

BEFORE THE PENNSYLVANIA HOUSE OF  
REPRESENTATIVES INSURANCE COMMITTEE

PUBLIC HEARING ON HB 2455  
Community Health Reinvestment

The Need to Preserve the adultBasic Program

Submitted by:

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Thank you this opportunity to testify regarding House Bill 2455. My name is Richard P. Weishaupt. I am a senior attorney at Community legal Services, Inc., a non-profit organization that provides free legal assistance in civil matters to low income individuals and families in Philadelphia. Every day we are approached by clients who desperately need health insurance coverage and health care. All too often we have to tell them that they do not qualify for Medical Assistance or Medicaid and that the adultBasic program that potentially covers individuals is over subscribed and has a very long waiting list. We are very concerned that the program is further threatened and that the 40,000 or more people currently covered could lose all coverage.

Before going into some of the legal points in my testimony, a few salient facts need to be pointed out. With the advent of what many have called the Great Recession, Pennsylvania and the rest of the nation are facing record unemployment. Not surprisingly, this high unemployment has resulted in greatly increased rates of uninsurance. Pennsylvania's rate of uninsurance has climbed to 13% of the Commonwealth's population and, at the same time the Medical Assistance program has shot up to 2,123,174 – so that the program now covers more than 1 in 6 Pennsylvanians. Even with this needed program there are 1.44 million people in the Commonwealth lacking health insurance. For those who don't qualify for Medical Assistance, Pennsylvania offers the adultBasic program, which covers people up to 200% of the Federal Poverty Income Guidelines (\$1806 per month for an individual; \$2430 per month for a couple). Of the 1.44 million uninsured Pennsylvanians, 390,131 (27%) are on the adultBasic waiting list. Obviously, this is a program that is desperately needed.

We are here today because the adultBasic program is threatened and, if we don't do something it will go out of existence at the end of the year. While the recently enacted Health Care Reform Act will provide coverage to the adultBasic population through a federally funded Medicaid expansion (up to 133% of poverty) and through subsidized Health Insurance Exchanges (up to 200% of poverty), there is a need to bridge the gap between the expiration of the CHR in 2011 and the effective date of the federal program in 2014. Providing this 3 years of bridge coverage is vitally important to the people of Pennsylvania.

The Blue Cross plans' contribution to the adultBasic program dates back to the Community Health Reinvestment Agreement (CHR Agreement) established in 2005. That Agreement grew out of proceedings then pending before the Department of Insurance concerning the size of Blue Cross reserves and excess surplus. Both the Insurance Commissioner at the time, Diane Kokken,<sup>1</sup> and members of the public, including organizations<sup>2</sup> represented by my organization and the Pennsylvania Health

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<sup>1</sup> The Commissioner's inquiry was officially known as In Re: Reserve and Surplus Levels of Hospital Plan and Professional Health Services Plan Corporations, Notice 2004-01.

<sup>2</sup> The eleven organizations challenging the level of surplus were: Philadelphia Unemployment Project, Consumer Health Coalition, Mon Valley Unemployed Committee, Service Employees International Union, Pennsylvania State Council, PENNPIRG Education Fund, Philadelphia Citizens for Children and Youth,

Law Project, expressed a belief that the Blues were amassing excess surpluses, in the amount of \$3 billion, that were contrary to their statutory obligation to provide insurance to individuals who were otherwise unable to obtain coverage.

The four Blue Cross plans are “institutions of purely public charity” that qualify for tax exemption under the Pennsylvania Constitution, Article VIII, Sections 2(a)(i) and (a)(vi). To qualify as institutions of purely public charity, they must serve a charitable purpose and render substantial portions of their services for free or at greatly reduced, subsidized prices, relieving the government of some of its burden.<sup>3</sup> A strong case was made that the the plans’ enormous surpluses were – and are – inconsistent with the mission of purely public charity.

The 2005 proceedings before the Insurance Commissioner were resolved when the Blue Cross plans entered into the CHR Agreement. Under the agreement, they would set aside a percentage of their premiums for community purposes. Of the premiums that they set aside, 60% would fund the adultBasic program. As you know, that agreement expires December 31, 2010.

