



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

1000 Washington Street, Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • Toll-free (877) 563-4467
<http://www.mass.gov/doi>

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

MIKE KENNEALY
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

EDWARD A. PALLESCHI
UNDERSECRETARY OF CONSUMER AFFAIRS
AND BUSINESS REGULATION

GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Minutes of Meeting of the Merged Market Advisory Council (Council) held on Thursday, March 5, 2020 and Approved by the Council at the Meeting Held on Wednesday, March 11, 2020; Motion of Council Member Michael Caljouw and Seconded by Council Member Rosemarie Lopes. The Motion Passed by a Unanimous Vote of the Council Members Present with Secretary Sudders Designee, Lauren Peters, Abstaining.

March 5, 2020, Minutes of the Council Meeting
Held at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Gary D. Anderson, Chairman, Commissioner Division of Insurance
Louis Gutierrez, Executive Director the Massachusetts Health Connector
Michael Caljouw, Blue Cross & Blue Shield, Health Insurance Carrier representative
Lora Pellegrini, Executive Director Massachusetts Association of Health Plans, Health Insurance Carrier representative
Mark Gaunya, Health Insurance Broker representative
Rosemarie Lopes, Insurance Broker representative
Rina Vertes, Health Insurance Industry Actuary
Amy Rosenthal, Small Group/Individual Health Insurance Purchaser representative
Patricia Begrowicz, Small Group/Individual Employer representative
Wendy Hudson, Small Group/Individual Employer representative
Joshua Archambault, Health Insurance Business Community representative
Jon Hurst, President of the Retailers Association of Massachusetts, Health Insurance Business Community representative

Attending to the Council:

Rachel Davison, General Counsel Division of Insurance
Michael D. Powers, Counsel to the Commissioner Division of Insurance
Jackie Horgan, Director Consumer Services Section Division of Insurance
Audrey Gasteier, Massachusetts Health Connector
Emily Brice, Massachusetts Health Connector

Call to Order:

Chairman Gary Anderson called the meeting to order. Chairman Anderson announced that Marylou Sudders, Secretary of Health and Human Services, had a previous commitment that she was unable to postpone and could not attend the meeting.

Chairman Anderson called for a review of the minutes of the meeting held on March 5, 2020. The Members of the Council reviewed the draft minutes and Council Member Michael Caljouw made the motion to approve the minutes, the motion was seconded by Council Member Mark Gaunya, and the motion passed unanimously with Chairman Anderson abstaining.

Chairman Anderson turned over the next segment to Kevin Beagan, Deputy Commissioner for the Health Care Access Bureau of the Division of Insurance, to discuss a recent issue raised about an agreement between Harvard Pilgrim Health Care, Inc. (hereinafter “HPHC”) and Massachusetts Biotechnology Council (hereinafter “MassBio”).

Deputy Commissioner Beagan asserted that there were questions raised about HPHC marketing Association Health Plans to MassBio and he was in contact with representatives from HPHC and in fact received a letter from HPHC explaining the relationship. HPHC entered into a marketing relationship with MassBio to promote certain plan designs as part of its “Edge Benefits” to its large employer group member companies or those companies with over 50 employees. Applicable members will be able to choose HPHC for their health insurance needs. Each current large employer group member of MassBio will be individually rated. In reviewing its joint marketing materials with MassBio, HPHC ensured that there was no discussion of small groups within the description of the HPHC health coverage offered to MassBio’s member companies. Mr. Beagan asserted that representatives from HPHC informed him that it is not engaged in marketing Association Health Plans and does not intend to. HPHC sent a confirmatory letter about these matters to Commissioner Anderson dated March 3, 2020.

