

TESTIMONY

PENNSYLVANIA ASSOCIATION of HEALTH UNDERWRITERS

Implementation of Patient Protection and Affordable Care Act in Pennsylvania

House Insurance Committee

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Mr. Chairman and members of the committee, for the record, I am Shelly Bloom, President of the Pennsylvania Association of Health Underwriters (PAHU), an association representing insurance producers with expertise in health insurance and employee benefit programs. Personally, I serve as Manager of Broker Relations for Emerson Reid. This means that that I work with insurance producers every day who tell me that their clients are apprehensive about how the implementation of the landmark Federal law will take place. I hope that this hearing and others will provide an understanding for them and for legislators and staff as the General Assembly works to implement the law.

As some of you will recall, the Pennsylvania Association of Health Underwriters was invited by Representative Gordon Denlinger to conduct two Briefings for House members and staff back in April. I was told by PAHU's lobbyist that another invitation from a Democratic legislator may be forthcoming this fall because what the two Briefings showed is that legislators and their staff really want and need to be conversant with the new law and how it affects Pennsylvanians and to learn what the General Assembly must do to implement it.

Mr. Chairman, I applaud your decision to hold this hearing. I hope my testimony will provide information on implementation and how PAHU sees the insurance agents as playing a constructive role.

Administrative Implementation

With 2800 pages, the Patient Protection and Affordable Care Act has an incredible number of moving parts, many of which require state action. Up to July 1, 2010, there are a number of specific items on which action needs to be taken, some regulatory and some legislative. Let me talk about implementation of the insurance side of the law. There are health aspects but that is not my area of expertise...

ADMINISTRATIVE IMPLEMENTATION ISSUES

Insurance Portal

Pennsylvania is supposed to have an Internet Insurance portal where consumers can better understand insurance options, both public and private that are open to them. We assume that responsibility was given to the Insurance Department. PAHU was happy to supply the Department with a ready-made Matrix of Insurance in Pennsylvania that a California think tank crafted for the national Association of Health Underwriters. We have not heard back from the Commissioner's Office whether or not this Matrix was useful to them but we hope so. The Insurance Department is stretched thin in resources and we felt that supplying them with a ready-made template might reduce or even eliminate their costs in putting one together.

Implementation Executive Order

Governor Rendell issued Executive Order 2010-2 which established his view of how implementation of the Patient Protection and Affordable Care Act will be achieved in Pennsylvania. It has two parts. First is the actual implementation group including public officials. The second is a stakeholders' group designed to provide advice on various aspects of the implementation including the Risk Pool, Exchanges etc. In looking down the list of included stakeholders, PAHU sees that the Governor's office forgot to include insurance agents.

We believe that this is a tragic oversight since insurance agents are at the heart of the insurance transaction. In fact, we are pivotal in that insurance agents may be the only ones who talk with ALL parties. Please consider that agents are the common link between clients, insurers, health care providers, and the government. The government is important here because agents explain new rules (autism mandated benefits, mini-COBRA, dependent age change, small business health insurance premium tax credit, etc.) to the client. In addition, agents are the boots on the ground as they help their clients find good coverage that is affordable.

We think insurance agents have standing and should be named to the Governor's stakeholders' group. Doing so would add expertise and credibility to the process.

Similarly, insurance agents should be included in the General Assembly's approach to implementation. House Bill 2462 was introduced to also establish through statute an implementation game plan. PAHU has already talked with the bill's prime sponsor, Rep. Josh Shapiro, about our inclusion.

Given the two approaches, the Governor's Executive Order and HB 2642, PAHU prefers passage of legislation since a new Governor may decide that the groundwork set by Executive Order 2010-2 is not the direction he wants to go and as such could void the work done in the last six months of the Rendell Administration. This would in effect set the clock back. Passing legislation ensures an institutional infrastructure that we think is necessary in order to have a thought-out and consistent implementation process.

Rate Review by HHS

Another regulatory issue is that the US Department of Health and Human Services (HHS) now has acquired legal authority to review rate increases by health insurers. PAHU disagrees with that part of the new Federal law because we believe that the best regulation is here at home. The Pennsylvania market place is different from New Jersey or Florida or Idaho. Pennsylvania regulators would in our view do a better job than HHS trying to regulate health insurer rate changes in all 50 states. Nonetheless, the law is the law. PAHU hopes that Commissioner Ario and his fellow Commissioners do not let themselves be sidelined by an HHS that seems to be trying to expand its authority at the expense of the state regulatory system that has served us so well. Of course PA has an odd sort of vacuum in that rate reviews for the for-profit carriers are not regulated by the Insurance Department and this will no doubt weaken the Commissioner's hand when he advances concerns to HHS policymakers.

