

LEG REG REVIEW 2008, Eighth Issue

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ONE MORE WEEK...

Next week is the last before the March 10 return of the General Assembly to what has been called 'Health Insurance Week'. Although Appropriations Committees' hearings on the 2008-09 State Budget command center stage, note that the House Insurance Committee has scheduled a March 5 hearing on the proposed merger between Independence Blue Cross and Highmark. Still, the main story this week is appropriations.

ARIO DEFENDS COVER ALL PENNSYLVANIANS

Acting PA Insurance Commissioner Joel Ario presented a spirited defense of the Administration's funding and rationale of Cover All Pennsylvanians (CAP) before the Senate Appropriations Committee February 26 and will again before the House Appropriations Committee March 4.

CAP and MCARE Dominate

The Senate chose a different format from the traditional presentation of formal testimony, preferring instead to go directly to legislator questions and concerns about use of the MCARE abatement fund surplus to fund CAP. Senator Don White (R-Indiana) led by suggesting that the surplus was the result of excessive assessments to doctors and hospitals and that reducing the \$1.8 billion unfunded liability should be the priority rather than the Cover All Pennsylvanians program. Ario answered, saying that the assessment will be higher than the stated need in a given year because of peaks and valleys in claims resolution. He also suggested slowing down the MCARE phase-out from three to ten years and that MCARE abatement fund monies were enough to fund unfunded liability and CAP because CAP utilized other funding streams as well. (*NOTE: MCARE is a state-run tier of Medical Malpractice insurance which has a separate premium called an assessment that health providers must pay. Providers secure primary coverage from the private sector, go into MCARE and then back into the private sector for excess & surplus professional liability coverage. The MCARE assessment is 20 percent this year and changes depending on the claims that are paid. The abatement fund's money comes from a cigarette tax and the old auto CAT Fund to pay all or part of the MCARE assessment. The Governor proposed that half of this surplus be used to pay for his new health program and refused to re-authorize the abatement fund until he got his way.*)

In response to a question from Senator Mike Stack (D-Phila.), the Acting Commissioner said that there were three pieces of MCARE to consider. First is the phase-out of MCARE and the transition to full private sector coverage. This could result in a bump up of over 25% in Medical Malpractice premium. Second, is a state effort to cushion the premium spike through the abatement fund surplus. Third, the Department must zealously monitor the market, focusing on the risk retention groups which sprang up at the height of the Medical Malpractice crisis and now account for 25% of that market in PA. Ario also said that the Governor had not said that the medical malpractice crisis was over despite media assertions. He said that the Governor said that we've turned the corner by way of the entrance of new carriers and reduction of numbers of Medical Malpractice lawsuits.

CAP Funding

CAP funding was a central issue with Senators Pat Browne (R-Lehigh), Jake Corman (R-Centre), Stewart Greenleaf (R-Montgomery) and Jim Rhoades (R-Schuylkill) all being critical of the plan's funding assumptions. Sen. Browne questioned the increase in cigarette tax revenues if demand declines. Ario said that hard-core smokers won't give up the habit meaning that the demand for tobacco may be flat but still a viable revenue source. This stream would be coupled by 2013 with massive federal funding (\$450 million), state funding (\$160 million) and employers/employees (\$260 million). Of these and unlike the original CAP which relied on a payroll tax, employers would only end up paying 1% or \$2.6 million.

The later observation prompted Sen. Rhoades to suggest that businesses would be quick to give up private sector coverage because the government subsidized plan would be much cheaper. Ario countered, suggesting that crowd-out would not occur because of the six-month wait to be eligible for CAP. He also said that PA had been commended by CMS for its success in curbing crowd-out.

Senator Pat Vance (R-Cumberland) asked questions about how Cover All Pennsylvanians could add two expensive services, prescriptions and behavioral services, yet cost less than adultBasic now. Ario said that offering those new benefits would reduce costs since prescriptions or advance behavioral treatment before problems become critical reduce medical expenditures later on.

Entitlement versus Partnership

The most spirited exchange came from Senator Corman when Acting Commissioner Ario claimed that CAP was not a government program but rather a private sector plan because private sector carriers would bid to run the program. During questioning, he admitted that only one non-Blue carrier had part of adultBasic and that for only 5,000 lives. Sen. Corman suggested that the Blues were forced to bid and that this eliminated the pretense of a 'partnership' with the private sector. Ario countered, saying that the Blues may be required to bid but that they would set the costs at a real-world level. Sen. Corman rebutted, saying that the Blues were coerced into providing bids based on the numbers the Department wanted, not on real costs of the program.

The second area was whether or not Cover All Pennsylvanians is an entitlement program. Ario said that it clearly was not because it had a budget and when costs met that budget level, people would go on a waiting list or benefits would be reduced. Sen. Corman said that despite the legal technicality, CAP is a 'political entitlement' because legislators would be forced to fund the waiting list for this new constituency. He and others also pointed to the danger of expecting federal dollars to the extent that Ario claimed. If federal funding was not there, the state would have to make up the difference.

Other Insurance Topics:

- **Flood Assessment:** The proposed tax/assessment on insurance premiums to pay for flood control projects would be levied on homeowners in flood zones AND on commercial property policies. Ario said that the added cost would be miniscule, less than 50 cents per policyholder. This money would leverage borrowing to pay for the flood control projects.
- **Underground Storage Tank Indemnification Program (USTIF):** Senator Barry Stout (D-Washington) commended the Administration for having a ten million dollar repayment of a loan made from USTIF to the General Fund but said that repayment was not yet on track. In another surprise, Ario said that even assuming the full repayment of the \$100 million loan meant that USTIF unfunded liability was \$375 million.
- **Complaints:** In response to a question from Senator John Gordner (R-Columbia) the Acting Commissioner said that the Department receives 150,000 queries and complaints per year with 10% being complaints. Of these, ¼ were health insurance related and ¼ were auto related.