Quarter-2 2020 Rates:

Deputy Commissioner Beagan informed the Members of the Council that the Division of Insurance completed its Quarterly Rate Review of health insurance premiums and the January submission of projected rates disclose the following:

- Average is expected to go up by 7.9% for those renewing April 1 and June 30
- Companies filed rates at the beginning of January and DOI staff and its consulting actuaries worked closely with companies to get them to lower rates
- DOI is not happy with rate changes; this is one of the most difficult tasks of the Division
- DOI is closely looking at costs and claims development; there is a mix of high cost services and prescription drugs
- DOI is offering to have supplemental meeting with members of the Council to go over rates and the DOI review process
- This is not only a small group issue and there is a similar impact in the large group market

Commissioner Anderson and Deputy Commissioner Beagan offered to schedule a one hour webinar the next two meetings of the Council. Council Member Lora Pellegrini stated this would be helpful and with some confusion about cost benchmarks, a webinar would help in clarifying the issues.

Deputy Commissioner Beagan offered to distribute a “doodle poll” to begin the conversation. Council Member Mark Gaunya questioned whether it would be appropriate for insurance carriers to be involved in that conversation and Commissioner Anderson responded that carriers should weigh-in if they felt the need to do so. Council Member Michael Caljouw, of Blue Cross & Blue Shield, observed that he engaged in frequent conversations with Council Member Jon Hurst,

President of Retailers Association of Massachusetts, and Mr. Caljouw stated he would be happy to participate.

Review of Public Meetings Held by the Council:

Deputy Commissioner Beagan informed the Council that the public meeting held in Dartmouth, Massachusetts in February was attended by some representatives of small businesses and there were concerns relayed about availability, level of deductibles, the good and bad features of limited and tiered products, and group purchasing cooperatives along with discussions of what people are buying and problems that they are having. Council Member Rosemarie Lopes asserted that is good to have public sessions in other locations. Deputy Commissioner Beagan observed that he would have liked to have better representation from small businesses at the public sessions. Commissioner Anderson declared that we should redouble our efforts to get the word out.

Deputy Commissioner Beagan stated that the next public session of the Council would be held in Springfield on March 18, 2020, and reminded everyone about the Council's email address for the public to submit comments to/at: MergedMarket@mass.gov

Presentation by Gorman Actuarial Inc.:

Commissioner Anderson next introduced Bela Gorman, principal of Gorman Actuarial, Inc. to provide a presentation created for the individual/small group health insurance markets (hereinafter "Merged Market") entitled, "Merged Market Advisory Council," dated March 5, 2020. Ms. Gorman introduced herself and explained that the power point presentation she created for this meeting of the Council was to continue building on some fundamental concepts underlining the Merged Market. The handout consisted of 29 slides with 3 topics: (1) Risk Adjustment Recap; (2) Group Size Adjustment; and (3) Baseline Analytics. The presentation was projected on a large screen while Ms. Gorman went through each slide, at various points providing additional background information, and entertained questions and comments from various Members of the Council.

Discussion about Employer Offered Individual Coverage Health Reimbursement Accounts (hereinafter "ICHRAs"):

At the conclusion of Ms. Gorman's presentation Deputy Commissioner Beagan announced the next segment of the Council's meeting and introduced Jeff Rich of HSA Insurance, a private exchange, and Bill Stewart of Benefit Strategies, LLC to talk about the new federal rules permitting Individual Contributory Health Care Reimbursement Accounts (ICHRAs) whereby an employer would pay employees to purchase individual health coverage.

Mr. Rich explained that his company offers individual health insurance coverage through approximately 800 insurance brokers. There are mixed feelings of the brokers that he transacts business with: 1/3 are very interested in the product; 1/3 don't care; and 1/3 think the product is terrible. Mr. Rich elaborated that the concept involves a platform of products, an administrator, and a broker. Since January there has been an uptick in sales, there is interest in these products because they are a means for employers to save money and a company's employees become real consumers who choose the products responsive to an employee's needs.

