Testimony Concerning HB 1605 – Producer Fees and Commissions

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Good Morning, Chairpersons Pickett and DeLuca, Representative Tobash and members of the House Insurance Committee. My name is Christopher Monahan and I serve as the Deputy Commissioner of the Office of Market Regulation at the Pennsylvania Insurance Department (Department). On behalf of Commissioner Altman, thank you for the opportunity to be here today to speak with you regarding House Bill 1605 and its potential impacts on the insurance market and consumers.

Introduced by Representative Tobash, HB 1605 would amend The Insurance Department Act of 1921, adding a provision allowing an insurance producer to charge a fee to consumers in cases where no commissions are paid by the insurer to the insurance producer for the sale of certain insurance products. The bill would also require a producer who charges a fee to provide consumers with a written notice that clearly states the service for which the fee is being charged, disclose the fee amount, and include the date by which the fee must be paid to the insurance producer.

This concept is not new. In fact, you may recall that in the 2015-2016 Legislative Session, Representative Tobash introduced House Bill 2432, which would have done the same thing. According to the co-sponsorship memo for HB 1605 that was circulated, the bill was introduced because "many insurance companies no longer pay commissions for individual health insurance policies." Based on our analysis, it appears that some, but not all companies in that market, stopped paying commissions following the establishment of the Affordable Care Act (ACA), in an effort to discourage the sale of policies that were not profitable. I will expand on this point a little bit later in my testimony.

Section 674-A of The Insurance Department Act states in part that, "A licensee may charge a fee in addition to a commission to a person for the sale, solicitation or negotiation of a contract of insurance for **commercial business**…no insurance producer shall charge a fee for the completion of an application for a contract of insurance." This provision prohibits producers from charging a fee for non-commercial business. This interpretation is consistent with the policies, laws, and regulations that other states have adopted regarding fees.

The perceived problem that HB 1605 is attempting to address is not widespread and is being addressed in the marketplace without legislation. In fact, the 2019 ACA individual market filings filed with the Department show only two companies—Highmark and Geisinger— are planning to sell plans that do not include commissions for insurance producers, as evidenced by the chart below. The chart also shows that Highmark is planning to offer commissions on some, but not all, of its products. As indicated, the majority of health insurance companies are paying commissions to insurance producers for the sale of ACA products.

Individual Health Insurance Market – 2019 Producer Fees & Commissions, as Reflected in Pending Rate Filings

Company Family Name	Company Name	Market	Agent/Broker Fees & Commissions % of Premium	PMPM
IBC	Keystone Health Plan East	Individual	2%	$10.42
	QCC Insurance Company	Individual	2%	$12.90
UPMC	UPMC Health Coverage	Individual	0.44%	$1.85
	UPMC Health Options	Individual	0.35%	$1.85
Capital	CAAC	Individual	0.61%	$4.66
	CAIC	Individual	1.15%	$4.80
	KHPC	Individual	0.98%	$4.90
Highmark	First Priority Health	Individual	0.03%	$0.20
	FPLIC	Individual	0.00%	$0.00
	Highmark, Inc.	Individual	0.15%	$0.91
	Highmark Choice (KHPW)	Individual	0.00%	$0.00
	HHIC	Individual	0.06%	$0.50
	Highmark Choice (KHPW)	Individual	0.00%	$0.00
Geisinger	Geisinger Health Plan	Individual	0.00%	$0.00
	Geisinger Quality Options	Individual	0.00%	$0.00
Centene	PA Health & Wellness	Individual	1.19%	$7.40

The Department has concerns about HB 1605, the most significant being affordability. An additional fee, for which consumers receive no extra benefits, could mean the difference between affording insurance and having the necessary coverage, or being uninsured. This concern applies equally to both the accident and health insurance market and the property and casualty insurance market.

In the health insurance market, when the ACA first mandated coverage, there was pent up demand for health care services and insurers were struggling to price their products accurately. In the past few years, that concern has lessened. However, due to federal efforts to reduce the ACA protections, including the removal of the penalty for not having insurance, there is still some measure of concern that the individuals who purchase ACA individual market policies may be expensive risks for insurers to assume. Premium rates and significant cost-sharing requirements for those policies reflect that risk, but are also buffered by premium tax credits, cost-sharing subsidies, and a risk adjustment program. But a producer fee added to those charges would be a financial burden to those individuals for which there would be no buffer.

In property and casualty insurance, the impact is most likely to be felt in the non-standard automobile market. That market consists of the riskiest insureds for insurers to take on, and consequently, this market pays the highest in premiums. Allowing producers to add on a fee, where no limit is set as to the fee, could cause the costs of insurance to substantially increase. These insureds also tend to be the most sensitive to price increases. As such, this could force many non-standard insureds to simply let their policies lapse and go without insurance, even though personal automobile insurance is statutorily required.

The Department also remains concerned that HB 1605 could curtail the information that a consumer may be able to obtain prior to purchasing insurance because of two possibilities: either a consumer would not engage in seeking information from various producers because of potentially facing multiple fees, or an insurer may choose to invest in direct marketing in lieu of paying commissions and therefore eliminate a resource for insurance information. Today, an insurance consumer can and will talk to multiple producers allowing them to get different perspectives and information on the various products those producers sell at no cost. Charging a fee could result in a consumer being unable or unwilling to go through that same process because of the increased costs. Insurers could take the position that producers could charge fees in lieu of commissions and stop paying commissions altogether. If that occurs, consumers would not get the benefit of any type of consultation with an insurance producer before making important decisions regarding their insurance coverage.

Additionally, HB 1605 may have unintended consequences on the Department's budget. If insurers take the position that producers could charge fees in lieu of commissions and stop paying commissions altogether, producers could lose the incentive to seek appointments to represent insurers in the sale of insurance, and instead choose to charge fees for their time and guidance. Insurance companies currently pay the Department for each appointed agent that they have. In the 2017 calendar year, the Department brought in $37,059,480 in appointment fees – more than the Department's entire annual budget. The enactment of this bill could result in the reduction of the revenue the Department anticipates from appointment fees.

Other concerns the Department has with HB 1605 revolve around the application fee itself. Would the Department set the fee or approve fee rates, or would producers set their own fees with no input from the Department? When would consumers learn of the possible fee that they would have to pay? Would this be a one-time yearly fee, or would this fee occur multiple times a year? Is there a fee cap?

It is the responsibility of the Department, as regulator, to protect consumers and ensure the market is operating properly. A healthy competitive market is good for everyone: consumers, producers, and insurance companies alike. While we recognize the producers' concerns, we do not believe that an issue with a few companies or a few products, triggered by circumstances in two areas of insurance coverage, should dictate such an impactful statutory change in the insurance market.

In its current form, the Department does not support HB 1605. We believe that the legislation risks generating unintended consequences in the marketplace while trying to address an issue that is no longer a chief concern in our marketplace, as a majority of insurers are paying commissioners. Unintended consequences from the bill include concerns with the lack of consumer affordability and access to information about insurance plans, the potential negative impact to the insurance market in Pennsylvania, as well as the Commonwealth's budget. The Department remains available to further discuss these concerns with the committee and Representative Tobash.

Again, thank you for allowing me the opportunity to speak with you today about HB 1605 and the issue of producer fees and commissions. I am happy to take any questions you might have at this time.