As a result of the CHR Agreement, tens of thousands of Pennsylvanians have received health insurance that they would not have been able to afford otherwise. At the same time, the Commonwealth has been relieved of its burden of covering even more of its citizens through the Medical Assistance program. There is no indication that the agreement has been unduly burdensome for the Blue Cross plans. There are provisions in the agreement that allow the plans to withdraw or seek relief if their obligations become too onerous. The plans have made no effort to withdraw or seek relief, and indeed they have continued to add to their reserves.

The General Assembly has expressed concern that the Blue Cross plans were not devoting a fair amount of their resources to charitable purposes, despite the plain language of the CHR Agreement. When it passed Act 62 of 2008, the Legislature made it clear that only well defined charitable contributions would count toward the charitable obligations of the plans. It appears that the General Assembly reacted to our shared suspicion that the Blues have a long history of creative bookkeeping to hide advertising, public relations, and other self-serving activities as “charitable contributions.” Yet even after enactment of Act 62, the plans have submitted vague, and probably illegal, accounts as to how they have satisfied their obligation under the CHR Agreement to devote 40% of their contributions to non-adultBasic charitable purposes. Incredibly, when the Insurance Department asked for further information, the information provided was filed as proprietary information that was not made part of the public record.

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Pennsylvania Alliance for Retired Americans, Action Alliance of Senior Citizens of Greater Philadelphia, PHILAPOSH, Philadelphia Welfare Rights Organization, Citizens for Consumer Justice, Jobs With Justice, Women’s Law Project, and Consumers Union of the U.S., Inc.

<sup>3</sup> This standard was set forth by the Pennsylvania Supreme Court in Hospital Utilization Project v. Commonwealth of Pennsylvania, 487 A.2d 1315 (Pa. 1987).

HB 2455 would continue the Blue Cross plans' responsibility to contribute to the funding of the adultBasic program until the federal health care reform legislation takes effect in 2014. At that point, adultBasic would no longer be necessary due to the federal expansion of Medicaid and the subsidization of health exchanges that will provide subsidies for those low income and working people who do not qualify for expanded Medicaid. In light of their growing surpluses, it is clear that the plans can afford the relatively modest amount of money that it would take to continue funding the adultBasic program.

Two features of HB 2455 deserve some attention. First, raising the percentage of the Blue Cross plans' charitable contribution that funds adultBasic from 60% to 95% will end the bookkeeping controversies that necessitated the passage of Act 62. In addition, raising the contribution percentage will help to address the pressing demand for a public health insurance program, in light of adultBasic's extraordinary waiting list, which is now approaching 400,000 people, or more than 3% of the population of the state; the explosive growth of the Medical Assistance program during a very bad recession; and the alarming erosion of employer based insurance in the Commonwealth.

Second, the assessment level of 2.4% of premiums is reasonable in light of the tax rate that for-profit insurance companies pay. While it is true that the CHR Agreement required a 1.6% contribution, the agreement also required a contribution of 1.0% of Medicare and Medicaid premiums, while HB 2455 has no assessment on those premiums. Indeed, it is possible that the Blue Cross plans' total contribution may actually decrease under HB 2455. (Note that, in the 2005 proceedings before the Insurance Commissioner, an assessment of 3.75% was suggested as reasonable.)