Mr. Stewart observed that the ICHRA idea was intended to strengthen the non-group market so that an estimated 11 million people could transfer from the group market and obtain coverage in the non-group market. The federal rules established guardrails placed to limit potential bad risk dumping and cherry picking. The rules would restrict the number of employee classes and

prescribe classes assigned to ICHRAs require a minimum of 10 people. Mr. Stewart's company acts as the program administrator and takes the burden of administering health products from the backs of employers. ICHRAs allow the option of moving some of the risk in a large group into a separate category and subsidize them, thereby decreasing costs.

Mr. Stewart stated that ICHRAs may not be attractive in Massachusetts at this time. Currently there is a scarcity of talent in a very tight labor market and the concept of an employer offering an ICHRA might not be received well by employees because they are seeking the traditional all-inclusive group health insurance coverage and benefits plans. Massachusetts is also different than other states because its Merged Market for non-group and small groups makes individual coverage more affordable than it may be in other states.

Mr. Rich opined that ICHRAs offer another option for employers with high quality plans for individuals. Council Member Mark Gaunya queried whether there was an interest by groups of under 50 employees and Mr. Rich responded that the majority of interest was in large groups.

Council Member Rina Vertes opined that ICHRAs were a better option for some employers because it out-sources the burden on employees to do the shopping for their health product and Ms. Vertes found it surprising that more employers aren't interested in offloading administrative responsibilities. Mr. Rich responded that this was one of the main reasons for employers choosing ICHRAs.

Council Member Mark Gaunya stated that this concept is early for Massachusetts with apparently few competitors doing business at this stage. Mr. Gaunya asked Mr. Rich about the number of parties marketing ICHRAs at this time and Mr. Rich indicated there were few. Council Member Gaunya then asked whether there was a way to keep track of the use of ICHRAs in Massachusetts and Deputy Commissioner Beagan answered there was not a current way to keep track of this.

Council Member Joshua Archambault asked if there was an interest by seasonal employers and Mr. Stewart responded that there was. Mr. Stewart recounted that he recently was approached by a Maine ski resort company that wanted to provide some health insurance coverage to the company's ski pros and wanted to provide some tax free money to help pay for some of their medical coverage. Mr. Stewart informed the ski company that they could provide such coverage through an ICHRA, but could not restrict the offer to the ski pros but had to offer it to all of the seasonal employees working at the resort such as the ticket takers and ski-lift operators.

Deputy Commissioner Beagan thanked Mr. Rich and Mr. Stewart for taking time to appear before the Council and moved onto the next item on the agenda.

Discussion of Limited Supplemental Health Plans:

Deputy Commissioner Beagan next introduced Jenny Erickson, Senior Vice-President and General Counsel for Life Insurance Association of Massachusetts (LIAM) and Edward "Ed" Donahue Second Vice-President and Regional Director of Aflac Inc.

Ms. Erickson informed the Council these supplemental health plans are not traditional health insurance products and not part of the Merged Market. She was present to talk about two types: hospital indemnity coverage that makes payments to an insured to indemnify for hospital costs not covered by health insurance and specified disease coverage that indemnifies for costs incurred as the result of diseases.

Hospital Indemnity Insurance provides benefits to be paid to an insured or a dependent, including the spouse of an insured, on the basis of hospitalization of the insured or a dependent. It is intended to cover gaps not covered by health insurance including co-payments or coinsurance deductibles, travel or overnight stays at hotels for families, and income replacement and transportation costs including those costs not covered for ambulances. Hospital indemnity coverage has a fixed dollar cap. Depending on the policy the cap may increase based on the severity of an event such as being placed in a cardiac care facility or Intensive Care treatment. Hospital indemnity coverage is sold as a supplement and not as a replacement for health benefit plans. Individual hospital indemnity plans must meet the requirements set by Massachusetts state law and the Commissioner of the Division of Insurance by regulation. These products comply with M.G.L. c. 175 §§ 108 and 110, and 211 CMR 42.00 et seq.

