



Testimony before the  
Pennsylvania House Insurance Committee and  
House Democratic Policy Committee:

*"Health Insurance Rate Increases"*

Presented by:  
Joel Ario  
Insurance Commissioner

Tuesday, July 20, 2010

William E. Anderson Library of Penn Hills  
The DeLuca Room

**Health Insurance Rate Increases**  
**Joel Ario, Pennsylvania Insurance Commissioner**  
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**Hearing before the PA House Insurance Committee and House Democratic Policy**  
**Committee**  
**William E. Anderson Library of Penn Hills, The DeLuca Room**

Good morning. My name is Joel Ario and I am the Pennsylvania Insurance Commissioner. I appreciate the opportunity to testify today to provide an overview of trends in the area of health insurance rate increases. As you know, the PA Insurance Department (PID) recently commenced an investigation which was formally acknowledged through a press release issued by Governor Rendell. The results of our investigation are contained in the Department's official report, attached. My comments this morning will summarize the backdrop to this investigation, our findings, and our recommendations for legislative action.

Before I continue with the background of this investigation, I want to formally thank the House for passing HB 746 last year. It is a giant step toward much needed reform and I think the rest of my testimony will reinforce why the Senate should act on it as well.

**Background**

In keeping with its mission to protect the consumers of Pennsylvania and to provide a level playing field for all insurance carriers operating in the Commonwealth, the Pennsylvania Insurance Department (the Department) constantly monitors the insurance industry to identify potential problematic trends and issues. Recently, while monitoring and analyzing insurance marketplace activities, the Department noted several indicators that health insurers may be using underwriting and rating practices in the small group accident and health market in ways that raise substantial consumer protection issues, especially for those most in need of health coverage. Specifically, the troubling indicators were discussed in or at a Congressional hearing featuring a Pennsylvania small business that received a 100% rate increase, letters to the Department from consumers and state legislators complaining about rating practices, sample medical questionnaires and other documentation from brokers concerning individual underwriting in the small group market and competitor complaints concerning the scope and pace at which the Blue-branded insurers are expanding their use of medical underwriting and rating.

In response and at the direction of Governor Rendell, the Department opened an investigation into the rating and underwriting practices of the nine largest insurance groups writing small group accident and health coverage in Pennsylvania. Companies from these nine largest groups accounted for 89% of all group accident and health direct written premiums in Pennsylvania for calendar year 2008.

## **Findings**

### **Transparency**

Pennsylvania lacks adequate statutory authority to review rates for small group products. We do have authority to review rates for such products offered by the parent Blue entities (hospital plan corporations and professional health service plan corporations) and Health Maintenance Organizations, but we lack statutory authority to require the filing of rates for small group policies issued by commercial insurers, including commercial insurers that are subsidiaries of the Blues. HB 746 provides a remedy for this loophole. Although you have passed the bill in the House, it awaits action by the Senate.

This lack of statutory authority by the Department hampers the ability and effectiveness of the Department to identify trends before they become problematic, causing harm to consumers and disruption of small group rating practices and procedures in the Commonwealth. The Department strongly supports HB 746 and asks the General Assembly to enact this legislative proposal immediately to help develop a smooth “glide path” to the full Federal health reforms triggered in 2014.

### **Health Profiling**

Our investigation revealed that seven of the nine insurance groups use health profiling tools such as health questionnaires or prescription drug profiling at the time of application to obtain medical information from enrollees of small groups. One group, although not using health questionnaires, uses prescription drug information obtained from HIPAA authorization forms to help “profile” a risk. The other two groups, representing 55% of the total Pennsylvania market included in the investigation, do not use health questionnaires or prescription drug information in the underwriting or rating process. If they decide to become more aggressive in using health profiling tools to determine premiums charged to small groups, there could be a significant shift in the current market creating more uncertainty to consumers and more pricing segmentation; both counter to the Federal reform efforts. However, there is nothing in Pennsylvania’s statutes or regulations that would restrict them from using medical or prescription information to develop rates on small group business.

### **Claims Data**

During the investigative time period, none of the nine insurance groups were found to be providing claims data to small employers for renewals. According to the industry, this is because rates in the small group market are not based on claims experience since that information is not actuarially credible on small risks. Instead, rates and rate changes are based on proprietary “black box” predicative computer modeling as well as demographic changes in the small group market.

### **Renewal quotes from incumbent carriers**

Our investigation also revealed that renewal quotes from incumbent carriers are being used in the large group market to assist carriers in providing final quotes on new group business. It also was found that one carrier had been requiring a renewal quote from incumbent carriers prior to providing final quotes on new small employer groups, but has stopped this practice since the initiation of the Department’s investigation. Further, health insurance brokers have voluntarily

provided renewal quotes to assist in sharpening proposals by potential carriers. There are still complexities in this area that the Department plans to explore in more depth.

