the sense that I

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1 wanted Representative Godshall and the rest of
2 you legislators to know that from some prior
3 experience we had, you've got to be careful with
4 how specific you get. I mean. And other than
5 that, I would clearly prefer that the Attorney
6 General or the district attorney address that.
7 I don't know that case law, pen down. So.

8 REPRESENTATIVE HENNESSEY: Fair
9 enough. But could you try to get a copy of the
10 case to us --

11 MR. DOUBMAN: I will do that.

12 REPRESENTATIVE HENNESSEY: -- so the
13 committee can look at it?

14 MR. DOUBMAN: I will absolutely do
15 that.

16 REPRESENTATIVE HENNESSEY: One other
17 question. On page 6, you were talking about
18 House Bill 2816, about tightening the Public
19 Adjuster Act.

20 MR. DOUBMAN: Okay.

21 REPRESENTATIVE HENNESSEY: And you
22 went on to say that there were a number of
23 suggestions that the federation had made to the
24 Insurance Department, but they were rejected.

25 MR. DOUBMAN: Well, they were doing

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1 regulations.

2 REPRESENTATIVE HENNESSEY: Okay.

3 MR. DOUBMAN: They were doing
4 regulations, I guess four years ago.

5 REPRESENTATIVE HENNESSEY: I'm just
6 wondering, was that the decision that was
7 in-house by the Insurance Department, or did
8 they actually create regulations that were
9 struck down?

10 MR. DOUBMAN: No, no, no no. They
11 didn't take our --

12 REPRESENTATIVE HENNESSEY: They chose
13 not to --

14 MR. DOUBMAN: They didn't take our
15 suggestions. They felt that a number of them
16 were beyond the pale.

17 Actually, I believe there is
18 appellant precedent in Pennsylvania on that
19 so-called cooling-off period; in other words, an
20 adjuster can't go talk to you, you know, as the
21 house is burning. That was struck some years
22 ago. I think we had a provision like that in
23 the law. Now, actually, I think that may have
24 been struck by our Supreme Court based on
25 freedom of commercial speech.

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1 REPRESENTATIVE HENNESSEY: Okay.

2 MR. DOUBMAN: So the Department felt
3 that it couldn't act on that. And the other
4 ones felt that they went beyond the range of
5 what they had the ability to do in their
6 regulations.

7 I don't necessarily know that I
8 quarreled with that, but I know that if we were
9 going to touch the adjuster law that our member
10 companies have always wanted to try to do
11 several things that they felt could tighten up
12 those practices.

13 REPRESENTATIVE HENNESSEY: Maybe now
14 is the time. But House Bill 2816, as it's
15 written, just upgrades the crime.

16 MR. DOUBMAN: Correct.

17 REPRESENTATIVE HENNESSEY: But it
18 doesn't create any expanded authority. Perhaps
19 if you could get some suggestions to the
20 committee as far as how the -- Maybe that's the
21 bill, the vehicle we need, to create that
22 expanded authority. So if you could just take a
23 look at that and get back to the committee on
24 that, it would help.

25 MR. DOUBMAN: I'd be happy to do that

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1 as well.

2 REPRESENTATIVE HENNESSEY: Thank you.

3 Thank you, Mr. Chairman.

4 CHAIRMAN MICOZZIE: Representative

5 Melio.

6 REPRESENTATIVE MELIO: Yeah. John,
7 we know there's insurance fraud in the
8 Commonwealth. Is there any agency or department
9 that you could suggest that would give us the
10 statistics to know how many there are, what they
11 are?

12 MR. DOUBMAN: Representative Melio,
13 that's one of the reasons I approached it the
14 way I did here, was to tell you how, once we
15 started attacking it, what we found. Because,
16 as I say, it's a hidden crime.

17 Ever since I guess when the
18 federation got involved a number of years ago,
19 creating the Fraud and Auto Theft Prevention
20 Authority, and that was a three-bill package.

21 And we did some things on the Crimes
22 Code, too.

23 We've had seminars and people trying
24 to estimate how much is in the different lines
25 of insurance.

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1 Not only are there not any
2 Pennsylvania-specific studies, but I don't
3 really think there's any nationwide study that
4 you would find definitive. And if there are, I
5 don't know what they are.

6 I think we are convinced and I think
7 our companies are convinced that it's a
8 significant problem.

9 I think we have our own style here in
10 Pennsylvania. Some things tend to be a problem
11 in some states and not in others. The Insurance
12 Fraud Prevention Authority is making a major
13 attack on trying to keep out-of-state (mainly
14 New York and New Jersey) people from using
15 Pennsylvania addresses to utilize that for their
16 auto insurance because it's cheaper. They
17 attack other pieces of it.

18 And since those authorities have
19 gotten started, they've been very well run. And
20 to be honest with you, Sam Marshall and I
21 haven't been engaged in it day to day. I mean,
22 they've been trying to take a whack at it on
23 their own. So, I'm not completely up to date,
24 but I would be very surprised if you're going to
25 find anything absolute definitive about

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1 quantifying fraud, which is why I went at it the
2 way I went at it.

3 REPRESENTATIVE MELIO: Do we know if,
4 in other states, how they may get that
5 information?

6 CHAIRMAN MICOZZIE: They get
7 researched.

8 Anyone else? Robert.

9 REPRESENTATIVE GODSHALL: Thank you.
10 I just wanted to mention that on page 4,
11 Representative Hennessey asked about making it a
12 crime to violate an Insurance Department
13 emergency rule or order may be not
14 constitutional. Our staff picked that up when
15 we were looking at this legislation and
16 discussed that. You know, that is something
17 that we've noted on that issue, and it will be
18 further, you know, totally addressed down the
19 road.

