Government Spotlight

Departments of Aging and Insurance
Protecting Seniors from Scams, Abuse

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Message from the Commissioner

As 2018 comes to a close, I am grateful for a productive year as Pennsylvania’s Insurance Commissioner. I am especially proud of the Insurance Department staff, who are working hard every day to protect and educate consumers and to effectively and efficiently regulate Pennsylvania’s large and diverse insurance markets. Throughout the year, we tackled numerous issues.

Our department expressed our concerns about the federal government’s efforts to try to dismantle the Affordable Care Act, including the rules to expand association health plans and short-term, limited-duration plans without appropriate consumer protections. (continued on page 2)

You may contact the department at RA-IN-Insights@PA.gov
We are working to ensure that consumers are protected as new health plans enter the market, and informed about new options so that they can be empowered to make educated decisions about their coverage. Once again, federal funding for ACA open enrollment advertising was slashed, so our department launched a significant outreach by holding multiple open enrollment events throughout the state, creating videos that take consumers step by step through the health insurance enrollment process, and producing TV, radio and social media ads.

Based on the most recently available Census data, our state’s uninsured rate is at a historical low of just 5.5 percent. As the ACA continues to change, our department will continue to work to ensure that Pennsylvanians have access to comprehensive health coverage, with the ultimate goal of ensuring our uninsured rate continues to move in the right direction, not the wrong one.

The department also joined the Wolf Administration’s multi-faceted effort to combat the opioid crisis. As part its ongoing commitment to combat the opioid overdose crisis, the Wolf Administration recently reached an agreement with the state’s seven largest commercial insurers to increase access and coverage for Medication Assisted Treatment (MAT) for opioid addiction, ensure access to the life-saving overdose reversal medication Naloxone for any individual who seeks it, and encourage appropriate prescribing of opioids themselves to prevent substance use disorder before it occurs. The guidelines also provide that MAT will be covered at the lowest patient cost tier on the plan’s pharmacy benefit, as applicable.

This agreement brings these insurers largely into alignment with what has already been implemented through the commonwealth’s Medicaid managed care plans. The agreement, however, may not apply to self-funded insurance plans.

Since Gov. Wolf first signed a heroin and opioid disaster declaration in January, 16 state agencies have continuously worked to fight the opioid epidemic and have made significant progress to help individuals and families dealing with this crisis. I’m proud that the Insurance Department was and remains a significant contributor.

We also focused on protecting consumers who are considering purchasing annuities. A new law takes effect in late December that will add consumer protections to annuity sales by requiring an agent, or an insurance company if it sells directly to a consumer, to gather much more financial information to determine whether an annuity is suitable for the consumer.
Commissioner continued

At an October news conference, Commissioner Altman, along with the Pennsylvania Secretaries for the Departments of Human Services, Health and Drug and Alcohol programs and representatives from commercial insurance companies, announced a major agreement with commercial insurers in Pennsylvania to align prior-authorization processes for opioid prescriptions to protect patient health and safety while ensuring patients have unrestricted access to medication-assisted treatment (MAT) when needed to battle opioid addiction.

The new law also requires, for the first time, anyone selling annuities in Pennsylvania to take four credit hours of training to sell these products, and holds the insurance company accountable for making sure anyone selling annuities for them has completed this training.

The Insurance Department can now also better hold both insurance companies and producers accountable for inappropriate annuity sales practices under the new law. Finally, as we enter the holiday season, our department partnered with the Pennsylvania Liquor Control Board to offer tips on safely hosting parties and to remind Pennsylvanians of potential liability if a guest has an alcohol-related incident, even after leaving the party.

I am looking forward to a new year, which comes with new opportunities to ensure that we have a stable, thriving insurance market and that consumers are protected. I wish you a safe and happy holiday season!

Jessica K. Altman

Insurance Department Bureau Protects Medical Malpractice Victims and Health Care Providers

The Medical Care Availability and Reduction of Error Fund (Mcare), a bureau within the Insurance Department, has been protecting Pennsylvania medical malpractice victims and health care providers since 2002.

It does so by providing a $500,000 layer of coverage once the $500,000 layer of coverage doctors and hospitals secure in the private market is used. The Mcare coverage compensates victims with catastrophic injuries because of medical malpractice. Combined, the two coverages result in each doctor and hospital having $1 million available for each medical malpractice occurrence.