### **Changes to business model since passage of federal health care reform**

One of the concerns the Department had was that insurance carriers would drastically change their business models in the immediate future, in an attempt to prepare for the changes coming in 2014. However, during the investigation, none of the groups were found to have changed their business models in order to “cleanse” or re-price their existing books of business as the industry moves toward complete implementation of Federal health care reform in 2014. Two groups, representing 55% of the total Pennsylvania market included in the investigation, do not use health profiling tools in the underwriting or rating process. That means if they change their approach there could be an expansion into the use of medical underwriting in the small group market between now and 2014.

### **Refusals to write small group policies**

Federal HIPAA requires that each health insurance carrier that offers health insurance coverage in the small group market in any state must accept every small employer that applies for coverage. During the course of the investigation, the Department learned that one insurance group had been refusing to write new small group business if the employer had not been in business for at least one year. This group recently ceased that practice and now writes all small employer groups that apply for coverage. The Department also discovered that another insurance group currently is refusing to write new small groups if employers are not in business for at least six months. The Department is currently working with that insurer to rectify the situation.

### **Highmark**

Many of you, especially those of you in the western part of the state, are aware of consumer complaints we have received about Highmark and I’ve been asked to address those specific complaints today.

On October 13, 2009, HM Health Insurance Company (HHIC), a wholly owned for profit subsidiary of Highmark Inc., submitted an application to license a blue-branded licensee of the Blue Cross Blue Shield Association, a risk assuming PPO company. This request was initially disapproved on November 25, 2009, for failure to file a Conversion policy. Highmark subsequently refilled both the PPO license application for HHIC and a filing requesting approval of a Conversion policy. The license application was reviewed by both the PID and DOH. There was nothing in the PPO license filing for HHIC to prohibit the Pennsylvania Insurance Department or Department of Health from approval, effective July 1, 2010.

Highmark’s wholly owned subsidiary company would not be subject to the Department’s rate review or front-end regulation. As such, the Department cannot determine, before rates are used, if the proposed rate increases are excessive, inadequate, or unfairly discriminatory. Additionally, Highmark submitted a market withdrawal plan, notifying the Department of its plan to non-renew all small group contracts in its current non-profit company and offer new PPO policies in HHIC, its for-profit subsidiary.

In July, Highmark Blue Shield commenced the withdrawal of products from its small group market and offered replacement coverage through its for-profit subsidiary Highmark Health Insurance Company. Recognizing the financial impact of such a transition on small employers in the Commonwealth, the Department worked diligently to secure an agreement with Highmark to limit the rating factor associated with health status to 25% on the renewal book of business and to hold off on the implementation of new business medical underwriting. While these arrangements offered some relief, for many small employers it is not enough. The Department received 32 complaints from small employers receiving increases up to 79% upon their renewal quotes. This is the single largest number of complaints received by the Department against a carrier dealing with renewal quotes. Highmark's rating complaints for 2010 represent 45% of all employer group complaints investigated by the Department and leads by a ratio of 2.5:1 compared to the next nearest carrier. The renewal quote complaints are expected to increase, especially if Highmark moves more aggressively in utilizing health profiling tools.

Even though the Department does not have rate approval authority over the HHIC rates and subsequent premiums, we still investigate each complaint requesting the factors that had the most significant affect on the renewal premium quote. In the greatest majority of cases, the policy holders receiving the 79% increase were either sole proprietors within an association plan or in a micro-group (less than 9 people). In either case, typical demographic rating factor changes such as age and gender can have substantial impact on the premium charged. Also, in the sole proprietor complaints many self selected very "rich" benefit plans that tend to compound the rating effect.

Highmark did not use "health profiling" tools such as health questionnaires or drug profiling in its kickoff of HHIC for new business effective July 1, 2010 but did indicate that the option is open in future years.

### **Recommendations for legislative action**

1) The Legislature should pass House Bill 746, which would provide for rating limitations including a 2:1 band on rates with restrictions on the use of rating factors other than age, caps on premium increases, initiation of wellness accounts, development of standard health benefit plans and rate reviews by the Department.

### **If there is no legislative action on HB 746, then we would suggest the implementation of the following measures:**

2) The Department's authority should be strengthened in the process of requesting and obtaining documents and information during the course of continuum type projects to include consumer complaint investigations, industry studies and surveys, and investigations of licensees.

3) The use of health profiling tools, such as medical questionnaires and drug profiling, should be limited so that adjustments to base rates have certain specified caps.

4) There should be more transparency in rate filings so that regulators and consumers are more knowledgeable about the factors that affect premiums.

5) There should be clearer guidance in the rate spread/ratio in the small group market leading to less pricing segmentation.

The Insurance Department looks forward to continuing our working relationship with respect to these timely issues that affect the very well being of our PA families. Thank you again for the opportunity to address you this morning and I will be happy to take any questions.