20 REPRESENTATIVE HENNESSEY: Okay.

21 REPRESENTATIVE GODSHALL: Another
22 item that was mentioned in here on page -- I
23 guess it was on page 8. John, you had, seize
24 the property for fraudulent operations. That
25 would actually only take really enabling

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1 legislation, you know, to handle that situation.
2 As of right now, I agree with you. But that
3 would take enabling legislation, which can be,
4 you know, forthcoming.

5 But the other thing that I really
6 want to try and make sure of is, you know, we
7 got a base to start from. And the Insurance
8 Federation, along with the fraud prevention
9 people from Washington, can sit down and we can
10 go over the questions that have been brought up
11 today and go forward from here. That's really
12 the intent of what we're doing here.

13 MR. DOUBMAN: We look forward to
14 doing it.

15 CHAIRMAN MICOZZIE: Thank you, John.

16 Next is Ira Straff, President, and
17 John Schuppert, general counsel of the Insurance
18 Adjustment Bureau, Inc. Welcome, gentlemen, and
19 you may begin when you're ready.

20 MR. STRAFF: Chairman Micozzie,
21 Chairman DeLuca, representatives and members of
22 the Pennsylvania House Insurance Committee and
23 Judiciary Subcommittee on Crime and Corrections,
24 good afternoon, and thank you for having us here
25 today to testify on several bills before you

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1 which you are considering as an insurance fraud
2 package.

3 My name is Ira Straff. I've a been
4 public adjuster for over 30 years. I'm
5 President of Insurance Adjustment Bureau, Inc.,
6 which is a public adjusting firm that has been
7 in business for over 40 years.

8 With me is John Schuppert, general
9 counsel for the Insurance Adjustment Bureau.
10 Mr. Schuppert has been a public adjuster for
11 over 10 years.

12 We are located in Bala Cynwyd in
13 Montgomery County, and we serve the tri-state
14 area, including the greater Philadelphia and
15 Lehigh Valley areas.

16 Our testimony is limited to one of
17 the bills being considered, House Bill 2816,
18 which would amend the Public Adjuster Licensing
19 Law of December 20th, 1983, entitled, An act
20 providing for the licensing and regulating of
21 public adjusters and public adjuster solicitors.
22 Specifically, the bill would amend Section 7 of
23 the act, on violations, in at least two ways.
24 First, it would make a violation of the act a
25 felony instead of a misdemeanor as it currently

1 is. Second, it would remove this section's
2 authorization for the Insurance Commissioner to
3 prosecute violations.

4 Section 7 of the act currently
5 provides, quote, any person, partnership,
6 association or corporation violating any of the
7 provisions of this act shall be guilty of a
8 misdemeanor and, upon conviction thereof, shall
9 be sentenced to pay a fine of not less than
10 \$500, no more than \$1,000 for each violation and
11 conviction. Prosecution for any violation under
12 this section may be instituted by the Insurance
13 Commissioner or his duly authorized
14 representative, unquote.

15 House Bill 2816 would amend the
16 statute to provide, quote, any person,
17 partnership, association or corporation
18 violating any of the provisions of this act
19 shall be guilty of a felony of the third degree,
20 unquote.

21 We agree that a public adjuster who
22 commits insurance fraud, or who conspires to do
23 so should be punished. We also agree that if
24 the offense is severe enough, it should be
25 punished as a felony. If the laws need to be

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1 changed to allow this, we support it. However,
2 this bill goes well beyond that. It would make
3 transgressions, which nowhere approach fraud,
4 punishable as felonies. This would be unwise
5 and unjust, and we oppose it.

6 Again, the act that this bill would
7 amend is the Public Adjuster Licensing Law.
8 This act enables the Insurance Department to
9 license and regulate public adjusters. It is
10 not a criminal statute, but a regulatory
11 statute. Section 2(b) of the act provides that,
12 quote, when the Insurance Commissioner is
13 satisfied that the applicant is trustworthy and
14 competent to transact business as a public
15 adjuster and public adjuster solicitor,
16 respectively, in such manner as to safeguard the
17 interest of the public, he shall issue a
18 license, unquote.

19 Section 4 of the act requires that
20 public adjusters be bonded. Section 5(a)
21 requires written public adjuster contracts
22 approved by the Insurance Commissioner. Section
23 6 permits the Commissioner to impose a fine, or
24 suspend or revoke a license, for
25 untrustworthiness or incompetence, or for other

1 violations of the regulatory scheme. Section 8
2 empowers the Commissioner to enforce the act,
3 and to issue regulations.

4 Because the act is a regulatory
5 statute, one does not have to commit a felony or
6 any kind of a crime to violate it. Let me give
7 you an example. Per Section 6(a)(1), a public
8 adjuster violates the act by making a material
9 misrepresentation of the terms and effect of an
10 insurance policy.

11 If a public adjuster misreads a
12 policy and tells a homeowner that the policy
13 does not cover additional living expenses, or
14 tells a business owner that it does not cover
15 loss of income, or tells either that it does not
16 cover debris removal expense, when in fact it
17 does, that is a material misrepresentation of
18 the policy.

19 This is incompetence and malpractice.
20 Under the act it is punishable by fine or
21 suspension, or revocation of license, and might
22 even be a misdemeanor, punishable by a fine,
23 under Section 7.

24 It is not a fraud or a felony-like
25 offense. But under House Bill 2816, such a

1 mistake could be punishable as a felony, because
2 the bill makes all violations of the act
3 felonies.

4 By way of further example, Section
5 5(a) of the act requires that a public
6 adjuster's contract with clients be available at
7 all times for inspection, without notice by the
8 Insurance Department. If an Insurance
9 Department representative comes to the office
10 and asks to see a contract, but the adjuster has
11 taken the contract with the file to go to a
12 meeting at the loss site, this could be
13 construed as a technical violation of the act.
14 Possibly, it could be sanctioned by a fine, or
15 suspension or revocation of a license under
16 6(a)(10) and could conceivably even be
17 prosecuted as a misdemeanor, punishable by a
18 fine, under Section 7.