Once a health care provider determines a medical malpractice claim will settle and the settlement amount will exceed $500,000, responsibility to negotiate a settlement is transferred by a “tender” of coverage to Mcare. It is at that point experienced Mcare staff work to an appropriate resolution of the claim.

The Mcare claims examiners have more expertise than anyone adjusting Pennsylvania catastrophic medical malpractice claims since that is the sole and exclusive focus of their work. Because of this, relationships have been built with those lawyers defending doctors and hospitals accused of medical malpractice and the lawyers representing injured patients. Mcare facilitates the wishes of the parties and provides efficient processes and procedures; a standard Mcare release form has been successfully used for years. Additional mediation and arbitration procedures and documents are also available for use in cases where the parties want to explore settlement with guidance from trained professionals in claims resolution. If many of the parties want to settle but one or more don’t, Mcare seeks to protect the doctor(s) or hospital(s) from an excess verdict in the documents settling the case with the other parties.
Medical Malpractice Victims continued

Recently a medical malpractice insurance company was placed into liquidation because its obligations were more than its assets. There is a guaranty fund for medical malpractice insurance companies in liquidation, but its coverage is $300,000 per claim and subject to some other limitations. Without the Mcare Fund, that would be all the available coverage for each claim of medical malpractice. With the Mcare Fund, it’s $500,000 layer of coverage is still available if the claim is sufficiently severe.

The revenue Mcare uses to pay claims and run its operations does not come from the General Fund; rather, each year Mcare uses a statutory formula to collect assessments from doctors and hospitals providing health care in Pennsylvania. Unlike an insurance company, Mcare does not reserve for its claims payments or include a provision in the assessments for profit. Instead, once Mcare determines its claims payments and operating expenses for a year, any amount projected to be left is built in to reduce the amount collected in the following year. This is often referred to as a “pay as you go” system.

In 2019, the Insurance Commissioner will conduct a study and determine whether the limits written in the private market should go to $750,000 with a corresponding decrease in the amount provided by Mcare to $250,000. The past seven times these studies have been conducted, the Commissioner has not shifted the limits.

Mcare works with counsel, health care providers, primary insurers and the courts on a daily basis to ensure that victims and health care providers are protected.

Department Educates Students on Careers in Insurance Regulation, Risk Management

As college students explore their career options after graduation, it’s important that they are exposed to the many job opportunities in the insurance field, including opportunities with the Commonwealth of Pennsylvania.

The Insurance Department is always seeking new ways to reach qualified professionals and the next generation of workers to join our team. Our department recently participated in the Zeigler Institute for Professional Development conference at Bloomsburg University. The ZIPD conference is convened at the Zeigler College of Business at Bloomsburg.

(continued on page 5)
Helping an aging loved one make the decision to move out of a maintenance-intensive home can be overwhelming. Although most seniors prefer to age in place, the hassles of homeownership can make the prospect of moving into a community designed especially for aging individuals an inviting option. For those who are ready to make their final relocation, access to medical care is an important consideration. Continuing Care Retirement Communities (CCRCs) offer a continuum of health care services, from minimal care in independent living units to assisted living and skilled nursing care. The Pennsylvania Insurance Department issues certificates of authority to CCRCs that meet statutory requirements and periodically examines their financial solvency. The Departments of Human Services and Health monitor the health care quality of the assisted living and skilled nursing services offered in these communities.

Pennsylvania law requires CCRCs to file annual disclosure statements, which include residents’ agreements, as well as financial information about the community. These statements must be made available to all residents and prospective residents. The Pennsylvania Insurance Department now posts these statements on its website. Under the heading “Coverage,” choose “Continuing Care” to be directed to a section of the website which offers a directory of all communities licensed in the state, by either name of the facility or by county.

CCRCs charge entrance fees that are comparable to the cost of a private home, often more than $100,000 to as much as $1 million. Some communities offer contracts that refund nearly all of their entrance fees when a resident leaves or dies, while others retain the fees, sometimes as security for the cost of future medical care. Still others offer a variety of options.

