

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

APPROPRIATIONS COMMITTEE HEARING

STATE CAPITOL
MAIN BUILDING
ROOM 140
HARRISBURG, PENNSYLVANIA

THURSDAY, FEBRUARY 27, 2014
3:20 P.M.

PRESENTATION FROM
INSURANCE DEPARTMENT

BEFORE:

HONORABLE WILLIAM F. ADOLPH, JR., MAJORITY CHAIRMAN
HONORABLE KAREN BOBACK
HONORABLE JIM CHRISTIANA
HONORABLE GARY DAY
HONORABLE GORDON DENLINGER
HONORABLE BRIAN ELLIS
HONORABLE GLEN GRELL
HONORABLE SETH GROVE
HONORABLE ADAM HARRIS
HONORABLE TOM KILLION
HONORABLE DAVID R. MILLARD
HONORABLE MARK T. MUSTIO
HONORABLE DONNA OBERLANDER
HONORABLE BERNIE T. O'NEILL
HONORABLE MICHAEL PEIFER
HONORABLE JEFFREY P. PYLE
HONORABLE CURTIS G. SONNEY

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BEFORE (cont.'d):

- HONORABLE JOSEPH F. MARKOSEK, MINORITY CHAIRMAN**
- HONORABLE BRENDAN BOYLE**
- HONORABLE MATTHEW D. BRADFORD**
- HONORABLE MICHELLE F. BROWNLEE**
- HONORABLE MIKE CARROLL**
- HONORABLE H. SCOTT CONKLIN**
- HONORABLE MADELEINE DEAN**
- HONORABLE DEBERAH KULA**
- HONORABLE MICHAEL O'BRIEN**
- HONORABLE STEVEN SANTARSIERO**

ALSO IN ATTENDANCE:

- DAVID DONLEY, REPUBLICAN EXECUTIVE DIRECTOR**
- DAN CLARK, REPUBLICAN CHIEF COUNSEL**
- MIRIAM FOX, DEMOCRATIC EXECUTIVE DIRECTOR**
- HONORABLE TINA PICKETT**

JEAN M. DAVIS, REPORTER
NOTARY PUBLIC

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1 P R O C E E D I N G S

2 * * *

3 MAJORITY CHAIRMAN ADOLPH: Good afternoon,
4 everyone.

5 I'd like to call to order the House
6 Appropriations Committee Budget Hearing. This is our last
7 hearing, Commissioner.

8 COMMISSIONER CONSEDINE: Mr. Chairman.

9 MAJORITY CHAIRMAN ADOLPH: We always save the
10 best for last.

11 COMMISSIONER CONSEDINE: Well, I was not going to
12 say that, Mr. Chairman.

13 MAJORITY CHAIRMAN ADOLPH: Of course.

14 COMMISSIONER CONSEDINE: But it's very kind of
15 you to say that.

16 MAJORITY CHAIRMAN ADOLPH: It's certainly our
17 privilege to have with us the Commissioner of the
18 Pennsylvania Insurance Department.

19 COMMISSIONER CONSEDINE: Thank you.

20 MAJORITY CHAIRMAN ADOLPH: And also,
21 Commissioner, as is customary, we always invite the
22 Chairmen of the standing committee of the House. And it's
23 certainly our honor to have the chairperson of that
24 committee with us, the Republican Chair, Representative
25 Tina Pickett.

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Welcome.

REP. PICKETT: Thank you.

MAJORITY CHAIRMAN ADOLPH: Any opening comments?
I'm also going to leave it up to you to introduce your distinguished cohort, the Executive Deputy of the Insurance Department.

COMMISSIONER CONSEDINE: Thank you very much, Mr. Chairman.

Good afternoon, Chairman Adolph and good afternoon, Chairman Markosek and members of the Committee.

As you noted, I am pleased to be joined here today by my Deputy Insurance Commissioner, Randy Rohrbaugh. Thank you for the opportunity to speak before you today.

First and foremost, our most sincere thanks. Last year, you approved a dedicated funding model for your insurance department. And this year marks the first time we have been able to focus our budget efforts using a dedicated funding formula.

The certainty provided by a dedicated funding model makes a substantial difference in our ability to make meaningful plans and in how we are able to accomplish our regulatory tasks. That's all the more important in an environment that has proven to be anything but certain these days.