19 But under House Bill 2816, even such
20 a technicality could be punished as a felony.

21 Granted, it is probably inconceivable
22 that a public adjuster would be prosecuted or
23 punished as a felon for not having a contract
24 readily available for inspection. It is also
25 probably unlikely that a public adjuster would

1 face such a punishment for committing
2 malpractice, or for other violations of this
3 regulatory statute, which do not rise to the
4 level of fraud. But our point is, that this
5 bill would make it possible to prosecute and
6 punish non-felonies as felonies.

7 If a public adjuster violates the
8 act, there should be a penalty and the act
9 prescribes the penalties. However, the
10 aforesaid violations, and others, are not bad
11 enough to prosecute or punish them as felonies.
12 This would not be necessary, or just, or
13 constitutional.

14 We ask you to consider whether House
15 Bill 2816 is even necessary. Neither Mr.
16 Schuppert nor I have any substantial knowledge
17 of the Criminal Code, but we would be surprised
18 if it does not already make it a felony for a
19 public adjuster to commit insurance fraud or
20 conspire to do so. If this is the case, then
21 the bill is unnecessary.

22 We also ask you to consider whether
23 House Bill 2816 is appropriate. It grafts a
24 crime code into a regulatory code, leading to
25 such problems and injustices, as I have just

1 discussed.

2 Finally, the act entrusts the
3 Insurance Department with policing public
4 adjusters. The Department is well qualified and
5 positioned to do so. However, this bill would
6 remove, at least in part, the power of the
7 Department to do so. We believe that this would
8 be unwise because the Insurance Department is
9 best able to do this, and also because this
10 would further burden the State Attorney
11 General's Office and the district attorneys of
12 the various counties.

13 We ask that House Bill 2816 be
14 rejected. If it is not rejected, we ask that it
15 be amended to cure its defects, by making it
16 expressly clear that only, only violations of
17 the act that constitute insurance fraud, or some
18 other felony, can be prosecuted or punished as a
19 felony.

20 This concludes my prepared testimony.
21 Thank you for having us here today. If any of
22 the representatives have any questions, Mr.
23 Schuppert and I will be glad to answer them.
24 Thank you.

25 CHAIRMAN MICOZZIE: Thank you. Any

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1 members have any questions; comments, questions?

2 (No response.)

3 CHAIRMAN MICOZZIE: You gave such a
4 good testimony that there are no questions.

5 MR. STRAFF: Thank you.

6 CHAIRMAN MICOZZIE: I'm sure you'll
7 work with Representative Godshall and try to
8 iron out some of your concerns.

9 MR. STRAFF: Thank you very much.

10 CHAIRMAN MICOZZIE: Thank you.

11 Next is Independence Blue Cross, Ed
12 Litchko, Senior Director of Corporate and
13 Financial Investigations and, of course, Mary
14 Ellen McMillen, Vice President. Welcome, and
15 you may begin.

16 MR. LITCHKO: Good afternoon,
17 distinguished members of the House Insurance
18 Committee and the Subcommittee on Crime and
19 Corrections, staff, ladies and gentlemen. Thank
20 you for providing Independence Blue Cross with
21 the opportunity to speak on behalf of this
22 important legislative issue.

23 My name is Edward Litchko. I'm the
24 Senior Director of Corporate and Financial
25 Investigations for Independence Blue Cross.

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1 With me today is Mary Ellen McMillen, Vice
2 President for Legislative Policy.

3 IBC is a Pennsylvania hospital plan
4 corporation that provides health insurance
5 coverage for over 2.7 million members in
6 southeastern Pennsylvania. IBC is the only
7 regional insurer and one of the very few
8 nationally that participates in all areas of
9 health insurance coverage. We serve all
10 constituents, remain the insurer of last resort,
11 and subsidize many of the public programs and
12 our own private program targeted at the
13 uninsured and disadvantaged. IBC is also the
14 largest tax-paying health insurance company in
15 Pennsylvania.

16 The National Health Care Anti-Fraud
17 Association in Washington, D.C. and the U.S.
18 Chamber of Commerce state that by conservative
19 estimates, health care fraud represents three
20 percent of the \$1.7 trillion the nation spends
21 on health care every year. That works out to
22 more than \$50 billion a year.

23 National health care spending will
24 more than double to \$4 trillion a year over the
25 next decade. Some national agencies have

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1 estimated that up to 10 percent of every dollar
2 spent is attributed to fraud, a potential \$400
3 billion a year. At a time when skyrocketing
4 costs are threatening America's health insurance
5 care system, Independence Blue Cross, IBC, has
6 continued to refocus its efforts to control the
7 major sources of increased costs: health care
8 fraud, waste, and abuse.

9 Over the last five years, IBC's
10 Corporate and Financial Investigations
11 Department, CFID, has recovered over
12 \$125 million in overpaid claims and has targeted
13 and is pursuing an additional \$40 million for
14 recovery. Although a significant number, it
15 represents less than three-tenths of one percent
16 of all claims paid by IBC over the same period
17 of time. If we were to apply national
18 estimates, CFID could have recovered
19 \$1.1 billion.

20 IBC, in order to satisfy our members'
21 requests for the best possible health care and
22 our providers' demands to be paid timely,
23 processed over 29 million medical claims in
24 2005, which were paid on an average in 10 days
25 based primarily upon our health claim processing

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1 system's soft edits. Soft edits mean that when
2 a claim is submitted to IBC, the computer checks
3 only to see if the provider has a contract, the
4 member has our coverage, and all other fields on
5 the claim are filled. This superficial review
6 satisfies providers' financial needs; however,
7 it creates a pay-and-chase scenario for
8 insurers.