It is important to understand what health care services – if any – are included in the payment of periodic fees. Life care contracts are the most comprehensive; in exchange for a monthly fee that does not change except for inflation, a community guarantees that all future medical care will be covered. With the cost of skilled nursing home care in Pennsylvania averaging about $100,000 annually, a life care contract can reduce the worry of being able to afford future care. Fee-for-service contracts can be attractive to those who choose to pay only for the health care services they use. Finally, modified or capitated contracts offer discounted rates for future health care. Contracts should be reviewed carefully, ideally with the assistance of a professional attorney or accountant.

It gives alumni and other business leaders with vast and diverse business experience an opportunity to engage with students within the business school. The Insurance Department was included due to our participation on the Pennsylvania Association of Mutual Insurance Companies (PAMIC) student engagement committee. Our chief of staff Alison Beam participated in three panels: Empowering Women in Business, International Business and a luncheon convened by PAMIC for students interested in insurance.

The department’s participation in this conference is part of our overall strategy to get students interested in the field of risk management and, if they so desire, into insurance regulation.

Our department recognizes that a third of our staff is of retirement age in the next few years. While we are committed to investing in our current employees through various employee development opportunities and programs, we also recognize the need to bring in talented graduates and professionals to help us achieve our goals of regulating the insurance industry and protecting and educating consumers.

Our department was excited to participate in the conference and educate students on potential careers at the commonwealth and looks forward to similar opportunities in the future.
Insurance Department, LCB Encourage Safe, Responsible Holiday Party Hosting

The Insurance Department continues to partner with other state agencies to offer consumer protection tips, this time working with the Liquor Control Board (LCB) to encourage safe and responsible hosting of parties, especially during the holiday season.

Commissioner Altman joined LCB Chairman Tim Holden and Board Member Michael Newsome at a Fine Wine and Good Spirits store in Lancaster County earlier this month to offer tips on safe party hosting regarding potential alcohol liability, and how an incident involving a guest who consumes alcohol could be covered or not covered by a homeowners or renters insurance policy.

The Insurance Department and LCB announced that a flier offering responsible hosting tips would be stuffed in customers’ bags at more than 600 Fine Wine and Good Spirits stores around the state this holiday season. This flier is available on the Insurance Department’s website, on the homeowners insurance page, along with another information piece, titled “Home for the Holidays,” offering tips on fire safety for holiday decorations, party hosting liability, and how to lessen the chances of gifts being stolen.

Commissioner Altman encourages insurance producers to share these fliers and discuss these important homeowners and renters protections with clients. She said a party host could be liable for negligence for an intoxicated guest’s actions after the guest leaves the party, similar to being liable for injuries or property damage someone may suffer if a sidewalk for which the insurance policy holder is responsible is found to have contributed to the injury by being in disrepair or not cleared of ice and snow.

Commissioner Altman noted a homeowners or renters insurance policy might provide some liquor liability coverage, but this coverage can vary from policy to policy. A policy might provide coverage for things such as the costs associated with a legal defense, including expenses, settlements, or judgements, but some policies might exclude coverage for liability relating to serving alcohol in your home or apartment, especially if a criminal charge or conviction results from an incident involving alcohol.

Altman added even if a policy has liquor liability coverage, in cases where there is extensive property damage, significant injury, or death, the liability limits in the policy might be insufficient to cover the costs. She recommended consumers review their policy and discuss their liability coverage with their insurance professional and if appropriate, consider adding a liquor liability rider to provide extra coverage.

Tips on the flier being stuffed into customers Fine Wine and Good Spirits store purchases include:

- Making sure as a host you stay sober to monitor your guests’ sobriety
- Having a good amount and variety of food on hand throughout the party
- Offering a variety of non-alcoholic beverages
- Stopping alcohol service about an hour before the party ends
- Never serving alcohol to anyone under 21 years of age, which is illegal and carries significant civil and criminal liabilities

The flier also lists actions a host can take if a guest has had too much to drink or is too tired to drive safely, including:

- Arranging for one or a few guests to not drink alcohol during the party and serve as designated drivers
- Calling a cab or ride-share for a guest
- Offering for a guest to stay overnight
As the 2017-2018 legislative session ends, the Pennsylvania Insurance Department would like to highlight four bills that were signed into law on Oct. 24 and will impact the insurance industry.