As the fifth largest insurance market in the

1 country and the 14th largest in the world, we could not do
2 our best for you or the insurance consumers we serve in our
3 State without the appropriate resources. Please know how
4 appreciative we are of this new model, as well as your vote
5 of confidence.

6 We continue to be committed to being good
7 stewards of the insurance industry as well as our funding.
8 You will note that our budget is flat again this year.
9 Being lean and mean these past years has taught us how to
10 focus on the core functions of the regulator.

11 First amongst these functions is consumer
12 protection. While the concept of insurance is simple,
13 there is a contractual complexity in the product of
14 insurance that requires a local touch both with its
15 Legislature and with its regulators.

16 Our dedicated consumer services staff works to
17 bring resolution to those who are experiencing challenges
18 within the insurance market. We also work with our
19 regulated insurers to facilitate clear information reaching
20 the hands of consumers in an effort to make sure that
21 consumers understand the promise of protection they have
22 purchased and that that promise is carried out.

23 The next pillar of insurance regulation is
24 insurance company solvency. Our insurance market best
25 serves consumers when companies are stable and solvent. I

1 want you to be among the first to know that the National
2 Association of Insurance Commissioners just completed their
3 review of our financial regulation division.

4 The NAIC will be recommending a five-year
5 accreditation for Pennsylvania. That means that your
6 insurance department has received the highest marks in
7 maintaining the financial health of our insurance
8 marketplace. This is great news for all of us, in
9 particular the consumers we protect and the world-class
10 market we regulate. And my thanks to my excellent team for
11 this tremendous result.

12 Rate and policy regulation is the third pillar of
13 insurance regulation. Where applicable in insurance law,
14 our charge is to see that rates are adequate, not excessive
15 or unfairly discriminatory. We review thousands of rate
16 applications each year. Most recently, we have approved a
17 workers' compensation loss cost filing with an overall
18 decrease in loss costs of 5.15 percent to be effective
19 April 1, 2014.

20 We estimate that Pennsylvania employers will
21 experience savings in workers' compensation insurance costs
22 of approximately \$140 million on an annualized basis as a
23 result of this action.

24 I'm also pleased to report that from a regulatory
25 perspective, Pennsylvania's insurance industry by and large

1 is healthy, diverse, and responsive. We have large
2 international insurance carriers here, as well as small
3 mutual companies that may only serve our State or segment
4 of it, and every type of company in between.

5 This year has presented unique challenges, as it
6 has been a year of unprecedented change in the health
7 insurance marketplace. Much of our time and resources have
8 been spent sorting through all the Federal changes and
9 their implications as well as assisting consumers in doing
10 the same.

11 As many provisions of the ACA are implemented in
12 Pennsylvania, the Department is working to protect
13 consumers and minimize disruptions in the marketplace for
14 consumers. To best achieve this aim, we are working with
15 our Federal counterparts at the Department of Health and
16 Human Services in D.C. to resolve these issues.

17 There is no doubt that Pennsylvanians require and
18 deserve a good working relationship between the
19 Administration and HHS to benefit the Commonwealth's
20 consumers engaging in this insurance market. In the vein
21 of cooperation, we are encouraged by HHS's willingness to
22 allow Pennsylvania CHIP enrollees to choose to remain in
23 the program through year-end and avoid an unnecessary
24 transition.

25 However, we do have residual frustrations

1 regarding the opening and initial operations of the
2 Federally facilitated marketplace. We also understand the
3 irritation of Pennsylvanians wanting to know what will be
4 happening with their health insurance. We share this
5 concern. We are, however, committed to working through all
6 of the uncertainty and getting consumers what they need to
7 make informed decisions.

8 While many of the provisions of the ACA have been
9 implemented, the consequences of the Act are yet to be
10 determined. Through it all, we have and will continue to
11 serve Pennsylvanians during this time of unprecedented
12 change and transition. The Department will continue to
13 address the consequences of the ACA while diligently
14 reinforcing the underlying presumption that Pennsylvania
15 should regulate the Pennsylvania insurance marketplace and
16 not cede that responsibility to the Federal Government.

