



**Testimony Submitted to the House Consumer Affairs Committee**

**Public Hearing on HB 2113**

Submitted by:

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Thank you Chairmen Godshall and Caltagirone, and members of the House Consumer Affairs Committee for the opportunity to provide written testimony regarding HB 2113, Representative Oberlander's proposal to prohibit health insurers from altering coverage for services outside of the specified rate and form review timeline.

One of the key missions of the Pennsylvania Insurance Department is consumer protection, and the Department shares the sponsor's desire to protect consumers from potential harm if benefit changes are made outside the scope of state and federal laws and regulations. To that end, the Department has a three-pronged approach to enforcement in order to protect Pennsylvania consumers. The Department reviews form and rate filings prior to their sale in Pennsylvania insurance markets to ensure compliance with federal and state requirements; investigates specific complaints to ensure consumers are receiving the benefits to which they are entitled; and conducts examinations to identify and correct noncompliance with state and federal law.

### **Form and Rate Review**

The Department currently reviews all individual and small group plans to ensure plans contain all state and federal policy requirements. This review was also extended to large group plans for the 2018 policy year. The Department is not required to review large group plans but has authorized to do so in order to take a comprehensive approach to enforcement across Pennsylvania.

Under the Affordable Care Act (ACA), it is generally a violation for insurers to change premiums, cost-sharing, and benefits during a plan year. There are, however, a limited number of circumstances in which insurers may make mid-year changes to their ACA-compliant plans. One of those circumstances is regarding prescription drug coverage, which we understand to be a primary concern sought to be addressed by HB 2113.

Formulary changes are permitted as an exception to the prohibition on benefit changes mid-year occurring outside of the form review process. The Department acknowledges the importance of giving insurance companies the ability to adjust to advancements in pharmacy and therapeutics, but there are limitations within state and federal<sup>1</sup> requirements that must be met with respect to

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<sup>1</sup> The Department recommends the following resources for information about the scope of existing federal consumer protections relating to pharmacy coverage and formulary requirements:

permissible changes. Recognizing that off-cycle formulary changes are inevitable and, at times, time sensitive, the Department is currently analyzing its capacity to conduct mid-year reviews of formulary changes. Specifically, it is working with pharmacology experts to build resources that will enable Department staff to review justifications submitted by insurers and ensure compliance with state and federal prescription drug benefit requirements.

## **Consumer Complaints**

The Department has not received consumer complaints specific to mid-year benefit changes, including complaints relating to formulary changes. In contrast to the issue of mid-year benefit changes, the Department has received complaints regarding provider network changes mid-benefit year.<sup>2</sup> In response to the complaints, the Department issued a notice in the Pennsylvania Bulletin clarifying the responsibility of health insurance companies to keep provider directories current and the subsequent consequences of failing to do so – including how the Department will act to avoid consumers from facing detriment.

As a reminder, the Department's jurisdiction is limited to the large and small group commercial fully-insured markets and the individual market. Together, these plans constitute approximately 24 percent of the health care coverage market in Pennsylvania.<sup>3</sup> Thus, to the extent consumers have identified concerns involving benefit changes by government programs or self-funded coverage arrangements, the Department does not have jurisdiction to address those concerns, even if HB 2113 were enacted. Coverages provided by those plans are regulated at the federal level or by other state agencies.

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- 45 C.F.R. 156.122 – Prescription Drug Benefits, *available at* [https://www.ecfr.gov/cgi-bin/text-idx?SID=0a2e77c519c195bfb45d5850d69bc5ca&mc=true&node=se45.1.156\\_1122&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=0a2e77c519c195bfb45d5850d69bc5ca&mc=true&node=se45.1.156_1122&rgn=div8);
  - 2016 Proposed Notice of Benefit and Payment Parameters, 79 FR 70673 (Nov. 26, 2014), specifically the discussion in the preamble at 70718-70722, *available at* <https://www.gpo.gov/fdsys/pkg/FR-2014-11-26/pdf/2014-27858.pdf>; and
  - 2016 Final Notice of Benefit and Payment Parameters, 79 FR 10750 (Feb. 27, 2015), specifically the discussion in the preamble at 10813-10822, *available at* <https://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03751.pdf>.

<sup>2</sup> Pennsylvania Bulletin Notice 2015-07, Provider Directories, 45 Pa.B. 5744, Saturday, September 19, 2015, *available at* <https://www.pabulletin.com/secure/data/vol45/45-38/1705.html>.

<sup>3</sup> Many consumers access health benefits through a self-funded employer arrangement, which is regulated under the Employee Retirement Income Security Act of 1974. A graphic of the Pennsylvania health care coverage market is available on the Department's website at <http://www.insurance.pa.gov/Coverage/Pages/Health-Insurance.aspx>.

## **Market Conduct Examinations**

The Department is also in the process of conducting market conduct examinations on all of Pennsylvania's major health insurers to ensure they are in compliance with state and federal law. On February 13, 2018, Commissioner Altman announced the results of the first market conduct examination conducted on the practices and procedures of Blue Cross of Northeastern Pennsylvania. The report<sup>4</sup>, which covers the period from January 2015 through March 2016, found substantial areas of compliance with insurance laws, and in instances of non-compliance, directs the company to implement a corrective action plan.

The Department appreciates the opportunity to provide this information to the Committee. Moreover, if there continues to be interest in moving this bill forward, the Department would be pleased to work with your staff to identify and address certain drafting and technical edits. Whether through technical edits or an assessment and analysis of federal and state consumer protections that might be bolstered by this proposal, we stand ready to provide assistance to the Committee.

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<sup>4</sup> A copy of the Market Conduct Examination Report can be found here: <http://www.insurance.pa.gov/Regulations/Regulatory%20Actions/Documents/Current%20Market%20Conduct/First%20Priority%20Life%20Insurance%20Co.%2018.pdf>.