**Senate Bill 1205**, sponsored by Sen. Dan Laughlin, was signed into law as Act 163. This model law is an accreditation standard of the National Association of Insurance Commissioners (NAIC) that requires an insurer that is domiciled in the commonwealth or an insurance group of which Pennsylvania is a lead state to complete a corporate governance annual disclosure (CGAD) filing. The CGAD requirement will begin in January 2020, with CGAD filings due by June 1 of each year. A CGAD filing will be required each year and an entity must file an amended version of the previous CGAD filing noting changes, if any. Failing to file a CGAD in a timely manner may result in a monetary penalty. All CGAD information provided to the Insurance Department is privileged and confidential and is not subject to discovery in private civil action, subpoena, or the Right-to-Know Law.

**House Bill 504**, sponsored by Rep. Alex Charlton and signed into law as Act 97, creates a limited lines license for owners of self-storage facilities to sell coverage for loss or damage to personal property stored at their facility. The new law allows the Insurance Department to issue a license to act as a self-service storage insurance producer to an owner, or their employee, of a self-storage facility. An individual licensee is not required at each self-storage facility; a licensee can authorize an employee of the facility to act on behalf of the licensee. However, it is the responsibility of the licensee to train all employees acting on his or her behalf, under his or her self-storage producer license. Additionally, the act requires brochures or other written materials to be readily available to potential occupants. The written materials must include information summarizing the insurance terms, including the identity of the insurer, price, benefits, deductibles, exclusions and conditions; disclose that the policy offered may be a duplication of coverage by an occupant’s homeowners or rental policy; and disclose that if insurance is required as a condition of rental, the requirement may be satisfied either by the occupant purchasing insurance or presenting evidence of other applicable insurance.

**House Bill 1013**, sponsored by Rep. Stephen Barrar and signed into law as Act 103, addresses reimbursement issues related to emergency service providers responding to a call where an individual does not require transportation to a hospital or refuses transport. Under the new act, all managed care plans, Medical Assistance, and group and individual major health insurance policies issued by a licensed health insurer may not deny a claim for payment solely because the enrollee does not require transport or refuses to be transported when emergency services are rendered by a licensed emergency medical agency. The bill also includes language that requires a health insurance policy to allow an insured who receives vision care from an in-network provider to select an out-of-network supplier on the recommendation or referral from the in-network provider. The in-network provider must provide a written disclosure to the insured before recommending, referring, prescribing or ordering any vision care from the out-of-network supplier. The written disclosure must state that the out-of-network vision care supplier is not an in-network vision care supplier and that the insured has the option of choosing an in-network vision care supplier. Additionally, a health insurance policy that has a discount program for noncovered services must permit an insured to receive, at a non-discounted rate, a noncovered service from an in-network vision care provider that does not participate in the discount program. The provider must give the insured a written disclosure that states the provider does not participate in the discount program before providing the noncovered service.

Finally, **House Bill 1840**, sponsored by Rep. Rob Kauffman and signed into law as Act 111. It re-establishes a provision in the Workers’ Compensation Act authorizing impairment rating evaluations for claimants that the Pennsylvania Supreme Court found unconstitutional in the 2017 decision of Protz v. WCAB (Derry Area School Dist., 161 A.3d. 827 (Pa. 2017)). The bill reduces the workers’ compensation impairment rating from 50 percent to 35 percent. If the threshold of impairment is equal to or greater than 35 percent, then an employee is considered totally disabled. The Protz decision was addressed by specifying the use of the American Medical Association “Guides to the Evaluation of Permanent Impairment,” 6th edition (second printing April 2009). Finally, the bill increases the reasonable expense for a burial from $3,000 to $7,000.
State Government Spotlight:

Departments of Aging and Insurance Protecting Seniors from Scams, Abuse

by Secretary Teresa Osbourne

The Wolf Administration is committed to protecting older Pennsylvanians from all forms of abuse, neglect, exploitation, and abandonment. Protection means involvement, and in order to prevent seniors from becoming victims of fraud, we must educate them on what these scams are, how they work, and where to call for help.

Older adults are less likely to report fraud because they often don’t realize they have been scammed or they don’t know who to report it to. In other cases, they may be too ashamed or embarrassed to report it, in part because they worry that their relatives or friends will think that they no longer have the mental capacity to take care of their own financial affairs.