17 This past year, I had the privilege to travel the
18 State and meet with Pennsylvania families about our
19 Children's Health Insurance Program, as well as the
20 Governor's Healthy Pennsylvania plan. The common theme in
21 most, if not all, of those meetings was that families
22 understand their own health care needs. They want to make
23 the decisions affecting their families' health care and not
24 have the government make those decisions for them.

25 The changes in health insurance and the health

1 care delivery system will continue and may do so at an even
2 more accelerated pace, as seen by some of the recent health
3 care transactions that the Department has reviewed and is
4 currently in the process of reviewing. But with every
5 twist and turn, our job is to ensure that Pennsylvania's
6 consumers and insurance industry are prepared for what's on
7 the horizon.

8 I hope you have come to rely upon us as
9 professional regulators with an open door. We strive for
10 that transparency as well as professionalism.

11 Thank you, Mr. Chairman. I'll be happy to take
12 questions.

13 MAJORITY CHAIRMAN ADOLPH: Thank you very much,
14 Commissioner. And congratulations on your five-year
15 accreditation.

16 COMMISSIONER CONSEDINE: Thank you.

17 MAJORITY CHAIRMAN ADOLPH: I just have a quick
18 question regarding the new oversight fund.

19 COMMISSIONER CONSEDINE: Sure.

20 MAJORITY CHAIRMAN ADOLPH: How many other states
21 fund their Insurance Commission this way?

22 COMMISSIONER CONSEDINE: When we looked at this
23 issue last year in making this proposal to you, we
24 identified that we and only one other state, Georgia, were
25 the only states left in the U.S. that did not have some

1 type of dedicated funding structure.

2 MAJORITY CHAIRMAN ADOLPH: Okay.

3 COMMISSIONER CONSEDINE: So it was really
4 important to us and -- again, in talking with our
5 colleagues, what it does for them and what we really
6 presented as the most significant benefit to us was just a
7 level of certainty in planning for what is a very uncertain
8 environment. But it has made a huge difference for us in
9 being able to plan for, again, all of the twists and turns
10 that we are currently experiencing.

11 MAJORITY CHAIRMAN ADOLPH: I know you were a
12 strong advocate for it.

13 COMMISSIONER CONSEDINE: Yes.

14 MAJORITY CHAIRMAN ADOLPH: Did we beat Georgia to
15 the finish?

16 COMMISSIONER CONSEDINE: We did indeed. And
17 again, my thanks to you all for, I think, what was
18 unanimous support for it.

19 MAJORITY CHAIRMAN ADOLPH: Very good.

20 COMMISSIONER CONSEDINE: Thank you.

21 MAJORITY CHAIRMAN ADOLPH: Thank you,
22 Commissioner.

23 Chairman Markosek.

24 MINORITY CHAIRMAN MARKOSEK: Thank you, Chairman
25 Adolph.

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Commissioner, welcome.

COMMISSIONER CONSEDINE: Thank you.

MINORITY CHAIRMAN MARKOSEK: Deputy, welcome.

MR. ROHRBAUGH: Thank you.

MINORITY CHAIRMAN MARKOSEK: My question is really kind of an older question maybe than the one we heard before.

COMMISSIONER CONSEDINE: Okay.

MINORITY CHAIRMAN MARKOSEK: It's all about the UPMC-Highmark situation.

COMMISSIONER CONSEDINE: Okay.

MINORITY CHAIRMAN MARKOSEK: Myself and others really from around the State but I would say heavily in the southwest area certainly are basically in Ground Zero of this issue. My understanding is that the contract between the two has been extended. I believe it's July 1st, if I'm not mistaken, that that current contract runs out. And at that point in time, there will be no agreement between the two. And folks that have insurance with one of those two providers will not be able to access the other's medical facilities, which we know both of them also are in that business as well.

COMMISSIONER CONSEDINE: Yes.

MINORITY CHAIRMAN MARKOSEK: There is legislation floating around here, as we all know. I think Chairman

1 DeLuca as well as our Caucus Chairman, Dan Frankel, and
2 even Representative Christiana all have legislation. And
3 right now that has not gone anywhere. So I guess to kind
4 of bring this to a question, first of all, I'd like to get
5 your idea of the status of this whole issue.

6 COMMISSIONER CONSEDINE: Sure.

7 MINORITY CHAIRMAN MARKOSEK: But also if we don't
8 have either legislation or an agreement by July 1st, we're
9 going to have some problems. So what is the Governor
10 doing? Is he just simply sitting back to see whether they,
11 you know, get together themselves? Is he taking any
12 proactive activity that would force this along? Are there
13 negotiations?