9 CFID utilizes sophisticated fraud,
10 waste, and abuse data mining software to analyze
11 all claims submitted by providers and pharmacies
12 and compares them against member enrollment and
13 overall provider information. Any trends,
14 patterns or aberrant billing practices are
15 targeted for an in-depth audit or investigation.
16 Unfortunately, the data mining software is
17 applied after the claim has been processed and
18 paid. Currently, we are able to investigate and
19 recover overpaid claims that have occurred over
20 a three-year period of time.

21 Any regulatory limitations on the
22 time in which an insurer can retroactively deny
23 or adjust reimbursements to a health care
24 provider will only add to the growing health
25 care cost epidemic. Insurers need to be able to

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1 retroactively deny or adjust reimbursements to a
2 health care provider at least 24 months after
3 the date the insurer paid the provider.

4 The expiration of the 24-month period
5 of the retroactive denial or adjustment of the
6 claim needs to be tolled while the provider is
7 gathering any and all records that were
8 requested by the insurer which would permit the
9 insurer to determine if the claim submitted is
10 supported by medical/billing records.

11 Over the last five years, we have
12 received over 3,200 allegations of fraud, waste,
13 or abuse. Over 53 percent of these allegations
14 were against providers, with the highest number
15 against chiropractors. Approximately 800 fraud
16 investigations were initiated from all
17 allegations received. Over 230 referrals for
18 criminal prosecution were made to law
19 enforcement and regulatory agencies, which
20 resulted in 84 indictments, 58 convictions/
21 guilty pleas and sentences. Twenty percent of
22 all referrals to law enforcement were on
23 chiropractors. Individuals have received
24 sentences ranging from probation to
25 incarceration of 35 years.

0070

1 Fraud schemes investigated include,
2 but are not limited to:

3 The intentional billing for services
4 not provided;

5 Falsifying medical diagnoses or
6 procedures to maximize payments;

7 Misrepresentation of dates,
8 descriptions of services, or identities of the
9 subscribers and providers;

10 Misrepresentation of the location
11 where the service was rendered;

12 Intentionally billing for more costly
13 service than the one that was provided, or
14 billing for duplicate services;

15 Accepting bribes for patient
16 referrals;

17 Intentionally billing for non-covered
18 services as covered items;

19 Providing false employer group and/or
20 group membership information;

21 Using insurer health cards after the
22 member's coverage was terminated;

23 Knowingly permitting someone who does
24 not have insurance coverage to utilize a covered
25 person's insurance;

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1 Identity theft, utilizing a
2 provider's billing information without their
3 knowledge;

4 Rendering medical care without a
5 license;

6 Rendering care outside the scope of a
7 medical license;

8 Conspiring with durable medical
9 equipment suppliers to furnish and bill for
10 unnecessary equipment and supplies;

11 Theft of a provider's prescription
12 pad and forging the provider's signature to
13 support a drug dependency;

14 Billing for more than 24 hours of
15 service in a day, 365 days in a year, or for
16 dates of service when the provider is
17 hospitalized;

18 Billing for services rendered to
19 immediate family members.

20 As a result of a hotline tip
21 allegation against a health care provider, a
22 data mining software analysis was used to
23 identify the aberrant billing patterns and
24 trends, to include billing for an excessive
25 number of patients per day, billing for family

1 members and double billing. Patient medical and
2 billing records were requested and were never
3 produced since the provider never initially
4 created them.

5 Based on later admissions by the
6 provider, his office manager and a patient, the
7 requested and nonexistent records were
8 fabricated and placed in a tanning salon booth
9 in order to give them the appearance of age.

10 After the \$280,000 fraud
11 investigation was referred to the Montgomery
12 County District Attorney, the three individuals
13 were arrested and all pled guilty to health care
14 insurance fraud and were subsequently sentenced.

15 In another investigation, our data
16 mining software identified a situation where a
17 provider was billing for treating a patient in
18 excess of 24 hours a day, seven days a week, an
19 impossible feat. The billing agency listed
20 itself as a health care provider offering
21 counseling and rehabilitation services. The
22 investigation revealed that the fraud was
23 actually being perpetrated on the provider, as
24 well as IBC, by the billing agency.

25 The building where the office was

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1 located also housed an area where a yoga studio
2 was located. The CEO/treasurer of the billing
3 agency was falsely billing IBC for psychiatric
4 treatment of people who came to the studio for
5 yoga lessons. He also billed for psychotherapy
6 treatment to patients that were rendered by his
7 unlicensed staff. After the investigation, he
8 was referred to the United States Attorney's
9 Office. The CEO/treasurer pled guilty to a
10 \$1 million health care insurance fraud and was
11 sentenced to 30 months in prison and ordered to
12 make restitution to IBC.

13 As the health care system increases
14 in sophistication, so does its vulnerability to
15 fraudulent schemes: something not lost on those
16 who would attempt to commit health care
17 insurance fraud. It's not a victimless crime.
18 Stealing from the health care system is stealing
19 from your family and friends. IBC is committed
20 to servicing our members by giving them access
21 to the best health care provider network and
22 providing and paying clean claims submitted by
23 the providers in a timely manner.

24 We realize that the majority of
25 providers and members are honest and ethical.

1 Unfortunately, the few that are predisposed to
2 commit fraud against the industry are driven by
3 financial greed. We look to the state
4 legislature to work with insurers to protect the
5 citizens of the Commonwealth against the
6 unscrupulous few who are driving health care
7 cost at a skyrocketing rate.

