

# LEG REG REVIEW

## 2023, 3<sup>rd</sup> Issue February 9, 2023

LEG REG REVIEW is a periodic newsletter produced by Vince Phillips who retired from active lobbying after 31 years of advocacy in Harrisburg. It contains news on the legislative and regulatory scene in Pennsylvania that may be of interest to the Insurance and Business Communities. Annual subscriptions are \$100 and information may be obtained by contacting PHILLIPS ASSOCIATES at 717/728-1217 or e-mail to [xenobun@aol.com](mailto:xenobun@aol.com).

### DEMOCRATS NOW CONTROL THE HOUSE

The February 7 special elections to fill vacant House seats left by Representatives Tony DeLuca (deceased), Summers Lee (elected to Congress), and Austin Davis (elected Lt. Governor) were won by Democrats in Allegheny County.

#### The winners and their backgrounds are:

Joseph Melvin McAndrew district 32

*Former Allegheny County Dem. Committee Executive Director*

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Abigail Salisbury district 34

*Attorney & Swissvale Borough Council*

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Mathew Gergely district 35

*McKeesport Chief Finance Officer*

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Democrats now have a majority of two in the House. This means that the House can begin functioning – adopting Rules, designate committee members, etc. There are some wrinkles:

- One of those two seats was held by GOP Rep. Lynda Schlegel-Culver who won the January Senate special election to fill former Senator John Gordner's (R-Columbia) seat.
- When that vacancy is filled in another House special election, the winner will likely be a Republican given the makeup of the district. That would shrink the Democratic majority to just one seat, 102-101.
- The Speaker of the House specifies the date of this special election. If he is thinking politically, he may choose a more distant date to protect the existing Democratic margin of two.
- Current Speaker Mark Rozzi (D-Berks) may be challenged either by Republicans who hope to pick up some Democratic crossover votes or by Democrats who want a Speaker who does not function more independently of the Democratic Caucus.

The drama continues when the House resumes (begins) its Harrisburg work **one week earlier than previously announced** as February 27. Until the three newcomers are sworn in, there can be no committee activity. There are at least 48 sponsorship memos in the House regarding insurance-related issues.

One of particular interest is a sponsorship memo from Rep. Bob Freeman (D-Northampton) that would allow the State Workers Insurance Fund (SWIF) which is the Workers Compensation insurer of last resort to also offer health insurance.

### RECENT SENATE SPONSORSHIP MEMOS

- Curtail the current spate of lawsuits against a person or organization for statements made or positions taken on a matter of public interest or regulation: Sponsored by Senators Katie Muth (D-Montgomery/Chester) and Maria Collett (D-Montgomery), there is not yet a bill number. The sponsorship memo cites the 'Me Too Movement' as an example where these lawsuits are inhibiting sexual victims from coming forward.

- Assignment of benefits where a patient could authorize direct payment to a dentist by a health insurance company: Sponsored by Senator Judy Ward (R-Blair), there is not yet a bill number. The sponsorship memo says that without assignment of benefits, patients are forced to pay the full amount up front.
- In case the Affordable Care Act (ACA) is repealed, PA to continue young adults to stay on their parents' health plan until age 26: Sponsored by Senators Steve Santarsiero (D-Phila.) and Michele Brooks (R-Mercer/Crawford/Lawrence), there is not yet a bill number. NOTE: Given the divided Congress, ACA repeal is highly unlikely. However, noteworthy in this bill is that a conservative Republican is one of the prime sponsors.
- Allowing volunteer fire companies to invoice insurance companies to seek reimbursement for "reasonable" expenses: Introduced by Senator Dush (R-Indiana), this issue has been a hardy perennial in PA for decades. There are conflicting court decisions and often, a carrier may ignore an invoice given the absence of established law. A bill number has not been assigned.

## **DEPARTMENT ISSUES TWO NOTICES ON MED MAL INSURANCE**

The PA Insurance Department issued two notices on February 3. Both relate to whether the scope of Medical Care Availability and Reduction of Error Fund (MCARE) should be reduced. Pennsylvania's Medical Malpractice Insurance market has three tiers (plus the Joint Underwriting Association (JUA), a market of last resort.) The first tier is the standard (primary) commercial insurance market. The second tier is run by MCARE. It specifies that certain levels of Medical Malpractice Insurance be obtained from the state. **NOTE:** MCARE calls it an assessment and not a premium based on a percentage of JUA rates. The third tier is the Surplus & Excess Lines market.

Health care providers are required to have tiers one and two. Most if not all also have E&S coverage because of the threat of huge medical malpractice awards. The MCARE law (Act 13 of 2002) specifies that periodic assessments be made of the capacity of the primary market to determine if the span of MCARE coverage can be reduced. The goal is to increase primary coverage until the MCARE tier is eliminated. Up to this point, that increase has not occurred because of claims levels and the continued unfunded liability for MCARE which was \$1.056 billion as of 12/31/20. Those commenting on whether or not the MCARE tier should be reduced because of primary carrier capacity should make your thoughts known to Shannon Kost, [skost@pa.gov](mailto:skost@pa.gov), by March 6.

The second notice going out to Medical Malpractice Insurance carriers having 2021 direct written premiums was a Data Call with responses due March 6. Details: [www.insurance.pa.gov](http://www.insurance.pa.gov), Select 'Companies', then 'Industry Activity' scroll to 'Product & Rate Activity', and then to 'Data Calls.

## **STATE OF THE UNION UPDATE re HEALTH INSURANCE**

President Biden's February 7 State of the Union Address to Congress contained several comments relating to health insurance. He touted his Inflation Reduction Act as capping Medicare cost of insulin at \$35, "*taking on powerful special interests to bring health care costs down so you can sleep better at night*" referencing "*Big Pharma unfairly charging people hundreds of dollars (on insulin) and making record profits*". In his speech, he said that he was seeking a \$35 cap on insulin for all, not just Medicare beneficiaries. Also, by capping out-of-pocket costs for Medicare recipients at \$2,000 in the Inflation Reduction Law, drug companies will have to pay Medicare back the difference of drug prices exceeding the rate of inflation. Biden also credited his law with reducing future Medicare drug costs by billions because the Federal Government can now negotiate drug pricing. He also promised Congress that he would veto any bill that raises costs of prescription drugs. He also said "*Thanks to the law I signed last year, millions are saving \$800 a year on their premiums.*" Text: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/02/07/remarks-of-president-joe-biden-state-of-the-union-address-as-prepared-for-delivery/>. (Pages 7 and 8.)

**LONG-TERM CARE NOTE...** The PA Long Term Care Council February meeting has been rescheduled for March 9. Details: Sasha Santana at 717-787-3368 or [ra-ailtcc@pa.gov](mailto:ra-ailtcc@pa.gov).