14 Obviously, if there are, I don't expect you to
15 give me the day-to-day negotiations. Can you at least tell
16 us that that is happening and perhaps what you're hearing
17 on the prospects of any of this legislation?

18 COMMISSIONER CONSEDINE: Well, thank you for the
19 question, Mr. Chairman.

20 MINORITY CHAIRMAN MARKOSEK: Sure.

21 COMMISSIONER CONSEDINE: And you are correct.
22 This is an issue that the Administration has been very
23 involved with for at least the last two years.

24 MINORITY CHAIRMAN MARKOSEK: Okay.

25 COMMISSIONER CONSEDINE: And before I get into

1 answering your question's substance, I do want to correct
2 just one factual statement.

3 MINORITY CHAIRMAN MARKOSEK: Sure.

4 COMMISSIONER CONSEDINE: The contract is set to
5 expire at the end of this calendar year.

6 MINORITY CHAIRMAN MARKOSEK: Okay.

7 COMMISSIONER CONSEDINE: So it will go through
8 until December 31st. But nonetheless, we are not too far
9 away from that time period. So we have been very focused
10 on issues in that marketplace.

11 MINORITY CHAIRMAN MARKOSEK: Okay.

12 COMMISSIONER CONSEDINE: And again, they have a
13 significant history with them. And Governor Corbett has
14 been very involved in this issue.

15 MINORITY CHAIRMAN MARKOSEK: Okay.

16 COMMISSIONER CONSEDINE: Not surprisingly, he,
17 being from that part of the State, and the Department,
18 traveling extensively to that part of the State, we, too,
19 have heard a lot of the concerns that have been expressed
20 by consumers in particular about what this is doing, the
21 confusion it's causing.

22 MINORITY CHAIRMAN MARKOSEK: Okay.

23 COMMISSIONER CONSEDINE: And again, just to take
24 a couple steps back, the Governor was very involved in
25 facilitating, I believe, two years ago the extension of

1 what then was a contract that was set to expire. And the
2 parties agreed to, as a result of some of the discussions
3 that the Governor helped facilitate, an additional two-year
4 extension to that contract --

5 MINORITY CHAIRMAN MARKOSEK: Okay.

6 COMMISSIONER CONSEDINE: -- as well as some other
7 important provisions that really carved out very
8 significant populations, a vulnerable population.

9 MINORITY CHAIRMAN MARKOSEK: Okay.

10 COMMISSIONER CONSEDINE: So any contract
11 expiration, were it to occur, does not impact, for example,
12 our Medicaid population, our Medicare population, our CHIP
13 population, and doesn't relate to several key hospitals in
14 the area, Children's Western Psych, and a few others that
15 have been specifically carved out.

16 MINORITY CHAIRMAN MARKOSEK: Okay.

17 COMMISSIONER CONSEDINE: So recognize that there
18 are some very significant carve-outs to any termination
19 that were to occur.

20 MINORITY CHAIRMAN MARKOSEK: Okay.

21 COMMISSIONER CONSEDINE: Taking a step forward a
22 little bit, obviously both of those parties began to run
23 fairly aggressive advertising out in that part of the
24 state.

25 MINORITY CHAIRMAN MARKOSEK: Yes.

1 COMMISSIONER CONSEDINE: We, at the Insurance
2 Department, started getting consumer inquiries about what
3 was going on, what this could mean for their health
4 insurance.

5 MINORITY CHAIRMAN MARKOSEK: Sure.

6 COMMISSIONER CONSEDINE: And the Governor at that
7 point directed both the Insurance Department and the
8 Department of Health to form an Interagency Task Force
9 really whose purpose was to serve the consumers during this
10 period, provide neutral, unbiased sources of objective
11 information, which we have a dedicated web page to this
12 issue that we have been directing consumers to.