8 Independence Blue Cross supports the
9 provisions of House Bill 2814, which would add
10 the following to the definition of insurance
11 fraud: Pays a bribe, in cash or in kind, to
12 induce the referral of a patient from or to a
13 service provider or health care facility. And
14 solicits or receives a commission, bonus,
15 referral fee, kickback, rebate or bribe, in cash
16 or in kind, or engages in a split-fee
17 arrangement of any sort in return for acceptance
18 or acknowledgement of treatment from a health
19 care provider or a health care facility.

20 IBC also supports House Bill 2817,
21 which directs the Insurance Fraud Prevention
22 Authority to require health care facilities to
23 place posters in each facility announcing that a
24 financial reward would be paid to persons
25 reporting insurance fraud when the report leads

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1 to an arrest and conviction.

2 Finally, IBC is the largest financier
3 of the Insurance Fraud Prevention Authority. We
4 have provided over \$5.9 million in support over
5 the last five years.

6 Thank you again for providing us with
7 this opportunity to present testimony. I'm
8 willing at this time to answer any questions.

9 CHAIRMAN MICOZZIE: Thank you very
10 much. As you know, there was a bill on the
11 floor of the House that passed that it limited
12 it to one year. Can you explain if that went
13 into law, how that would affect your company?

14 MR. LITCHKO: Well, it would -- I
15 right now investigate and retroactively recover
16 three years.

17 Those numbers you heard me say, the
18 \$125 million that has been recovered over the
19 last five years, if that was limited to a
20 12-month period of time, Independence Blue Cross
21 would have recovered somewhere around 40 million
22 of that \$125 million. So by limiting it to 12
23 months, you're preventing insurance companies
24 the ability to go back and recover line.

25 Part of the reason for that is, is

1 that by the time a claim is received and
2 processed and paid and the member receives some
3 notification of the services that were billed,
4 months, sometimes half a year in elapsed time
5 takes place. In the meantime, the claim has
6 already been processed and paid.

7 When we make a request, or identify
8 through an allegation received from a member or
9 through our data mining software, when we
10 initiate an investigation and make a request for
11 records from the provider, on the average it
12 takes another six to nine months for providers
13 to turn all the records over that are needed to
14 determine whether or not the services actually
15 billed were truly rendered.

16 If you take several months from the
17 time the service was allegedly rendered until
18 the claim was processed and paid, until
19 identification occurs, until the records
20 requested were turned over, the 12-month period
21 of time would have elapsed.

22 CHAIRMAN MICOZZIE: If the bill
23 becomes law, how are you going to recover the
24 eight -- Let's say it was law when you were
25 investigating it, how would you recover the

0077

1 \$85 million?

2 MR. LITCHKO: If the law was in
3 effect for 12 months, you wouldn't be able to
4 recover line.

5 CHAIRMAN MICOZZIE: Yeah.

6 MR. LITCHKO: It would be lost
7 revenue to our member provider groups and
8 ultimately would impact in overall premiums that
9 are paid.

10 CHAIRMAN MICOZZIE: And what will you
11 do in the future?

12 MR. LITCHKO: In the future, if -- We
13 would recommend that, at a minimum, the law be
14 (if enacted) at least 24 months; and more
15 importantly that there would be a tolling
16 provision.

17 What I mean by the tolling provision
18 is, is that, when we make a request for the
19 records, whatever period of time it takes the
20 provider to produce the records to allow us to
21 determine whether or not the service was
22 rendered and the claim paid correctly, that
23 period of time should be added on at the end
24 where the records are turned over.

25 So, the request is made, it takes six

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1 months, that six months should be added to -- it
2 should be a 24-month period of time. Give the
3 insurers an opportunity to fully determine
4 whether or not the claim was paid properly.

5 CHAIRMAN MICOZZIE: If it became law
6 of one year, what would the IBC do?

7 MR. LITCHKO: Well, if it became law
8 for 12 months, we would have to put in place
9 what we call hard edits.

10 What that means is: up front, a
11 larger percentage of claims, instead of
12 processing and paying on a timely basis (and as
13 you heard me testify, within an average of 10
14 days) by putting harder edits in place, the
15 claims would suspend or reject back to the
16 providers that would then delay the process of
17 the claim actually being paid by for the
18 provider.

19 CHAIRMAN MICOZZIE: Any questions?
20 Representative DeLuca.

21 REPRESENTATIVE DeLUCA: Thank you,
22 Mr. Chairman. Thank you for your testimony.

23 Let me go back to page 8 where you
24 say, pays a bribe, in cash or in kind, service
25 referrals of patients (and other things),

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1 solicits commission. Now, let me ask you, if a
2 pharmaceutical company provided lunch every day
3 to a physician, is that a bribe?

4 MR. LITCHKO: Was business discussed?
5 Was a pharmaceutical product discussed? In
6 other words, was it, the reason for the luncheon
7 meeting was to discuss some new drug that the
8 pharmaceutical --

9 REPRESENTATIVE DeLUCA: I'm talking
10 about every day. Every day. Not just when they
11 came in. Every day.

12 MR. LITCHKO: I would have a concern
13 if it was every day. Absolutely.

14 REPRESENTATIVE DeLUCA: If that's
15 going on, would you have a concern about that?

16 MR. LITCHKO: Absolutely you have a
17 concern.

18 REPRESENTATIVE DeLUCA: You don't
19 know that's going on?

20 MR. LITCHKO: Not every day.

21 REPRESENTATIVE DeLUCA: Not every
22 day? You've got to do a better job of checking.
23 You ought to do a job of checking like that.

24 How about helping pay for a seminar
25 or a vacation, is that a bribe?

0080

1 MR. LITCHKO: If a pharmaceutical
2 manufacturing company pays for any provider to
3 go to any resort, vacation, golf outing (and,
4 number one, I believe is a taxable event, from a
5 federal standpoint), but I would have a concern
6 with that also. I'd have to determine why was
7 that being provided.

