



Department of Consumer and Business Services

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Before the

House Interim Committee on Health Care

September 30, 2009

Testimony of
Teresa Miller, Insurance Division Administrator
Department of Consumer and Business Services

For the record, my name is Teresa Miller. I am the Administrator of the Insurance Division at the Department of Consumer and Business Services (DCBS). I am here today to provide an update about the rulemaking currently underway at the Insurance Division (Division) to implement some of the changes to the Division's rate review process adopted under House Bill 2009.

As background, under current law, the Insurance Division of the Department of Consumer and Business Services must review health insurance rates for individual, small group, and "portability" coverage before they can take effect. In the 2007 session, the Legislature passed House Bill 3103, which made rate filing information publicly available upon the department's receipt of a rate filing. The bill also allowed the department, upon the request of a carrier, to exempt from disclosure some of the data submitted if the department determined that the information was a trade secret and that release of the information would be harmful to competition. This process was extremely time-consuming and occurred on a case-by-case basis, with each carrier requesting exemption of material at the carrier's discretion.

In 2009, the Legislative Assembly adopted House Bill 2009 which modified the rate review process in several ways. First, the bill establishes that health insurance rates must be reasonable and not excessive, inadequate, or unfairly discriminatory. The bill authorizes the department to take into account a number of factors routinely considered as part of the rate review process and explicitly authorizes the department to consider factors such as investment income, insurer profits, surplus levels and cost containment and quality improvement efforts when reviewing a rate filing. Additionally, House Bill 2009 requires insurers to separately report and justify increases or decreases in administrative expenses as part of each rate filing. The statement of administrative expenses must be in the form and manner established by the department by rule. Finally, House Bill 2009 gives consumers a voice in the rate review process by establishing a 30-day public comment period before the decision is made. To help facilitate meaningful review of rate filing documents, the bill changed the process for making a determination regarding whether rate filing information should be confidential because it constitutes a trade secret and would be harmful to competition if disclosed. Rather than making a case-by-case determination, the Department now has the discretion to establish by rule that portion of the rate review materials, if any, that will be exempt from disclosure.

In July, the Insurance Division began rulemaking to do three things associated with HB 2009. First, the department plans to specify, by rule, the form and manner required for insurers to submit administrative expense information. Second, we plan to specify all information a carrier must submit as part of a rate filing. Finally, we plan to identify whether there are types of information that constitute a trade secrets that would be harmful to competition if released and would thus be exempt from disclosure. For purposes of the rulemaking, we started the conversation regarding potential confidential information with the assumption

that all rate filing information will be made publicly available. However, the rulemaking process will allow for discussion and consideration of limited pieces of information that may meet the standard for confidentiality.

The Division convened an external advisory committee in August to assist in preparing a draft of proposed rules prior to engaging in the more formal rulemaking process. The advisory committee, which has met three times so far, consists of industry representatives, consumer advocates and representatives of small and large businesses. The Division is now considering the comments and recommendations of the advisory committee regarding the rules and will prepare a draft of proposed rules for the formal public comment and public hearing segment of the rulemaking process.

The Division plans to file the Notice of Rulemaking in October or November, and anticipates holding a public hearing in December or January. After the public hearing and close of the public comment period, the Division will revise the rules based on all comments received. The Department plans to adopt the final rule by February 1, 2010. The provisions of House Bill 2009 and the implementing rules apply to rate filings made on and after April 1, 2010.

I appreciate the opportunity to update the committee on our rulemaking process associated with House Bill 2009 and am happy to answer any questions you might have.