13 MINORITY CHAIRMAN MARKOSEK: Okay.

14 COMMISSIONER CONSEDINE: And, in fact, in many
15 cases now Highmark and UPMC are directing people to this
16 website.

17 MINORITY CHAIRMAN MARKOSEK: Okay.

18 COMMISSIONER CONSEDINE: And we would be happy to
19 provide that to you as well as a good resource.

20 MINORITY CHAIRMAN MARKOSEK: Thank you.

21 COMMISSIONER CONSEDINE: We've also worked with
22 Highmark and UPMC behind the scenes to help try to calm
23 down some of the vitriol that was in the marketplace.

24 MINORITY CHAIRMAN MARKOSEK: I see.

25 COMMISSIONER CONSEDINE: We were successful in

1 doing that to some extent.

2 MINORITY CHAIRMAN MARKOSEK: Good.

3 COMMISSIONER CONSEDINE: We got them to run joint
4 advertising dealing with those vulnerable populations and
5 again in an effort to reassure them that they would not be
6 impacted by any termination.

7 MINORITY CHAIRMAN MARKOSEK: Okay.

8 COMMISSIONER CONSEDINE: And really going
9 forward, you know, at this point, we don't know what is
10 necessarily going to happen.

11 MINORITY CHAIRMAN MARKOSEK: Sure.

12 COMMISSIONER CONSEDINE: We have built into the
13 transaction that we did, involving Highmark's acquisition
14 of West Penn, scenarios that deal with either if a contract
15 is reached or if a contract is not reached.

16 MINORITY CHAIRMAN MARKOSEK: Okay.

17 COMMISSIONER CONSEDINE: And some of those
18 include timelines.

19 MINORITY CHAIRMAN MARKOSEK: Okay.

20 COMMISSIONER CONSEDINE: The July 1st comes from
21 a contractual provision in the West Penn agreement, which
22 says if they don't have a contract by that time, the
23 parties are to inform us. And Highmark is, by the end of
24 that month, to file a transition plan for the marketplace.

25 MINORITY CHAIRMAN MARKOSEK: Okay.

1 COMMISSIONER CONSEDINE: We have gone through
2 this before.

3 MINORITY CHAIRMAN MARKOSEK: Right.

4 COMMISSIONER CONSEDINE: We had not too long ago
5 in Central Pennsylvania the breakup of Capital BlueCross
6 and Highmark. That was a turbulent period for this area.

7 MINORITY CHAIRMAN MARKOSEK: Yes.

8 COMMISSIONER CONSEDINE: We helped consumers
9 through that. Again, there's a lot that goes into the
10 planning of that process.

11 MINORITY CHAIRMAN MARKOSEK: Sure.

12 COMMISSIONER CONSEDINE: We will continue to be
13 really focused on consumers and the impact on the
14 marketplace.

15 MINORITY CHAIRMAN MARKOSEK: Okay.

16 COMMISSIONER CONSEDINE: If the parties were to
17 reach a contract, again, we would want to take a look at
18 how does that impact the competitive market in that part of
19 the State?

20 MINORITY CHAIRMAN MARKOSEK: Sure.

21 COMMISSIONER CONSEDINE: We're getting some
22 indications that for the first time, you've got competition
23 that's occurring, new health insurers are gaining market
24 share, which is a good thing from a competitive standpoint.

25 MINORITY CHAIRMAN MARKOSEK: Sure.

1 COMMISSIONER CONSEDINE: So we stand ready and we
2 have mechanisms in place. And again, the Governor has been
3 very involved in this and will continue to be involved in
4 this to make sure that consumers are protected and the
5 market is insured.

6 MINORITY CHAIRMAN MARKOSEK: Okay.

7 COMMISSIONER CONSEDINE: And again, I think in
8 the event of either contingency, we have planning ready to
9 go.

10 MINORITY CHAIRMAN MARKOSEK: Well, I appreciate
11 that. You know, I like to tell folks that I'm right in
12 Ground Zero of that whole issue. I'm not alone.

13 COMMISSIONER CONSEDINE: Sure.

14 MINORITY CHAIRMAN MARKOSEK: But physically in
15 Monroeville there's a UPMC hospital and a Highmark hospital
16 roughly not even a mile apart from each other.

