

LEG REG REVIEW

2019, 11th Issue * May 6, 2019**

LEG REG REVIEW is a periodic newsletter produced by PHILLIPS ASSOCIATES, a professional lobbying and consultant firm located near the State Capitol. It contains news on Pennsylvania legislation and regulations impacting the Insurance and Business Communities. Subscriptions are \$100 per year and further information may be obtained by contacting PHILLIPS ASSOCIATES at 717/728-1217 FAX 717/232-7005 or e-mail at xenobun@aol.com.

HOUSE INSURANCE COMMITTEE LOOKS AT PA EXCHANGE

On May 7, the House Insurance Committee is looking at whether or not Pennsylvania should create its own state-based exchange with a reinsurance mechanism.

Also known under the Affordable Care Act (ACA) as ‘Federally-facilitated marketplace’, the exchange offers subsidized individual policies and small group (SHOP) policies with tax credits. Originally, the PA Insurance Department under former Commissioner Mike Consedine held several hearings to ask whether a PA-run exchange would be preferable to a federally-run program. The overall conclusion from stakeholders was to favor a state-based exchange without the controlling hand of the Federal Government. Now, several years later, the topic has re-emerged for different reasons.

PA policymakers in the Wolf Administration including Insurance Commissioner Jessica Altman and Secretary of Human Services Teresa Miller (former Insurance Commissioner) as well as Governor Wolf himself have attacked the Trump Administration repeatedly on what it has proposed (association health plans, marketing across state lines, etc.) and on the weakening of ACA outreach at the Federal level. In addition, there is real concern that ACA may be voided after a December 2018 ruling in the U.S. District Court for the Northern District of Texas that the entire Affordable Care Act is unconstitutional. This ruling came about after enactment of the Tax Cuts and Jobs Act of 2017 which reduced the individual mandate penalty to zero. Earlier ruling by the U.S. Supreme Court held that this law was an extension of Congress’ Tax Power. The 2017 law voided ACA per Judge Reed O’Connor’s ruling because the individual mandate requiring individuals to have health insurance “*can no longer be sustained as an exercise of Congress’ Tax Power.*” The decision was appealed and will eventually reach the U.S. Supreme Court for a final decision. (Ruling: <https://oag.ca.gov/system/files/attachments/press-docs/211-texas-order-granting-plaintiffs-partial-summary-judgment.pdf>)

Advocates of provisions of the Affordable Care Act (no pre-existing conditions, minimum essential benefits, etc.) so far have introduced legislation to preserve parts of the Federal law in PA statute. Some of these include:

- Senate Bill 50 no pre-existing conditions (no medical underwriting)
- Senate Bill 51 establishing essential health benefits
- Senate Bill 470: prohibition on annual or lifetime benefits for minimum essential benefits
- House Bill 469: establishing minimum essential benefits
- House Bill 1013: no pre-existing condition (no medical underwriting)
- House Resolution 101: urges Congress to retain consumer protections if ACA is ruled unconstitutional

This Insurance Committee informational meeting will look at advantages of a state-based exchange and presumably will describe several ways this could be devised. One prototype could be the former AdultBasic program established during the Rendell Administration or it could be modeled directly on the ACA federally-facilitated marketplace (exchange).

LAST WEEK'S LEGISLATIVE ACTIONS

- The House passed several regulatory reform bills, with Republicans generally voting for and Democrats against. The legislation is now in the Senate Intergovernmental Operations Committee.
- **House Bill 806** (Keefer-R-York/Cumberland) amends the Regulatory Review Act to require (among other things) an estimated economic impact of a proposed Rule. Vote was 102-91.
- **House Bill 430** (Benninghoff-R-Centre) prohibits agencies from reissuing regulations that were previously disapproved. In addition, legislative committees would be able to report a concurrent resolution to initiate the repeal of regulations now in effect. Vote was 105-90.
- **House Bill 762** (T.O'Neal-R-Washington) requires an annual report detailing activities of agencies' regulatory compliance officers. Vote was 102-94.
- **House Bill 509** (Rothman-R-Cumberland) requires that agencies have an online tracking system for permit applications. Vote was 109-86.
- **House Bill 328** (Warren-D-Bucks) establishes a Flood Insurance Premium Assistance Task Force. **NOTE** that current language does not require that a licensed insurance agent who sells Flood Insurance be included in the Task Force's makeup. On April 29, HB 328 passed the House 197-0.
- **Narrowly defeated was House Bill 1055** (Klunk-R-York) which says that for every regulation being proposed, there must be two regulations slated for repeal. Vote was 100-97 with eight Republicans voting with Democrats.

In addition, new Senator Pam Iovino (D-Allegheny/Washington) was sworn in last week. She won the seat vacated by former Senator and new U.S. Representative Guy Reschenthaler.

THIS WEEK

The Senate has 42 bills for second or third consideration (voting) on its calendar. Two with insurance implications are: **Senate Bill 109** sponsored by Senator Gene Yaw (R-Lycoming) establishing a legal mandate requiring passengers to give assistance including the making of medical transport arrangements if the driver cannot or refuses to render such aid. The bill is silent as to any liability connected with this passenger assistance but does impose a \$300 fine on the passenger if convicted from having not provided this aid; Senate **Bill 131** sponsored by Senator John Sabatina (D-Phila.)prohibiting use of cell phones by novice drivers (16 and 17 years of age) while driving.

The House has 15 bills on its calendar for second or third consideration (voting). One to watch is House Bill 427 (Benninghoff-R-Centre) mandates health insurance coverage requirements for stage four metastatic cancer.

COMMITTEE WORK

- This week the House Health Committee takes up a volatile bill, one which would preclude abortions for those diagnosed with Down's syndrome. **House Bill 1234** is sponsored by Rep. Kate Klunk (R-York) and Speaker Mike Turzai (R-Allegheny).
- The House Labor & Industry is convening a hearing on **House Bill 1234** (Cox-R-Berks) which extends the authority of the Worker Compensation Act to cases such as asbestos exposure where a workplace injury does not make itself known until after 300 weeks post-employment.
- The Senate Banking & Insurance Committee takes up the reconfirmation of Robin Weissmann as Secretary of Banking & Securities.
- The Senate Aging & Youth Committee considers the re-confirmation of Robert Torres as Secretary of Aging.
- Teresa Miller's re-confirmation will be considered by the Senate Health & Human Services Committee.