STATE OF CONNECTICUT

INSURANCE DEPARTMENT

194

Testimony of Thomas R. Sullivan, Commissioner
Connecticut Insurance Department

Before
The Insurance and Real Estate Committee

February 25th, 2010

RB No. 194 An Act Concerning Rate Approval for Individual Health Insurance

Senator Crisco and Representative Fontana, co-chairs, Senator Caliguiri and Representative D'Amelio, Ranking Members, and Members of the Committee, the Insurance Department appreciates the opportunity to testify regarding this bill. I am Thomas R. Sullivan, Insurance Commissioner, and it is an honor to appear before you today.

At the outset, I would like for you to know that my senior staff and I have spent considerable time and effort struggling mightily with this issue. We understand the high cost of health insurance and health care, particularly in the individual market. We are sympathetic to consumers trying to meet these high costs, especially in these economic times. At the same time, we support a robust competitive individual health insurance market in Connecticut so consumers will have a number of choices for their individual health insurance needs. In the Department's view, the current rate review process which is based on actuarial science is fair, objective, and without bias. As such, we believe that a process possessing these qualities is more appropriate than the process set forth in the bill before you.

After careful review and analysis, the Department opposes RB No. 194 as it is severely flawed and threatens to leave consumers with less health insurance choices than they have now.

In my testimony today, I would like to briefly outline, in broad terms, our reasons for opposition. In addition, I have attached a detailed analysis of the problems we find in the bill, which I believe will be of interest and assistance to the Committee.

I have heard compelling testimony from insureds in this state related to the effects of rate increases on them. I understand and share the goal of legislators and proponents of this bill, for less expensive health care. However, I fear this bill, if enacted, will have the opposite effect. I believe there is a significant risk, after enactment, which will lead to a reduction in the number of health insurers writing individual health insurance in Connecticut. Currently we have 8 companies writing individual major medical health insurance in Connecticut. When speaking to my colleagues in other states, it is evident that Connecticut's market is one which they envy.

The Department is very concerned that the unclear and subjective standards established in this bill are not firmly based on actuarial science and may reduce the number of health insurers writing individual coverage. For example, the bill defines "reasonable" as providing for a "fair rate of return" for the filer. However, there are no objective standards as to what a fair rate of return is. The Department understands we are to take into consideration the average rate of return for the 5 previous years in the filer's industry, but there is no objective or recognized published standard in this area. Also, the Department is to look at the filer's average net income for the previous 5 years. This, again, is subject to ambiguity where a corporate family may include a health insurer, an HMO, and a parent company that sometimes is a general business corporation, rather than an insurance company. This "reasonable" test will be nearly impossible to apply and likely to lead to inconsistent results.

Connecticut has a competitive market today in individual health insurance, and I strongly urge that the Committee exercise caution in making changes which will adversely affect the market and ultimately consumers.

It may be helpful for the Committee to understand how rate increases are analyzed today. The Insurance Department reviews rates today carefully and thoroughly to ensure they are not "excessive, inadequate, or unfairly discriminatory" as specified in current law. The Department's actuaries perform the review consistent with the objective principles of actuarial science. The current claim losses and projected claim losses, as well as the expenses of the health insurer, are carefully evaluated. Probing questions are asked, and frequently the Department actuaries request more information from the health insurer, to be sure we have all the necessary relevant information. When appropriate, the Department actuaries will reject the assumptions and trend factors used by the health insurer in developing the requested premium rates, and therefore reject the proposed rate filing.

In addition, the current rate approval process provides a measure of predictability for a health insurer, as well as a clear understanding that a substantial rate increase will not be approved without compelling loss ratio data. Conversely, a health insurer knows that the Department will not reject a rate increase where incurred claims come close to, or may even exceed, premiums. I believe that this actuarially-based and fair process keeps health insurers writing individual health insurance in the state, thereby providing options to consumers purchasing insurance in the individual market. Switching to unclear and subjective standards of "reasonableness" as proposed by this bill, while well-intentioned for the consumer, creates uncertainty for the health insurer. Stated simply: if this bill is enacted, a health insurer will need to evaluate whether it is fiscally prudent to continue to write individual health insurance business in Connecticut. Connecticut consumers in the individual market should be very concerned about this prospect. In addition, the General Assembly should consider that less competition in the commercial market puts pressure on state subsidized programs, such as the Charter Oak Health Plan, leaving taxpayers to pay the bill of what used to be paid for by policyholders.

In summary, this bill would make Connecticut the first in the country to implement a rate approval process that moves from defined and well-understood standards of sound actuarial science to subjective social standards. The Department opposes this bill and believes it is dangerous for Connecticut to embark on an experiment which could result in fewer choices for consumers and higher rates in the long term.