17 COMMISSIONER CONSEDINE: Right.

18 MINORITY CHAIRMAN MARKOSEK: My district office
19 sits right square in between the two of them.

20 COMMISSIONER CONSEDINE: Right.

21 MINORITY CHAIRMAN MARKOSEK: And when folks don't
22 get coverage, they don't necessarily call you, they call
23 us.

24 COMMISSIONER CONSEDINE: Right.

25 MINORITY CHAIRMAN MARKOSEK: And they put us, I

1 think, on notice. And basically what I've told them when
2 they tell me that, you know, what are you guys doing?
3 What's the Legislature doing about it? What's the Governor
4 doing about it? well, I can only speak for the Legislature
5 and certainly for myself.

6 COMMISSIONER CONSEDINE: Sure.

7 MINORITY CHAIRMAN MARKOSEK: You know, I tell
8 them, look, this is something I'd like to see. If I had my
9 druthers, I'd like to see them sit down and work it out.
10 But in lieu of that, if they don't do that, then we have to
11 get involved here.

12 COMMISSIONER CONSEDINE: Yes.

13 MINORITY CHAIRMAN MARKOSEK: And I just want to
14 make sure -- and maybe I'm just asking more for a sense
15 from you of your commitment and the Governor's commitment
16 to getting this done and whatever powers you have to have
17 and maybe legally you just can't make them do it but
18 certainly there's a bully pulpit, etc. The Governor, I
19 think, and yourself, as his main insurance representative,
20 have to be involved very, very diligently and aggressively
21 or else there will be a real health care disaster in many
22 ways back home.

23 COMMISSIONER CONSEDINE: Right.

24 MINORITY CHAIRMAN MARKOSEK: And when folks start
25 calling our offices, we are going to be, believe me, all

1 over your office and the Governor, etc., and that will be a
2 bipartisan effort coming at you.

3 COMMISSIONER CONSEDINE: Yes.

4 MINORITY CHAIRMAN MARKOSEK: Because I know it's
5 been a bipartisan effort back home to try to get this thing
6 done.

7 COMMISSIONER CONSEDINE: Sure.

8 MINORITY CHAIRMAN MARKOSEK: So for whatever
9 that's worth -- and I'm not saying that in a bad way or
10 anything. We really need your help on this.

11 COMMISSIONER CONSEDINE: Sure.

12 MINORITY CHAIRMAN MARKOSEK: And I would
13 appreciate what you can do.

14 COMMISSIONER CONSEDINE: Thank you, Mr. Chairman.

15 MINORITY CHAIRMAN MARKOSEK: Thank you.

16 Thank you, Mr. Chairman.

17 MAJORITY CHAIRMAN ADOLPH: Thank you, Chairman
18 Markosek.

19 Chairman Pickett.

20 REP. PICKETT: Thank you, Mr. Chairman.

21 Greetings.

22 COMMISSIONER CONSEDINE: Madam, good afternoon.

23 REP. PICKETT: Mr. Commissioner, it's nice to be
24 here with you today.

25 COMMISSIONER CONSEDINE: Thank you.

1 REP. PICKETT: I'd like to bring up the subject
2 that was presented to me recently by some mutual insurance
3 companies.

4 COMMISSIONER CONSEDINE: Okay.

5 REP. PICKETT: And we know that they are very
6 important out there with a niche market. They understand
7 local knowledge and focus on some of those risks that are
8 not taken on by the larger carriers.

9 COMMISSIONER CONSEDINE: Yes.

10 REP. PICKETT: They have to have financial
11 examinations.

12 COMMISSIONER CONSEDINE: Yes.

13 REP. PICKETT: Very important, the consumer needs
14 to know that these companies are strong, properly managed,
15 that they're going to be able to be there when the
16 policyholder experiences a loss. So all of that is a given
17 that it needs to be done.

18 COMMISSIONER CONSEDINE: Yes.

19 REP. PICKETT: However, the industry was bringing
20 to me a concern that the cost of those examinations are
21 really increasing dramatically.

22 COMMISSIONER CONSEDINE: Yes.

23 REP. PICKETT: They're kind of open-ended in that
24 cost. They don't really know what's going to come at them
25 when those costs are taking place during those

1 examinations.

2 COMMISSIONER CONSEDINE: Right.

3 REP. PICKETT: And they sort of indicated to me
4 that it might be happening because the Department had to
5 put some of the contracts out on the market for those
6 examinations.

7 COMMISSIONER CONSEDINE: Okay.

8 REP. PICKETT: They're questioning me on whether
9 maybe because the Department is now able to be financed in
10 a different way that you might be able to bring more of
11 that back inhouse and maybe be able to help them out with
12 the costs that they're experiencing on these financial
13 examinations.