The Pennsylvania Insurance Department has been a key partner in combatting elder abuse, especially in developing stronger protections for seniors who are being pressured to purchase or replace annuities. The Insurance Department worked with the legislature to pass Act 48, which requires an agent, or an insurance company that sells directly to consumers, to gather more financial information to determine whether an annuity is suitable for the consumer. Act 48 goes into effect on December 25th and anyone selling an annuity must now base the annuity’s suitability on the consumer’s:

- Age and annual income
- Financial situation, needs experience, and objectives
- Intended use of the annuity and time frame for using the money
- Existing assets, including investments and life insurance
- Risk tolerance and tax status

The Department of Aging is working closely with the 52 local Area Agencies on Aging and ensuring that they have the information and resources needed to educate older adults about this scam and the new consumer protections.

Each of us has a stake in protecting older Pennsylvanians from fraud and abuse, and we hope that you will join us in this effort to educate yourself and the seniors in your life about these important topics. To learn about a number of issues important to seniors and access a wide array of resources, you can visit the Department of Insurance’s senior page. Consumers can also ask a question or file a complaint on the website, or by calling the Consumers Services Bureau hotline at 1-877-881-6388.

It is only by working together that we can create a world free of elder abuse. Each of us must learn to recognize elder abuse when we see it, and know what to do when we encounter it, by reporting it. If you believe that an older Pennsylvanian is being abused, report it to Pennsylvania’s 24-hour statewide abuse hotline at 1-800-490-8505.
On June 28, 2018, Gov. Tom Wolf signed into law House Bill 152, which significantly increases the responsibilities insurers and producers have when making an annuity transaction. This bill creates a number of new disclosure, record keeping, and educational requirements to be put into place to ensure suitable sales are being made to consumers when purchasing an annuity. This law will be known as Act 48 and goes into effect on December 26, 2018.

This annuity suitability law explicitly defines the “suitability information” about a consumer that must be considered when making a recommendation for a sale or replacement of an annuity. This suitability information includes age, annual income, financial situation and needs, including the financial resources used for the funding of the annuity, financial experience, financial objectives, intended use of the annuity, financial time horizon, existing assets, including investment and life insurance holdings, liquidity needs, liquid net worth, risk tolerance, and tax status. This information is much more extensive than what was required to be considered before the passage of Act 48.

With the newfound clarity surrounding the specifics of "suitability information," the responsibility is now on the producer to document all aspects surrounding the recommendation for an annuity replacement. Included in this documentation must be the impact to the consumer, the benefit to the consumer and the consumer’s past. If the consumer is going to be charged significant surrender fees and tax penalties, the producer will have to prove how this sale is still suitable. Additionally, if the consumer had an annuity replacement in the preceding 36 months, a producer has an even higher burden to demonstrate why another replacement is suitable. If the producer cannot satisfactorily document this information, and an unsuitable sale is made to a consumer, the department has the authority to investigate this circumstance, request documentation and take action against the producer for violating provisions of this law.

For consumers, this law significantly increases protections surrounding annuity sales and replacements. Many times, annuity products are very complex and hard to understand; however, the burden is now clearly on the producer and ultimately the insurance company to protect these consumers from being deceived or misinformed on the annuity products.

Because of the passage of this law, insurers must now have a supervision system in place which contains elements such as, producer training manuals on compliance with this law, specific annuity product training for producers, a screening system for review of each recommendation and a detection system for potentially unsuitable sales. This detection system could include the insurer conducting consumer surveys or interviews, or issuing confirmation letters to consumers to ensure their satisfaction with the product.

The enhancements to consumer protection due to the enactment of this law are substantial, both through the increase in a producer’s responsibilities when making a recommendation for an annuity replacement and through the department’s ability to hold insurance companies and producers accountable for unsuitable annuity sales. This law is undoubtedly a win for Pennsylvania consumers.
Workers’ Compensation Security Fund Addresses Opioid Crisis

Opioid addiction has reached unprecedented heights, leaving the nation facing one of its worst drug crises ever. Millions of Americans suffer from opioid addiction.

Pennsylvania reported 5,456 drug-related overdose deaths in 2017, one of the highest rates of overdoses in the country. On Jan. 10, Gov. Tom Wolf signed a statewide disaster declaration to enhance state response and increase access to treatment.