Despite our opposition to this proposal, the Department recognizes there is always room for improvement and is happy to work with the Committee on alternative approaches.

Thank you for this opportunity to comment on this bill. I look forward to working with you on this issue.

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TECHNICAL REVIEW OF SB194 – AAC RATE APPROVALS FOR INDIVIDUAL HEALTH INSURANCE POLICIES

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Given the sweeping nature of this proposal, the items raised in the following analysis are intended to aid the Committee in understanding how the Insurance Department will be impacted from an operational, legal, and fiscal standpoint.

Section 1:

As currently drafted, this proposal requires that rate hearings be held for new product as well as existing product rate filings for all 16 categories of health insurance set forth in 38a-469 – including closed blocks of business (which may only have a handful of members.)

If this is the case, the Department will be required to hold between 150 and 200 rate hearings per year which will result in significant additional costs and resources.
Further, it appears that this bill eliminates the "loss ratio guarantee" rate approach. As you may know, companies that use this approach file a minimum loss ratio with the Department and if that loss ratio is not met (within a five point variance), consumers receive a percentage of their premium refunded. The Department questions why this bill would remove this important consumer protection.

Section 2:

Both the Office of Healthcare Advocate (OHA) and the Attorney General (AG) are given specific rights to intervene in each rate filing subject to this bill and to avail themselves of the expertise of Department staff in fulfilling their duties under this bill.

The Department questions why proponents of this bill believe our expertise in reviewing rate filings is insufficient but looks to us to aid the OHA and AG as intevenors.

In addition, the language as drafted presents a number of questions. For example, section 2 states:

- Conn. Gen. Stat. § 4-180 requires agencies to render a final decision in a contested case within 90 days following the close of evidence or the due date for the filing of briefs, whichever is later. This proposal appears to conflict with the provisions of the Uniform Administrative Procedure Act by requiring the Commissioner to render a decision in thirty days or less from the date of the hearing.
- What is meant by "rate of return" and to what is it applicable?
- Is it the explicit profit/margin charge built into the proposed rates for that particular product filing or for the overall coverage line, or company or holding company?
- Is the rate of return based on the product that's been filed, multiple products, or the entire category of product lines that the company has, or the rate of return for the entire company?

- If the company incurs a loss on a rate filing for the product for a given year, are they able to charge a one-time additional fee to each policyholder so that the company can achieve a fair rate of return?
- If the rate of return is being determined on a larger scale than just the product filing, there is the potential that we are basing the rate action on the rate of return of a non-Connecticut domiciled subsidiary of the company. That means that we are potentially requiring another company, under the jurisdiction of another state's insurance authority, to potentially subsidize the rate for the Connecticut filing. Might that not lead to other states doing the same ---- using Connecticut domiciled companies to subsidize the rate actions of similar rate filings made in other states?
- What average rate does this refer back to as a benchmark and how is that rate calculated? The average rate for this product filing, product category?
- How are current reserves used to calculate this rate of return? Are these reserves at the product level or company level?
- How is the transfer of funds to and from the parent company or affiliates or subsidiaries used in determining the rate of return for this specific product rate filing? For Connecticut companies only or on a national basis which could include higher rate basis jurisdictions?
- It appears that the objective actuarial analysis based on claim experience and medical costs has been eliminated from this rate review process and has been replaced by a subjective social analysis based on undisclosed standards. Could that be perceived as being an arbitrary and capricious regulatory process not yielding the substantial evidence needed to meet administrative standards for a regulatory agency?

Section 2 of the proposal also requires that all materials related to the rate filing and all communications between the Insurance Department and the rate filer be posted on the Insurance Department's website. The Department supports this position.

Does this provision intend to give the OHA and AG access to materials not available to other parties, including information that might be confidential by statute? In essence, the Department questions why the OHA and AG should have access to more information that others, including the general public, would have and which might have no actuarial relevancy to evaluating the rate filing submitted.

Section 3:

The Department questions why both the OHA and AG are necessary, in addition to the Insurance Department, to evaluate rate filings when the proposed redundancy of resources and the cost associated it will be passed along to consumers.

In addition, line 229 of the proposed bill indicates that the cost of the consultant services will be "paid in such manner as directed by the Insurance Commissioner". What does that mean? Does that mean that the Insurance Commissioner is involved in the process of engaging these consultants for the OHA and/or AG?

With the strict time constraints imposed by this proposal, how do the OHA and AG expect to comply with state contracting rules (open postings and transparent evaluation of proposals, contracting review and approvals etc.)?