Specified Disease Insurance provides benefits to be paid to an insured or dependent, including the spouse of an insured, if the insured or dependent comes down with a specified disease such as cancer or stroke. As with hospital indemnity insurance, it is intended to fill-in gaps not covered by traditional health insurance including copayments, coinsurance or deductibles, travel or overnight hotels for families, payment for groceries, and income replacement. Individual specified disease insurance products must meet the requirements set by the Massachusetts state law and the Commissioner of the Division of Insurance by regulation. These products comply with M.G.L. c. 175 §§ 108 and 110, and 211 CMR 146.00 et seq.

These products don't directly pay for healthcare but give policyholders money in-hand, are triggered by health events, and the policyholders choose how to use the money. These products are sold individually and through employers, the premiums are generally less than \$500 per year and the average age of the purchaser is 50 years old and most insureds have underlying health insurance coverage.

Council Member Amy Rosenthal stated that her call center receives about 20,000 calls per year and a recent caller was upset because she purchased this type of coverage and did not receive any payments. Council Member Rosenthal went to the website, reviewed it, and she was confused about the provisions of the coverage the company was offering. She stated that it is easy to say consumers should do a better job of educating themselves, but marketing is often times confusing even to the sophisticated consumer and there needs to be a better job done making these products more easily understood.

Council Member Michael Caljouw observed that the Division of Insurance regulations are strong but there are some tweaks to think about; some carriers don't do a good job of explaining the supplemental nature of these products and he would support some amendments to the current regulations. He found that there have been abuses in companies marketing these products, but wished to make it clear that none of the people attending and participating at the Council meeting were engaged in such misconduct.

Deputy Commissioner Beagan observed that, if people leave the Merged Market and bought a hospital indemnity plan thinking it is health insurance they bought the wrong product, and they usually return to the health insurance coverage when they have an injury or health sickness to pay for their health care needs.

Discussion of Professional Employer Organizations (“PEOs”):

Deputy Commissioner Beagan next introduced Robert “Bob” Burbridge founder and owner of

Genesis HR Solutions, Patricia “Patty” Hilger, specialist Genesis HR Solutions, and Daniel Harris, Regional Director of the National Association of Professional Employer Organizations “NAPEO” to talk about PEOs.

Bob Burbridge introduced himself by stating he is the owner of Genesis HR Solutions and started the company in 1991. He informed the members of the Council that a PEO offers comprehensive human resources solutions providing services to small and medium business, providing access to quality health insurance coverage, 401(k), dental, and life coverage. A PEO helps businesses focus on growing the business by providing a comprehensive suite of human resources functions and access to a Fortune 500 level of human resource benefits for small and medium size businesses. They cover the gamut of activates from payroll, risk management, labor relations, workers compensation, to health care coverage for employees along with navigating the alphabet soup of employment regulation such as FMLA, COBRA, and other compliance regimes.

The PEO allows smaller companies to have the feel of larger companies by providing the same services that larger companies can provide in-house. Many times they do not provide the cheaper option; health care is never offered on its own by PEOs and only with other services. The standard PEO is a co-employment relationship established by client services contractual agreements and in Massachusetts there are statutory registration requirement and laws governing them.

Patty Hilger explained that a PEO is based on a client partnership model: a company outsources solution for HR resource management and the PEO acts in the role of the employer. Typically the clients/companies lack experienced HR staff. The PEOs bring value to businesses: HR functions (handle life cycle of employment and expertise in navigating employee issues); relief from the day-to-day administration of employees’ services, and these types of burdensome tasks of being an employer; employee benefits; consolidation and integration of all of these services with single point of contact.

Council Member Lora Pellegrini asked how a PEO selects offerings for employers. Ms. Hilger responded that Genesis selects carriers and working with a broker determines what plans to offer. The PEO creates a large group because of its co-employment relationships and because it is acting in the capacity as the employer.

Daniel Harris informed the Council of some basic facts about PEOs. Currently there are 34,000 covered lives in Massachusetts; 78 PEOs; regulated since 2018; and based on survey of members, about half of PEOs offer health coverage; 30% of clients choose to sponsor their own plans.