8 REPRESENTATIVE DeLUCA: Doesn't it
9 drive up our health care costs?

10 MR. LITCHKO: It absolutely drives up
11 our health care costs.

12 REPRESENTATIVE DeLUCA: Why couldn't
13 we do a better job of scrutinizing that and help
14 cut some of that fraud and abuse? If the
15 insurance industry is losing all this money,
16 using the ratepayer's money, then why don't we
17 try to put some of the systems in place to
18 scrutinize that?

19 MR. LITCHKO: Well, we're not aware
20 of providers that go off to seminars; that is,
21 there is no mandatory requirement to provide
22 insurance companies with that type of
23 information. So we don't know who attends these
24 seminars.

25 REPRESENTATIVE DeLUCA: Do you know

0081

1 what that reminds me of when you say you don't
2 know about that? It reminds me of the police
3 officer on the corner who doesn't know who's
4 pushing the drugs, yet there are still pushers
5 out there pushing drugs. Or the police officer
6 who's hooked on drugs and he says, I don't know
7 who's pushing drugs. We're not provided the
8 information.

9 I think we have to do a better job,
10 not only up here, but we also need to do a
11 better job with the insurance industry, too, to
12 police some of these allegations on some of
13 these things.

14 Now, you mentioned the fact that a
15 lot of these things are with chiropractors. The
16 look-back time: no other one of the professions
17 have that problem, or you just haven't had time
18 to look back at some of them?

19 MR. LITCHKO: No. I have a record of
20 all of the providers in all of the different
21 specialty categories.

22 My comment was, is that the most
23 egregious is the chiropractic community, by far.
24 The next closest one would be a podiatrist, and
25 they're somewhere around eight, nine percent of

0082

1 that specialty category that's referred to law
2 enforcement.

3 REPRESENTATIVE DeLUCA: How about
4 physical therapists?

5 MR. LITCHKO: Physical therapists,
6 they're around two or three percent of the total
7 that's referred to law enforcement. But I have
8 all of that information in terms of --

9 REPRESENTATIVE DeLUCA: Could you
10 give us any of that information? We'd certainly
11 appreciate if we could have that breakdown.

12 I think we need to do a way better
13 job, and that's why Representative Godshall
14 feels it's very important here. Certainly, that
15 costs all the insurers more money. And I think
16 that these packages of bills will go a long way
17 trying to make the people more conscious of the
18 fact that this thing is happening.

19 And as you know, we have self-
20 referral bills out here, which we consider some
21 of the fraud and abuse, because that's just
22 fraud and abuse that we allow people to
23 self-refer to some of these other independent
24 clinics out there that they have some stock in
25 or part ownership. Myself and the Majority

0083

1 Chairman have bills to prohibit that.
2 Unfortunately, it hasn't gone any place. But
3 maybe the more we bring it to the public's
4 attention, we'll be able to move some of that
5 legislation up here in Harrisburg.

6 So again, I want to thank you for
7 your testimony. And thank you, Mr. Chairman.

8 CHAIRMAN MICOZZIE: Representative
9 Godshall.

10 REPRESENTATIVE GODSHALL: I'd just
11 like to say that, you know, we're not out here
12 to nail anybody or anything. We have a lot of
13 good podiatrists, we have a lot of absolutely
14 totally good chiropractors, and so forth. You
15 know, the testimony that you presented was your
16 testimony, but, you know, really, I'd like to
17 go, you know, beyond that.

18 And for Representative DeLuca's
19 information: my brother's office, which has
20 five acting physicians, they don't have time to
21 take off for lunch (they work right straight
22 through lunch), mainly because, there once was
23 eight doctors and there are only five at this
24 time and they can't find three more; so they
25 don't have time for lunch very often.

1 But I will ask him, the next time
2 he's invited, maybe he can take me along and
3 I'll check it out.

4 REPRESENTATIVE DeLUCA: You know
5 what, Representative Godshall, they must be very
6 lean physicians.

7 REPRESENTATIVE GODSHALL: In some
8 areas of the state, physicians are a little
9 bit -- The physician situation is a little
10 tight.

11 But I just want to say, you know, I
12 really appreciate your testimony. Again, it
13 further shows that there's a need to look at the
14 situation that we're in.

15 And I think a lot of people (all my
16 constituents, our constituents) just look at
17 insurance fraud and think it's, you know, it's
18 just something that's out there. But they don't
19 realize they're paying for it every day. Every
20 day, they buy an insurance policy, they're
21 paying for an insurance policy, it's something
22 they're paying the cost; and so, it behooves us
23 to go forward with this, and I hope that we do.

24 And I really, again, also hope for
25 your involvement as we progress with the

0085

1 legislation. And I thank you very much.

2 CHAIRMAN MICOZZIE: Anybody else have
3 any questions, comments? Representative
4 Hennessey.

5 REPRESENTATIVE HENNESSEY: Thank you,
6 Mr. Chairman.

7 Mr. Litchko, with regard to your
8 investigation over the last five years, you said
9 there were 3,200 allegations, only a quarter of
10 those actually make to it an investigation, and
11 about 30 percent of them actually are referred
12 for prosecution. What does that tell us about
13 the quality of the allegations that you're
14 getting?

15 It would seem to me that if you're
16 cutting out three-quarters of those as not being
17 worth pursuing, you know, it may be the
18 situation where there's lots of people making
19 baseless allegations just maybe out of spite.
20 I don't know.

21 But if you then go on and only 30
22 percent of the investigations then result in
23 referrals for prosecution, is that because
24 you're holding yourself, IBC, to such a high
25 standard in terms of only turning over requests

0086

1 for prosecution where you're pretty sure you're
2 going to be able to nail the guy who's doing
3 something wrong?