14 And I also understand -- I think I understand
15 that some of their standards are different from interstate
16 companies. They don't play in the interstate market. And
17 therefore, perhaps the market could do a little more to
18 streamline those examinations for them.

19 Would you be able to comment on that for me?

20 COMMISSIONER CONSEDINE: I would be happy to.

21 REP. PICKETT: Thank you.

22 COMMISSIONER CONSEDINE: And thank you for the
23 question.

24 REP. PICKETT: Sure.

25 COMMISSIONER CONSEDINE: You know, obviously,

1 having a good working relationship with the companies in
2 Pennsylvania is very important to us. We have, I think, a
3 national reputation as being a very professional regulator
4 but very open and transparent.

5 REP. PICKETT: Okay.

6 COMMISSIONER CONSEDINE: And this is an issue,
7 frankly, we have sat down and talked to the companies
8 about.

9 REP. PICKETT: Okay.

10 COMMISSIONER CONSEDINE: Candidly, I've seen a
11 few bills that made my eyes pop and were of concern to us.
12 Some of that is as a result of really some of the
13 constraints and pressure that the Department has
14 experienced over the last five years with a tightening
15 budget situation.

16 REP. PICKETT: Okay.

17 COMMISSIONER CONSEDINE: Again, the fiscal crisis
18 here in the Commonwealth was what it was.

19 REP. PICKETT: Right.

20 COMMISSIONER CONSEDINE: And we dealt with it, I
21 think, very effectively. But we also had a hiring freeze
22 in place and we lost approximately, I think, about 30
23 percent of our complement during that period of time.

24 REP. PICKETT: Okay.

25 COMMISSIONER CONSEDINE: And that includes our

1 examination shop.

2 REP. PICKETT: Okay.

3 COMMISSIONER CONSEDINE: As you pointed out,
4 financial solvency and examinations surrounding financial
5 solvency is one of our highest priorities.

6 REP. PICKETT: Okay.

7 COMMISSIONER CONSEDINE: We still had to get that
8 job done. That's one of the reasons we got the
9 accreditation result we did.

10 REP. PICKETT: Sure.

11 COMMISSIONER CONSEDINE: So there was an
12 increased utilization of outside contractors. Many states
13 utilized contractors 100 percent.

14 REP. PICKETT: Okay.

15 COMMISSIONER CONSEDINE: We favor generally more
16 a mix or utilizing our own people because it's a better way
17 to control costs.

18 REP. PICKETT: Sure.

19 COMMISSIONER CONSEDINE: So the good news is,
20 again, I think the dedicated funding is going to be a
21 tremendous help in stabilizing our funding structure.

22 REP. PICKETT: Okay.

23 COMMISSIONER CONSEDINE: We are able to plan now
24 for areas where we can start to build out. And our exam
25 area will be an area where we will continue to focus on

1 having state examiners inside the Insurance Department.

2 REP. PICKETT: Okay.

3 COMMISSIONER CONSEDINE: And in talking with the
4 mutual community -- particularly what we have emphasized
5 and promised is that we will, wherever possible, utilize
6 our own examiners to do the exams for the smaller mid-sized
7 companies.

8 REP. PICKETT: Okay.

9 COMMISSIONER CONSEDINE: Again, that helps us
10 control costs.

11 REP. PICKETT: Okay.

12 COMMISSIONER CONSEDINE: But to one of our
13 points, we do sit down with them in advance of every exam.
14 We lay out a budget for the process.

15 REP. PICKETT: Okay.

16 COMMISSIONER CONSEDINE: While some of the costs
17 have gone up -- and they've gone up really as a result of
18 the increased compliance that has come out of the financial
19 crisis, but we do lay out a budget.

20 REP. PICKETT: Okay.

21 COMMISSIONER CONSEDINE: We try to stick to that
22 budget.

23 REP. PICKETT: Okay.

24 COMMISSIONER CONSEDINE: Where the budget is
25 exceeded, we go back to the contractors and find out why.

1 REP. PICKETT: Okay.

2 COMMISSIONER CONSEDINE: But again, we're looking
3 for every opportunity we can to make this process better
4 and more efficient.