Council Member Jon Hurst asked Mr. Harris why trade associations can’t do the same as PEOs. His organization separates everything and breaks things out much like a chamber of commerce has separate entities for everything such as health insurance, workers compensation all are stand alone and it appears that a PEO is combining everything.

Bob Burbridge responded, the PEO acts in the shoes of the employer through a contractual agreement and they are the employer and have a fiduciary responsibility by law for any of the services that they are performing for a company. The PEOS are on the hook for payments of any premiums contracted for the employees working for a company. He indicated that Trade Associations direct employers to different companies to choose for themselves and they

determine whether to take the service. If a member of a Trade Association takes a recommended service, the decision is between the company and the servicing company and the Trade Association is not obligated for any part of the transaction.

Council Member Lopes asked Mr. Burbridge how long does an average employer stay with the PEO. Mr. Burbridge replied that on average an employer stays with his PEO for 10-12 years. He said that the relationship is designed to be a long-term relationship.

Michael Caljouw asked what is the potential impact that PEOs and other product designs might have on risk in the Merged Market. Mr. Burbridge responded that groups that join PEOs are similar to other groups in the market. He said that Genesis usually offers employees richer benefits and more expensive types of coverage.

Deputy Commissioner Beagan asked whether other states treat the health coverage offered through a PEO entity as large group coverage. Mr. Harris answered that most states treat a PEO as a large group employer for purposes of health insurance coverage with the exception of the state of Maryland. In Maryland, PEO health coverage is considered to be part of the small group market. At this time, over 30 states have adopted NAPEO's model law which treats coverage issued through PEOs as large group coverage.

Council Member Michael Caljouw suggested that the Council should take a look at rating rules; e.g., the requirement for look-through for coops but not PEOs because of the co-employment relationship created between the PEO and employer. Mark Gaunya asserted that, PEOs are responsible for payment of taxes and premiums and there is a major difference between PEOs and Trade Associations. PEOs have fiduciary relationship because of co-employment contractual agreements that distinguishes them from Trade Associations.

Commissioner Anderson summarized the issue by stating that the reason we requested a presentation by those involved with PEOs is to determine why people are migrating out of the Merged Market. He thanked the presenters for appearing before the Council, and concluded that PEOs may be another reason for people migrating out of the Merged Market.

Adjournment:

Commissioner Anderson thanked the Council Members and the presenters for their participation, and stated that the next meeting of the Council will be on Wednesday, March 11, 2020 at the Division of Insurance, Room 1E, 1000 Washington Street, Boston. Chairman Anderson called for a motion to adjourn and Council Member Mark Gaunya made the motion, the motion was seconded by Council Member Jon Hurst and the motion passed by a unanimous vote of those in attendance with Chairman Anderson abstaining.

Whereupon, the Council's business was concluded.

These minutes are exempt from the requirements of M.G.L. c. 30A, § 22(a) based on the definition of a "public body" as defined under c. 30A, § 18.

List of Documents provided at the Council meeting:

- 1. Slide presentation "Merged Market Advisory Council" dated March 5, 2020 created by Gorman Actuarial Inc.**
- 2. Draft minutes of the public meeting held on February 5, 2020 at 1000 Washington**

Street, Boston, Massachusetts.

- 3. Letter dated March 3, 2020, from Patrick Cahill, Vice-President Massachusetts Market, Harvard Pilgrim Health Care to Gary D. Anderson, Commissioner Division of Insurance.**
- 4. Handout entitled “HOSPITAL INDEMNITY INSURANCE”.**
- 5. Handout “3 WAYS SMALL BUSINESSES BENEFIT FROM USING A PEO.”**
- 6. Handout “Facts about Professional Employer Organizations (PEOs).**
- 7. Summary of Public Information Session on Wednesday, February 12, 2020 at UMass Law School in Dartmouth, Mass.**
- 8. 2Q20 Average Rate Increases for Merged Market.**