4 MR. LITCHKO: Well, the question of
5 the 3,200? Yes, a large percentage of the 3,200
6 allegations that we receive lack merit, or the
7 issue deals with a single one-time event only;
8 in other words, the allegation, let's say
9 against a provider, when we do some initial
10 gathering of the data that we have, it turns out
11 that that one member, that one particular
12 situation, was the only time that it occurred.

13 So a lot of the allegations that are
14 made, we -- The way our system is set up now,
15 any allegation that comes into our company, we
16 record it; so that 3,200 represents a lot of
17 allegations that, as I said earlier, don't rise
18 to the level of an investigation or an audit.

19 The question --

20 REPRESENTATIVE HENNESSEY: I'm sorry,
21 if you're going to break into the second part of
22 that question, let me just see -- What are these
23 allegations? What do you see them being driven
24 by if they don't even result in enough
25 information to go to an investigation stage?

0087

1 Is it spite? Is it somebody being
2 fired and then going back and trying to get
3 their boss in trouble?

4 Why do 75 percent of these
5 allegations not result in at least an
6 investigation by IBC?

7 MR. LITCHKO: Very few allegations
8 are as a result of spite, you know, whether it's
9 against a provider or an employee -- a former
10 employee in a provider's office.

11 The vast majority of them are where a
12 member looks at their explanation of benefits
13 and maybe doesn't understand or doesn't remember
14 the services that they had rendered. But
15 because, as I mentioned earlier, the claim --
16 the services rendered to a patient member, the
17 claim is processed and paid, at some later date,
18 and it does take a little period of time for the
19 explanation of benefits to be sent back out to
20 the members, the written piece of paper that
21 shows who they went to see, who serviced -- the
22 services were rendered by, or what the level or
23 type of service was.

24 There were instances where members
25 read it and don't understand everything that is

0088

1 on it and they will contact you, and we are able
2 to, very quickly, by making a phone call to the
3 providers on -- to determine that a member was
4 there. Or we are able to look at the claim
5 history, the medical history on prior claims for
6 that same member, and we could see that they
7 were being treated for additional injury or
8 condition; and therefore we are able to say back
9 to the member, well, the records actually do, in
10 fact, reflect that you were there, and do you
11 remember receiving the following type of
12 treatment; and, in some instances, they will say
13 yes.

14 REPRESENTATIVE HENNESSEY: Okay.

15 MR. LITCHKO: But I would prefer to
16 receive 3200 allegations than not because they
17 become a pattern over a period. A single
18 allegation by a single member, for one instance,
19 and where the provider today, maybe 20 more in
20 the future from other members going to that same
21 provider and that would then trigger or initiate
22 an investigation.

23 REPRESENTATIVE HENNESSEY: Okay.

24 Thank you.

25 MR. LITCHKO: And the question about

0089

1 the number of referrals to law enforcement,
2 there are a couple of factors that build into
3 that. One of the factors is we have to gather
4 the evidence to show that there is knowledge and
5 intent by the individual that we believe has
6 committed health care fraud against our company.
7 In all instances, as an insurer, we don't have
8 the authority that law enforcement would have,
9 you know, through a Grand Jury process, through
10 law enforcement, the badge. You know the
11 scenario.

12 We simply have to make a request to
13 talk to somebody. And they can deny it, they
14 can say I don't want to talk to you. We have to
15 make a request for records, and if we are not --
16 if we don't have a contract, our provider, they
17 don't have to turn the records over to us.
18 There is nothing that forces that would be done.

19 So if we can't prove that, that what
20 we believe to be knowledge and intent of the
21 health care fraud, we don't make a referral of
22 the law enforcement.

23 And then on top of that, if the
24 evidence that we gathered rises to the level
25 where we believe that we actually have health

0090

1 care fraud, then you get involved with the
2 potential dollar amount of the fraud. You know,
3 does it rise to the level in magnitude and scope
4 that should be referred to the federal law
5 enforcement authority? Does it rise to the
6 level and scope that maybe one of the local
7 district attorneys would certainly pick it up,
8 or the Attorney General's Office would pick it
9 up? So it truly does depend.

10 So the fact that the number has
11 dropped is because we either can't get the
12 evidence to support our fraud scheme or the
13 dollar amount on the magnitude of the scheme,
14 ones the law enforcement authorities are not
15 willing to pick up and help.

16 REPRESENTATIVE HENNESSEY: Thank you.
17 Thank you, Mr. Chairman.

18 CHAIRMAN MICOZZIE: One of the
19 controversies during our long discussions on
20 this issue, meetings and whatever, is that the
21 innocent person, the innocent provider, the time
22 it takes that you send the notice out, they have
23 to respond. And, of course, that's money on the
24 provider side of the ledger. And that was a
25 concern of the providers we were talking about.

0091

1 And just for information and members and
2 whatever, how long does that take, that process?

3 MR. LITCHKO: On the average, it
4 could average somewhere between three and six
5 months. Some offices that have their records in
6 a complete pristine manner, literally could turn
7 it over in weeks, because it's available to
8 them. Others that -- My one example, there were
9 no records so the provider procrastinated and
10 then created those records and then tried to
11 disguise that they weren't today's records.
12 They had to age the paper to make it look like
13 it was old.

14 CHAIRMAN MICOZZIE: Is the average
15 three months?

16 MR. LITCHKO: Yeah, the average would
17 be three. Sometimes as much as six. Again
18 depending on the scope and large size of the
19 provider's practice.

20 CHAIRMAN MICOZZIE: Representative
21 DeLuca.

22 REPRESENTATIVE DeLUCA: Thank you,
23 Mr. Chairman.

24 Ed, I just want to clarify something.
25 On page 5, you mentioned the fact that over 53

0092

1 percent of the allegations were against
2 providers, with the highest number against
3 chiropractors.

