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## Senate of Pennsylvania

May 21, 2024



Devon Trolley  
 Executive Director  
 PA Health Insurance Exchange Authority  
 312 Market Street  
 3rd Floor  
 Harrisburg, PA 17102

Director Trolley:

Thank you for submitting to my office the proposed Regulation 130-1 package from the Pennsylvania Health Insurance Exchange Authority (Pennie). After review, I have significant concerns about this proposal.

As a general rule, administrative entities such as Pennie should leave social-engineering policy decisions, into which category this clearly falls, to the elected branches of government, unless given clear statutory authorization. By your own admission, "this regulation is not mandated by any federal or state law, court order, or federal regulation" but proposed under general rulemaking authority.

Additionally, it bears mentioning that there is no direct or implied mention of "health equity" in Pennie's enabling legislation, as insurance companies already are subject to existing state and federal anti-discrimination law. This being said, had Act 42 of 2019 included a vague, potentially discriminatory concept such as health equity, I would have certainly opposed such a provision.

Upon review of the Regulatory Analysis provided by your agency, I found the rationale disappointingly deficient in substantive details and data to justify any need for this initiative.

Toward that end, I would ask that you please answer the following questions and address the concerns I have detailed below.

With regard to the Regulatory Analysis Form Questions/Comments (references to Form box numbers included):

- How do you define "same quality of care" and how would you measure it? (7)
- Please provide your list of "historically underserved communities" and those whom the Authority deems to not constitute an underserved community. Include any source used to assist in the determination of underserved communities. (10)
- What exactly would the Authority consider a sufficiently "diverse staff"? Please include the specific qualitative or quantitative measures which the authority wants regulated insurance companies to meet. Are you aware of any regulated insurers having insufficiently diverse staff? (10)

- In what manner or form have regulated entities offering plans on the exchange failed to be sufficiently diverse in their staffing? Please include any data demonstrating the failure to meet this standard. (10)
- Because you are trying to “reduce biased behavior and decision-making,” I’m interested in knowing what are the biased behaviors and decisions you have witnessed by insurers? Have you been keeping a tally so you will know whether they have been reduced? (10)
- The regulation speaks of “cultural competency” being needed to “better meet cultural and linguistic needs of their (insurers’) customers.” What evidence do you have that plans offered on the exchange do not have “provider networks that are responsive to their (customers’) specific healthcare needs,” as insurers regularly evaluate and update their networks to reach customers and potential customers with varying healthcare needs? (10)
- You indicate the “Pennsylvania individual health insurance market is very healthy and competitive,” and I agree. What evidence do you have that the states you reference which require health equity accreditation have an insurance market that is any healthier and more competitive? What data do you have that “this regulation will raise the quality of qualified plans”? (12)
- What is the Exchange Authority Board’s “vision to increase health equity”? What measures will it use to determine whether it is achieving this vision? (14)
- The Authority’s cost estimate seems to be incomplete as it assumes only the cost of the accreditation program itself. Did the Authority attempt to estimate the costs to insurers of any new training or organizational initiatives necessary to achieve the accreditation? (17)

With regards to Pennie’s Recognized Health Equity Accreditation Application, requirements 4 through 9, against what criteria/expectations/benchmarks will Pennie evaluate these submissions? Are there any minimum quantitative or qualitative standards that Pennie has set or is planning to set?

Again, as these questions remain unanswered, I have serious reservations about Pennie imposing non-statutory requirements on insurers. In this context, the threat of limiting or reducing participation in the exchange based on a fashionable but unclear-in-practice slogan seems counterproductive to the goal of providing affordable healthcare to Pennsylvanians. Pennie should hope that more insurers meeting existing statutory requirements seek to offer plans on the exchange, as increased competition has demonstrated time and again to result in more options for consumers to select their optimal value proposition (e.g., networks, price, customer service, etc.).

Moreover, by the very nature of your directive “requiring insurers to leverage race and ethnicity data for quality measurement,” it sounds very much like they are being pushed to use potentially discriminatory decision-making about healthcare decisions. Overall, this regulation raises concerns for me that insurers that are currently equal opportunity employers with non-discrimination policies consistent with applicable state and federal laws somehow aren’t meeting Pennie’s expectations.

At this time, it is impossible for me to come to any conclusion other than Pennie has strayed far from the stated purpose of the Authority. The Authority was designed to assist Pennsylvanians in obtaining low-cost health insurance plans. To this extent, Pennie, as an instrument of the Commonwealth, should be focused on lowering costs and increasing access for all Pennsylvanians. By your own admission (though, I suspect, greatly underestimated), this regulation would increase costs in the system while injecting government-sanctioned practices that will likely result in discriminatory behavior against Pennsylvanians.

In light of Pennie's decision to propose this regulation, I am concerned about the organization's decision-making process. As a result, I am hesitant to consider investing tens of millions of additional taxpayer dollars for new programs proposed under Pennie as part of the Commonwealth's 2024-25 budget. I remain hopeful that we can reach consensus on how to proceed with these matters and look forward to receiving your response.

Sincerely,

A handwritten signature in blue ink that reads "John M. DiSanto". The signature is written in a cursive style with a long horizontal stroke at the end of the name.

John M. DiSanto