



Testimony before The
Committee on Energy and Commerce,
Subcommittee on Health

Presented by
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Acting Insurance Commissioner

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The Committee on Energy and Commerce, Subcommittee on Health

Statement of Michael F. Consedine,

Pennsylvania's Acting Insurance Commissioner

Harrisburg, Pennsylvania

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Good Morning Chairman Pitts, Ranking Member Pallone, and distinguished members of the Committee. My name is Michael Consedine and I am Pennsylvania's acting Insurance Commissioner.

As you know, this is the first anniversary of the federal Affordable Care Act or "ACA." As Pennsylvania's chief regulator of the insurance industry, I appreciate the opportunity to share with you our efforts over the last year to navigate this new law; our view on its impact on our consumers, both individual and business, and on our state; and the challenges we face as we move forward.

But first, because, as Chairman Pitts knows, Pennsylvania is unlike many other states, allow me to provide a snapshot of Pennsylvania's health insurance marketplace. Our market is distinctive in many respects and is a good example of

why increased flexibility for states in implementing health care reform is going to be crucial to any hope of addressing the issue of affordable and accessible health insurance. While there are more than one hundred carriers licensed to write health insurance in our state, the marketplace is in fact dominated by nine carriers: two groups share over 50 percent of the market, five groups each maintain close to 5 percent of the market, and two groups each have about 2.5 percent of the market. Moreover, Pennsylvania's population is diverse. We have urban areas, but we have significant rural regions. We're often considered a state with large businesses, due in part to the urban concentrations; but much of our population is employed by small businesses.

It is in this unique, and in many respects challenging, marketplace, that we are dealing with implementation of the Affordable Care Act. If the Act was designed to serve as a roadmap to affordable and accessible health insurance for Pennsylvanians, I will tell you that thus far the path has been marked by a lack of clear direction and troubling indications of the terrain ahead. I recognize that some journeys do start out that way, and still one proceeds undaunted by the twists and turns ahead. But I feel it is very important to share the Insurance

Department's journey over the last year and provide our thoughts on some of the challenges we see down the road for Pennsylvania.

Taking the First Step – Implementing a High Risk Plan

One of the first requirements we dealt with under ACA was the creation of a so-called state "high risk plan." These plans or pools were designed to act as a stop gap measure for uninsured Americans until the Act takes full effect in 2014. HHS had initially projected that over 350,000 participants would be enrolled nationwide by 2014. As has been widely reported, the actual numbers indicate the program has gotten off to a slow start with just over 12,000 enrollees across the country at the current time.

While neither HHS, nor any state, quite hit the mark of establishing a pool within 90 days of enactment, Pennsylvania met its obligation on time to form its plan, and by October was enrolling individuals in the program we titled "PA Fair Care." It was a significant undertaking to create a new program in the short time frame required, but we made it to this first mile marker. At the current time, PA Fair Care has enabled 3,211 different individuals to have insurance. However, it should be noted that some of that number were enrolled for only a month or two before

dropping coverage. As of March 1, 2011, we have 2,684 enrollees receiving coverage and care. This makes Pennsylvania one of the more successful programs in the country in terms of participation.

Thoroughfare of Immediate Insurance Reforms

Several provisions of the Affordable Care Act have become effective and several additional provisions will become effective in 2011. These are the “immediate” insurance reforms that took effect for plan years beginning on or after September 23, 2010, including:

- Prohibition of lifetime benefit limits;
- Restrictions on annual benefit limits;
- Prohibition of rescissions;
- Extension of dependent coverage up to age 26; and
- Prohibition of pre-existing condition exclusions for children.

Compliance with ACA required Pennsylvania to develop new systems and procedures – all with an associated cost to the state – to ensure compliance. And it was also at this point in our journey that we first saw troubling signs for the road ahead. While from a consumer perspective there are additional benefits as

a result of these reforms, these ACA-mandated coverage changes resulted in premium increases of up to 9 percent – this on top of already significant premium increases being seen by Pennsylvania businesses and consumers. Therefore, it is important to stress that the initial reforms have caused an increase in premiums and not a decrease.

Planning for the Road Ahead

ACA also provided for several grants from the federal government to the states as a way to help states navigate the path to implementation. The first, as already mentioned, is funding PA Fair Care. Two other grants are allowing Pennsylvania to study the market and enhance its regulatory processes and to further educate consumers, and another is allowing for planning for implementation of an exchange.

The first of these is a **rate review grant**. This \$1 million grant is allowing the Department to perform an analysis of gaps in the Department's regulatory authority over rates, and to develop a data base for rate review and comparison. While no determination has been made as yet as to whether the Department will seek (through state legislation) to increase its authority to review rates, we expect

that the work performed under this grant will make the rate review process more transparent, to the benefit of consumers.

The second grant is a **consumer assistance grant**. While this \$1.4 million grant has not yet been appropriated by the state legislature due to the timing of the grant award in the state budget cycle, we anticipate that this grant will assist us in making health insurance understandable to consumers. I'm not sure any of us here or in Washington understand ACA, in part because it is still evolving and changing, so educating everyday Pennsylvanians about the new law is a challenge. While this grant will be helpful in advising consumers on ACA, we are concerned about our ability to properly advise on a law that is still in flux and about which the rules are being still being written. To use the journey analogy, how can a state effectively give directions to consumers when the destination itself is still moving?