4 Without the percentage, how many
5 chiropractors were caught for fraud?

6 Forget the percentage. Fifty-three
7 percent is not any good. Anybody could make --
8 It sounds pretty high. And we could make it up.
9 53 percent of the chiropractors (or even half of
10 the 53 percent), 25 percent would be a lot of
11 chiropractors who were convicted of fraud.

12 How many chiropractors have you
13 investigated that turned up being for fraud?

14 Not percentage-wise.

15 How many? I mean, out of all of the
16 chiropractors you service in your area,
17 Independence Blue Cross.

18 MR. LITCHKO: If you look to the next
19 couple of lines on there, over 230 referrals
20 were made to law enforcement. And then as you
21 break it down, 84 were indicted. So 20 percent
22 of the referrals. So of the 230 referrals that
23 we made to law enforcement or regulatory
24 agencies, 20 percent of those were on
25 chiropractors.

0093

1 REPRESENTATIVE DeLUCA: Twenty
2 percent of the two --

3 MR. LITCHKO: Forty-six.

4 REPRESENTATIVE DeLUCA: Forty-six.

5 MR. LITCHKO: Forty-six of the
6 230 were on a fraud (phonetic; dropped voice) so
7 that would make --

8 REPRESENTATIVE DeLUCA: Okay. How
9 many chiropractors does your organization have?
10 That is, you, in your organization.

11 You know, we mean business. You
12 know, we could play with figures. We can play
13 with figures any time, any way you want. But,
14 you know, 46 out of, what, a thousand, 2,000?

15 MR. LITCHKO: I honestly don't --

16 REPRESENTATIVE DeLUCA: I think we
17 need to know what that figure is, and I would
18 like to have that figure before we crucify
19 chiropractors or any other professionals.
20 Saying that, you know, you can make anything out
21 of this thing. The newspaper is saying, well,
22 you know what? The chiropractors are the
23 biggest abusers out there and they're all
24 thieves.

25 And you've got a lot of these

0094

1 chiropractors or any other professionals who are
2 honest individuals, honest workers, and we don't
3 need to --

4 You know, it's the same way that the
5 public does out there with elected officials.
6 You know, if you get one or two bad guys,
7 everybody is a bum or a crook. You know. So, I
8 mean, I think we need to know that before we
9 just throw out these figures.

10 MR. LITCHKO: I understand.

11 REPRESENTATIVE DeLUCA: I'd
12 appreciate that.

13 MR. LITCHKO: I can generalize by
14 saying that the vast majority of all of our
15 providers, including chiropractors, including
16 chiropractors, are honest.

17 This number, 46, I'm going to -- I
18 mean, we will provide you with the number of
19 chiropractors that we have received claims from.
20 But let's say it's a thousand chiropractors that
21 are out there, forty-six of a thousand is a
22 very, very small percentage.

23 So my point in commenting and what I
24 commented about is, is that, they were by far
25 the most egregious of all the professional

0095

1 provider categories.

2 REPRESENTATIVE DeLUCA: And the
3 reason I bring it up is, the Chairman was
4 talking before about the bill we passed, that we
5 have passed, that some of the members have
6 passed, about the one year.

7 And the professionals had a point,
8 too, because the fact is, you have to have some
9 time, a certain time. You can't go back five,
10 six, seven years. Because, you know what?
11 Their expenses drive up our health care, too.
12 And if they -- their expenses get too high, we
13 put them out of business.

14 So we have to be cognizant of the
15 fact that we have to look at both sides of this
16 issue.

17 And, certainly, I agree that maybe
18 one year is not enough. And, certainly, I was
19 in favor of two years. And I think two years
20 would work. And I'm pretty sure you could get
21 the two years. So, I mean, we've got to be fair
22 about it. It was unlimited before. You can go
23 back and look as far as you want to go back, if
24 I'm not mistaken.

25 MR. LITCHKO: Well, I believe --

0096

1 REPRESENTATIVE DeLUCA: A number of,
2 what, four or five years?

3 MR. LITCHKO: No. I never went back
4 four or five years.

5 REPRESENTATIVE DeLUCA: I don't know
6 about a year. But the fact I had some of my
7 chiropractors back home said you were going back
8 four or five or six years.

9 MR. LITCHKO: Not Independence Blue
10 Cross. And not that I'm the department that has
11 the responsibility to do that. But I can tell
12 you, we never went back four or five years.
13 Three years, yes. I mean, that's -- That's
14 exactly. We're going back three years.

15 But I'll agree, I feel 24 months is
16 more realistic.

17 REPRESENTATIVE DeLUCA: Thank you.
18 Thank you, Mr. Chairman.

19 CHAIRMAN MICOZZIE: Well, for
20 everyone's information, we started at four
21 years, went down to one year. And we tried to
22 make a compromise in two years and it was
23 unacceptable, so the bill passed the way it did.
24 We'll see what the Senate does with it.

25 Tell me what the bill contains as far

0097

1 as fraud itself. The provisions in the bill, is
2 the fraud part still in that bill? I had a
3 question on that.

4 MR. LITCHKO: Yeah. What it had was
5 an exception, whether it's 12 months, 24 months,
6 whatever the time frame is, one of the
7 exceptions would be fraud. So, in other words,
8 if fraud was investigated and ultimately
9 referred, accepted, indicted, convicted, you can
10 go back beyond that period of time. You can go
11 to the -- you know, in the State of
12 Pennsylvania, five years.

13 CHAIRMAN MICOZZIE: Anyone else have
14 any questions?

15 (No response.)

16 CHAIRMAN MICOZZIE: I call this
17 meeting adjourned.

18 MR. LITCHKO: Thank you, Mr.
19 Chairman.

20 (At or about 2:50, the hearing
21 concluded.)

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C E R T I F I C A T E

I, Roxy C. Cressler, Reporter, Notary Public, duly commissioned and qualified in and for the County of York, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

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