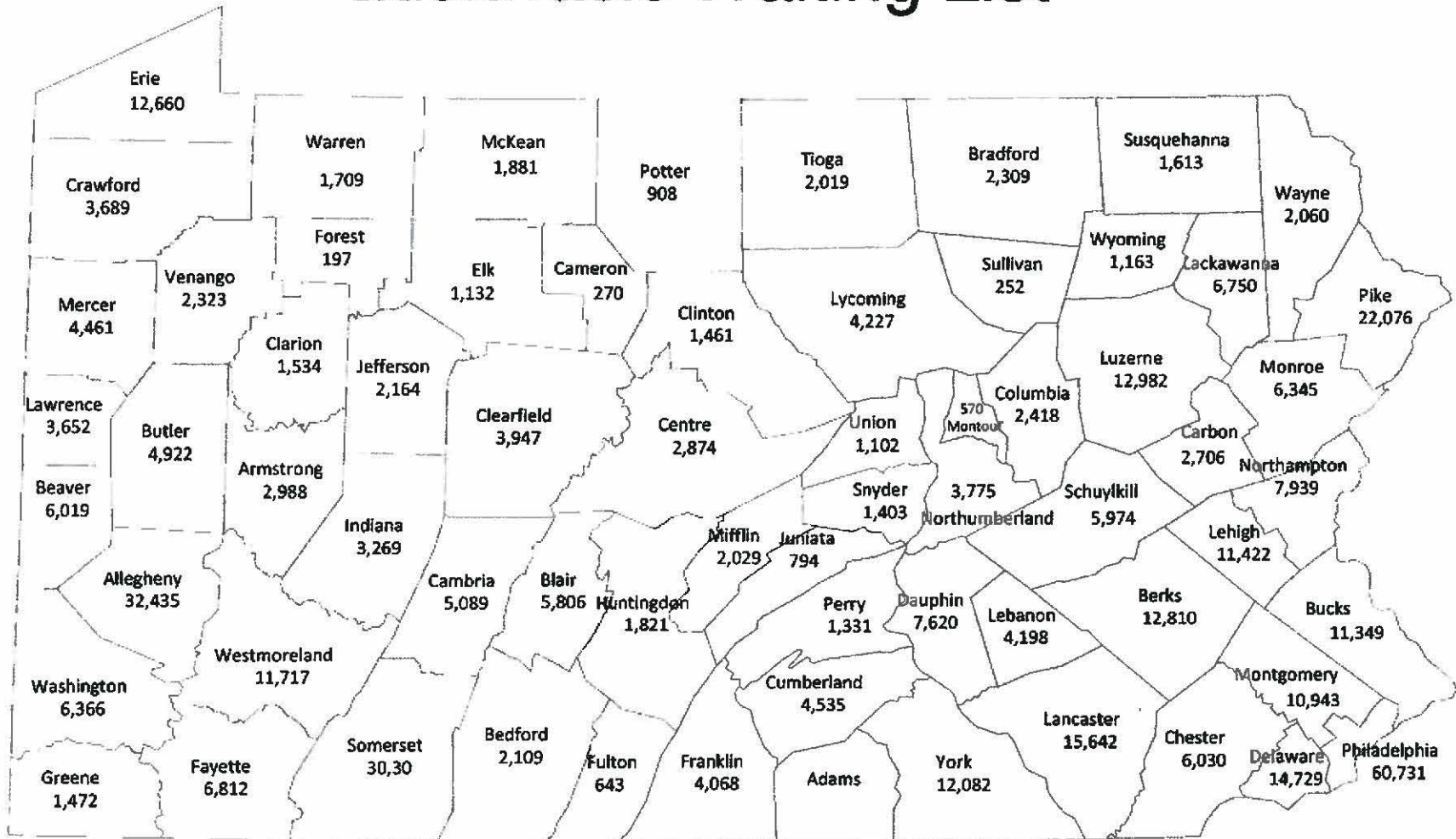
We should not forget that the Blue Cross plans are exempt from other forms of taxation, beyond Insurance Department premium levies, and, under the terms of HB 2455, are protected from any assessment that exceeds 110% of what was required under the CHR Agreement. In short, the distribution allocation and assessment under HB 2455 is both reasonable and necessary to ensure that the Blue Cross plans meet what is in fact their mission: to make health insurance affordable and available to all Pennsylvanians.

In short, HB 2455 is a desperately needed program that saves lives and provides vital services. Continuing to fund it through a community health reinvestment program is a demonstrably successful idea. Covering those who do not have insurance is a perfect fit with the mission of the Blue plans. The amount of their contribution is reasonable and affordable.

Thank you for allowing me to testify on this important matter.



# 390,131 Pennsylvanians on the adultBasic Waiting List



Source: Pennsylvania Department of Insurance, March 2010