As the Insurance Department has taken a number of other steps to increase access to treatment for substance use disorder, expand consumer education, and ensure compliance with state and federal laws that provide for access to substance use disorder treatment, the Workers’ Compensation Security Fund (WCSF) is also doing its part to help stem the opioid crisis. The WCSF is a fund within the Bureau of Special Funds under the Office of Liquidations, Rehabilitation and Special Funds. It provides workers’ compensation payments to Pennsylvania injured workers in certain circumstances when the insurance company originally providing the coverage is placed into liquidation by a court in its home state. Many injured workers receiving benefits through the WCSF are prescribed opioid medications to relieve their pain symptoms. In some instances, these individuals have been taking these prescribed medications for many years.

The WCSF recognizes the effect this opioid crisis is having on the injured workers who receive medical and prescription benefits through the Fund, and because of this it employs two different mechanisms to assist in the opioid abuse fight.

First, the Fund works with the Department of Aging’s Pharmaceutical Assistance Contract for the Elderly (PACE) program as part of a coordinated effort to enhance prescription drug services and improve cost effectiveness for its patients. The Fund and PACE review the medication profiles of claimants every six months to identify individuals with possible opioid use disorder. In situations where a patient’s daily opioid intake is found to exceed the Centers for Disease Control and Prevention’s (CDC) recommended amount for non-cancer pain, a letter is sent asking the provider to consider decreasing the opioid dosage. The provider is asked to assess the patient for undiagnosed conditions, significant psychological issues and any evidence of drug-seeking behaviors. It is recommended the provider speaks with the patient about having his or her opioid prescriptions written by only one provider and having the patient sign an opioid agreement designating one pharmacy to fill medications. Finally, the provider is asked to provide feedback regarding any changes made to the patient’s medication regimen as a result of these discussions.

Second, the third-party administrator (TPA) contracted by the Fund to handle claims services also utilizes an opioid management strategy to encourage appropriate prescriptions of opioids. This strategy requires a Patient-Provider Agreement and prior authorization for all opioid products where standard dosing exceeds the CDC’s recommended amount as well as for all opioid patches and for most strengths of long-acting opioids.

Third, as a result of the opioid disaster declaration, the WCSF has gained access to the Prescription Drug Monitoring Program (PDMP). Accessing the PDMP allows the Fund to identify and track claimants’ opioid prescriptions, even those that may not be processed as claims, and provides additional tools to prevent potential abuse and fraud.

The WCSF will continue its efforts in the years ahead to monitor the use of opioid medications by claimants. These efforts aim to reduce the number of claimants on opioid medications by encouraging providers to consider other drugs and/or consider weaning their patient off of these medications.
Adequate health insurance is critical for individuals and families to have access to care when they get sick or injured, as well as the preventive services they need to stay healthy. But there are a lot of coverage options out there, and finding the right insurance can be complex and overwhelming.

As Pennsylvanians think about their health coverage options, it's important that they not only explore different insurance plans, but also understand how health insurance works.

That's why the Insurance Department, in partnership with a group of health-minded stakeholders, has created a series of 10 short videos that guide Pennsylvanians through the process of finding, buying, keeping and using health insurance.

The videos are available on the Insurance Department’s website, https://www.insurance.pa.gov/literacy, and they aim to help consumers better understand their health insurance by addressing the following topics:

- Why Buy Health Insurance?
- When to Buy Health Insurance
- Health Care Costs You Should Know
- Provider Networks
- How to Choose a Health Insurance Plan
- Prescription Drug Coverage
- You Bought Health Insurance, Now What?
- Insurance Cards Are Important
- What If I Get Sick?
- What Is An EOB?

We created the videos and other informational resources in collaboration with representatives from state agencies, consumer advocacy organizations, insurers, hospitals, libraries and academia, who together make up our Health Insurance Literacy Workgroup.

We hope these resources are helpful to consumers shopping for insurance on their own, and to health care providers, exchange assistors and others who work to help individuals and families get the coverage they need. Of course, though, Pennsylvanians who have questions about getting covered are welcome to contact the Insurance Department for help by calling the Consumer Hotline at 1-877-881-6388.