Finally, there is the **exchange planning grant**. The formation of a health insurance exchange or market in each state by 2014, really by 2013, is one of ACA's landmark provisions. If the state does not set up an exchange, the state's exchange will be run at the federal level.

Implementation of an exchange is no small endeavor – in some respects it represents the “point of no return” in the implementation of ACA because of the time and resources that states will need to expend in creating this new enterprise. Also, ACA sets a very aggressive timeline for exchange implementation. As with other areas of the law, here we are also awaiting clear direction from HHS on key components of the exchange, including the design of the “essential benefit package.”

Governor Corbett has tasked the Insurance Department as the lead agency in the Commonwealth to study implementation of a health insurance exchange. The \$1 million exchange planning grant will be used to fund background research and analysis to set the stage for informed decisions regarding formation of an exchange. We intend to look very carefully at what type of an exchange, if any, Pennsylvania should implement before taking that very significant step on the road to ACA implementation.

I’d like to further touch on two points that I’ve referenced elsewhere in my testimony – the cost of implementation and the uncertainty.

The “Tolls” on the Road Ahead

The road to Affordable Care Act implementation is a toll-road.

As noted earlier, the immediate insurance reforms imposed by ACA added to the cost of coverage by mandating required benefits or expanding coverage.

Whether the “essential benefit package” to be defined by ACA further contributes to costs for states is unknown at this time. If for example, the essential benefit package does not include certain benefits such as autism coverage, then the state must determine whether it will provide those benefits at its own cost, out of its already strained budget.

Additionally, ACA imposes a toll on insurance regulators’ already strained resources. There is no money in ACA to help fund the increased work load associated with reviewing new products and rates required under the Act. Nor is there any money to fund the enforcement efforts that states will need to undertake to ensure industry compliance. Again, this is a toll that states are expected to pay out of already strained budgets.

As Governor Corbett noted in his remarks, ACA also does not go far enough in addressing the cost drivers of health insurance. These include: medical needs of an aging population; cost of new technologies; consumer and treatment demand;

provider consolidation; cost shifting from public to private payers; lifestyle changes to unhealthy behavior; and defensive medicine.

Beyond these factors is the unknown of how new elements injected into the health insurance marketplace by ACA will affect insurance pricing. Many questions arise here. Will the individual mandate trigger adverse selection? Will the expansion of the small group market from groups of 1-50 to 1-100 prompt healthy small groups to self-insure, leaving the insured marketplace to the older and sicker population, making insurance more expensive for those left in the marketplace? Will smaller insurers simply flee the market to avoid the hassle of compliance, further undermining competition and potentially driving up cost?

If the ultimate objective of our journey to healthcare reform is affordable care – we question whether ACA is a clear roadmap or a still uncharted course.

In addition to the financial toll of healthcare reform, we also find ourselves without clear direction on many key points. I think even HHS would agree that there are many critical components of ACA that have yet to be firmly defined and this has led to a general atmosphere of uncertainty and confusion for the states and consumers.

For example, ACA charges HHS with promulgating a significant number of regulations, in an area that, quite frankly, it has not regulated to-date. Insurance has been a state-regulated industry since its inception in this country. For HHS to now step in and write regulations is no small task, nor does the volume of regulations to be issued ease the challenge. The National Association of Insurance Commissioners has been providing input, but it is a process that is not as simple as many would wish. Let me provide a quick example. HHS is currently in the process of finalizing regulations related to Rate Increase Disclosure and Review. Final regulations are not expected for several more weeks, if not months, but unless Pennsylvania enacts legislation almost immediately to provide the Insurance Department with additional rate review authority, HHS will assume certain rate review functions for Pennsylvania this July.

You can readily see our dilemma. How do we fashion appropriate legislation when we don't yet know what the final regulations will require? This is one area where we hope that HHS will delay implementation of the regulations in order to provide us with some opportunity to review the final regulations and determine the best course of action for Pennsylvania.

There are also grants HHS is to issue for which consumers are still waiting. For example, the Department has fielded inquiries from small businesses about the grants that are to be issued (under section 10408 of ACA) to “small businesses to provide comprehensive workplace wellness programs.” The funding of this grant program was authorized for fiscal years 2011-2015. While fiscal year 2011 began last October, small businesses are still waiting.

In order to successfully traverse health-care implementation, states need clear guidance and direction. Right now, we do not really have a working compass or a precise map and yet we’ve been told that time is of the essence. This is not the best of environments in which to make sound, well-informed judgments.

Critical Crossroads

So Pennsylvania, like many states, stands here today one year after the Affordable Care Act’s enactment, at a crossroads. We could proceed down a path towards full implementation of the Act – expending substantial time and limited state resources and funds in doing so – possibly only later to find that the path is closed by virtue of legal or legislative challenges to the current version of the law. We

could also choose a path of full resistance to implementation but risk that we end the journey with federal regulation of Pennsylvania's health insurance market.

We continue to hope that together with your help Mr. Chairman, members of the Committee and Governor Corbett, we might be able to forge another path – one that results in a clear roadmap that delivers us to the destination we all seek – health care reform that truly addresses the issues of affordability and accessibility in a fiscally sound manner.

Thank you. I would be happy to take your questions.

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