

## LEG REG REVIEW 2024, 5th Issue March 4, 2024

*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).*

### INSURANCE COMMISSIONER TESTIFIES

On February 26, PA Insurance Commissioner Michael Humphries testified on the State Budget and several insurance issues before the House Appropriations Committee. This is the first time in well over a decade that the Department testified in Appropriations hearings.

For starters, he briefed legislators on some Insurance Department basics such as:

- PA has the 6<sup>th</sup> largest insurance market in the United States and the 15<sup>th</sup> largest in the world.
- The Insurance Industry contributes over \$800 million in premium taxes to Pennsylvania's coffers.
- PID has one of the smallest budgets in the U.S. state insurance regulatory offices despite its oversight responsibilities over such a large and complicated market.
- In health insurance, the Department only has regulatory authority over twenty percent of the market. The remaining 80% is comprised of public sector insurance programs and by the self-insured market which is regulated federally by ERISA.
- The PA Insurance Department does not tap the General Fund for its governmental operations. Per Act 46 of 2013, a dedicated Fund was established. The Insurance Regulation and Oversight Fund was set up to allow one-half of licensing fees to go to the Department with the rest and fines revenue going into the General Fund. The Department also returns money from its share back to the General Fund if there is money left at the end of the fiscal year.

**Although questions were raised on numerous topics, two are highlighted here – the proposed diversion of \$50 million from the Workers Compensation Security Fund to the reinsurance mechanism for the state's health insurance exchange known as Pennie -- and mental health parity.**

### WC Security Fund

This is a guaranty fund established to pay claims when a carrier goes insolvent. It is funded by assessments on other insurance companies. The last time an assessment took place was 2009 because this Fund has such a healthy balance. According to the Governor's Budget Book, the WC Security Fund has \$1.124 billion in available funds in Fiscal Year 2023-24 and only \$40.8 million in expenditures. Source: <https://www.budget.pa.gov/Publications%20and%20Reports/CommonwealthBudget/Documents/2024-25%20Budget%20Documents/Budget%20Book%202024-25%20-%20Web%20Version.3.pdf>.

Some of the discussion points with answers *in italics*:

- Will the transfer be paid back? *The transfer is not a loan.*
- What would be the money used for? *The purpose of the \$50 million transfer is to establish a pilot program to support Pennie's Reinsurance Fund. The money would be used to reduce premiums paid by some enrollees to as low as zero as an incentive to enroll. The savings would also be an incentive to upgrade plans, for example from Bronze to Silver, with better coverage and a lower deductible. Pennie deductibles are as high as \$8,000.*
- Is this robbing Peter to pay Paul? Should not insurers get their assessment back if the WC Fund is used for another purpose? *No and yes. There would need to be an amendment to Act 42 to make this possible. NOTE: Although contained in the Governor's State Budget proposal, there would likely need to be a change in the Fiscal Code as well. Regarding reimbursing insurers for their assessment, they would be reimbursed. NOTE: During the Rendell Administration, attempts were made to use some of*

the Joint Underwriting Association (JUA) reserves to help balance the Budget. JUA is the Medical Malpractice insurer of last resort. A court ruling held that the JUA assessment was money being paid by health care providers and systems and that the General Assembly could not “raid” JUA’s reserves.

- Regarding a concern expressed about what happens after the pilot program is ended, Commissioner Humphries pointed to the upcoming end of Federal subsidies in 2025. This requires planning to continue the adequacy of the Pennie Reinsurance Fund.

### **Autism and Mental Health Parity**

Mental Health Parity means that health insurance companies may not discriminate against persons afflicted with issues relating to mental health and treatment for substance abuse. Questions here dealt with Autism. The Commissioner stated that mental health parity laws include treatment for those on the Autism Spectrum. PID issued Notice 2023-16 on November 4, 2023 reminding insurers of their obligation. The question was posed as to why Autism was classified as a mental illness and that such a label was misinformation because it suggests that Autism could be cured. In addition, labeling a person as having a mental illness creates a stigma which is particularly harmful to young people. Commissioner Humphries said that the label came from the Federal Government. In addition, PA’s efforts in this area are considered a national model.

He also pointed to Insurance Department work in helping companies improve their internal procedures and researching how long it takes persons with Autism to get treatment. An excessive wait period suggests noncompliance with Mental Health Parity laws and regulations.

### **Some of the other topics:**

- Departmental plans to analyze **Essential Health Benefits (EHB)** are not moving forward because of reactions from stakeholder groups. A related question was where the authority comes from to change the EHBs. The answer was that the Affordable Care Act gives states the authority to determine their EHBs as long as nine Federal health treatment categories are met. However, per the Commissioner, the ACA wording is somewhat vague. It does however state that a state adding an additional mandated benefit must pay its cost.
- Regarding PA’s low requirement in **auto insurance coverage** of 5/15/30, Commissioner Humphries said that we are one of the lowest states when it comes to required levels of automobile coverage. He posed a consequence that could hurt those with lower incomes because of premium increases of possibly 15% if we double the minimums. He added that the Bureau of Public Engagement is seeking opportunities to meet with policyholders and community groups to educate them on insurance. One topic would be to educate people to know that cheap auto insurance can mean inadequate coverage in an accident.
- **Highmark’s request to PID to amend the Agreement** relative to the insurer’s purchase of a hospital system received attention with legislators expressing the view that the Agreement should stand because it benefits health care consumers. The Commissioner said that the Department is looking into integrated insurer/hospital systems because right now, PID can only look at the insurer side and does not have the full picture.

Also discussed were the PID’s priority to increase the numbers of private sector **Flood Insurance** policies because it was made a PID priority since only about 65,000 policies are in effect now in PA; **Cyber Insurance** was put on the Export List (allowing access to Surplus Lines without getting the required declinations from standard carriers); **Landslide Insurance**; and **Long-Term Care insurer insolvencies** such as with Penn Treaty where the Department is prevented from using company assets to pay policyholder claims.

The final question in the hearing came from House Majority Appropriations Chair Jordan Harris (D-Phila.). He asked why auto insurance is so expensive in Philadelphia. Commissioner Humphries explained that more cars, tighter roads, and greater losses (claims) equal premium because they reflect risk. Rep. Harris countered by saying just outside of Philadelphia, people have cheaper insurance and drive into Philadelphia every day resulting in crowded roads. Meanwhile, Philadelphians are punished with higher auto insurance costs.