LEGISLATIVE IMPLEMENTATION ISSUES

Risk Pool

This is perhaps the most immediate legislative priority. The Federal law requires that there be a Risk Pool for uninsured adults who cannot get insurance because of a pre-existing condition. This Risk Pool includes those without insurance for six months. As you know, the PA Senate passed Senate Bill 507 and sent it to the House. In the House, Rep. Nick Kotik introduced House Bill 2514 to do the same. The bills reach the same goal but are different in how they get there.

Of key interest to the PA Association of Health Underwriters is how the Risk Pool is marketed. We look at the Risk Pool as an insurance market of last resort just as the Assigned Risk program is auto insurance of last resort and JUA is the medical malpractice market of last resort.

As such, the Risk Pool must be marketed by licensed insurance producers. Agents know insurance and consumers are protected because insurance agents are regulated. If non-agents market the Risk Pool, they may be well-intentioned but they are not qualified to “sell, solicit and negotiate contracts of insurance” per the language of Act 147 of 2002, the Producer Licensing Law. PAHU opposes Senate Bill 507 because it expressly permits non insurance agents to sign up people in the Risk Pool. PAHU disagrees with the section within Senate Bill 507, PN 1865 (Page 15, line 12) that states: ***“The selling or marketing of plans shall not be limited to the administering insurer or its agents.”*** PAHU supports Rep. Kotik’s bill although we think it could be clarified with the following language:

Selling, soliciting or negotiating contracts of insurance for the Pennsylvania High Risk Insurance Pool must be done in accord with the insurance producer licensing requirements specified in Sections 601 and Section 603-A of Act 147 of 2002.

Insurance Ombudsman

The Federal law requires that all states have an Insurance Ombudsman to assist consumers in navigating the world of insurance and in helping with claims resolution etc. As I understand the law, it can either be a function of the Insurance Department or free-standing. PAHU believes that the Insurance Department already protects the public as its mission. It already has a consumer services and enforcement section designed to address consumer questions and complaints. Thus, we don't see the need to build something new. PAHU would like to see the current Insurance Department Office of Consumer Liaison upgraded to include the new functions of the Federal law. Creating a new Office of Consumer Advocate seems duplicative to what the Insurance Department does now.

A new office will add to consumer confusion as to where they should go with a concern. The public knows that the Insurance Commissioner is their advocate and the waters should not be muddied with a new office. Insurance agents could help the Insurance Ombudsman since our job is to help customers understand the system and to work with them in resolving legitimate health claims. It is what we do now and we welcome the opportunity to add ourselves as a resource. Agents have the pulse of the insurance buying community and are also the Department's eyes and ears re reporting improper marketing practices

Exchanges

As the General Assembly moves on to later implementation, central is legislation creating a state Exchange. Again, PAHU holds that Exchanges are insurance and must be marketed by licensed insurance professionals, not well-intentioned but non-credentialed persons and groups. The federal law calls for Navigators to help consumers and PAHU certainly does not object to organizations such as farm groups or civic-minded organizations providing outreach as long as the actual enrollment is done in accordance with Act 147. Outreach by Navigators is important in getting the word out but the actual transaction must be compliant with Act 147. Act 147 does not just allow agents to market insurance along with a host of other groups. It mandates that insurance producers be the conduit to obtaining an insurance product.

Amending Act 4

Act 4 is legislation passed in Pennsylvania bringing dependent age to 30 as an attempt to insure more young adults. That effort has been trumped by HR 3590 and the Reconciliation Act because of dependents being included until age 26. There are inconsistencies. Act 4 says that you can't be married. The Federal law says that marital status does not matter. It would appear that PA law must be brought into line with Federal law regarding eligibility for the expanded dependent status. Not doing so will only add to the confusion being felt now by those who do not know which set of rules apply. Part of that "fix" might be to examine Federal tax treatment of the new dependents and make sure that PA's Tax Code is consistent with regards to tax treatment.

Conclusion

In conclusion, PAHU wants to work with the General Assembly in implementing the Federal law. Hopefully you will be helped by the insights presented today. Thank you again for convening today's hearing. We look forward to being a resource for you.