5 REP. PICKETT: Okay.

6 COMMISSIONER CONSEDINE: We recognize we can do
7 more. And the dedicated funding was an important first
8 step. Another will be to your final point, which is, are
9 there areas where we can refine our exam process for a
10 small mutual that's been writing essentially the same book
11 of business for 150 years and isn't doing a global
12 insurance market? I think that's a very fair request. And
13 again, we have a good deal of leadership at the National
14 Association of Insurance Commissioners.

15 REP. PICKETT: Great.

16 COMMISSIONER CONSEDINE: And that is an issue we
17 will be taking up.

18 REP. PICKETT: Thank you so much.

19 COMMISSIONER CONSEDINE: Sure.

20 REP. PICKETT: And, Mr. Chairman, if I could just
21 toss one more little thing on the table here.

22 MAJORITY CHAIRMAN ADOLPH: Sure.

23 REP. PICKETT: There's nothing like going to
24 breakfast at the firemen's hall to find out what's
25 bothering them. And this past weekend, I had several of

1 them come up to me and wanted to talk about what's
2 happening with their workmen's comp policies regarding the
3 change we made with the cancer coverage. I understand
4 their agents are probably moving them over to SWIF in order
5 to be able to get them covered at all.

6 Is there anything you can comment on there that I
7 might be able to give them in a way of assurance of what
8 they're going to be looking at?

9 COMMISSIONER CONSEDINE: Well, I'll have Deputy
10 Commissioner Rohrbaugh answer some of that.

11 REP. PICKETT: Okay.

12 COMMISSIONER CONSEDINE: But you're right. It's
13 divided really into two different areas, sort of the
14 self-insured municipal or SWIF market, which we at the
15 Insurance Department don't directly regulate --

16 REP. PICKETT: Okay.

17 COMMISSIONER CONSEDINE: -- and then the admitted
18 carriers who are writing this business. And I think there
19 was a concern that on the admitted insured side they could
20 get out of drop policies altogether. We really haven't
21 seen that at all thus far. And I don't think we've seen
22 the development of the claims on, again, the commercial
23 side that would lead to potentially a decision to get out
24 of that line of business.

25 REP. PICKETT: Okay.

1 COMMISSIONER CONSEDINE: But let me have Deputy
2 Commissioner Rohrbaugh add any additional thoughts he might
3 have.

4 REP. PICKETT: Sure.

5 DEPUTY COMMISSIONER ROHRBAUGH: Thank you,
6 Commissioner.

7 Good afternoon, Representative.

8 REP. PICKETT: Good afternoon.

9 DEPUTY COMMISSIONER ROHRBAUGH: Good afternoon,
10 Chairman Adolph, Chairman Markosek, and members of the
11 House Budget Committee.

12 This same question came up during our Senate
13 Appropriation Hearing. And I note it's quite a concern to
14 the municipalities that have volunteer fire departments and
15 the concern about where they'll seek coverage.

16 REP. PICKETT: Yes.

17 DEPUTY COMMISSIONER ROHRBAUGH: We did hear
18 several months back, nearly half a year ago, that there was
19 some non-renewal of coverage within the self-insured
20 program of the municipalities, workers' comp programs. So
21 if you dissect what I just said, these are municipalities
22 that chose not to insure their firemen under their
23 self-insurance workers' comp program.

24 As a result of that, those firemen sought
25 coverage through the State Workers Insurance Fund, the SWIF

1 program.

2 REP. PICKETT: Okay.

3 DEPUTY COMMISSIONER ROHRBAUGH: And we saw some
4 of that action right at renewal time late last year.

5 REP. PICKETT: Okay.

6 DEPUTY COMMISSIONER ROHRBAUGH: And it was all
7 based upon the change in the legislation on presumptive
8 cancer as a result of firemen doing their duty.

9 REP. PICKETT: Right.

10 DEPUTY COMMISSIONER ROHRBAUGH: And the key to
11 this was the fear that there would be a great rush to file
12 claims. We saw a similar kind of reaction back when
13 Congress changed some of the coverage under the Black Lung
14 Fund and allowed widows of deceased mine workers to file
15 claims. It was a case then that smokers couldn't file
16 black lung claims. That was changed.

17 REP. PICKETT: Okay.

18 DEPUTY COMMISSIONER ROHRBAUGH: So there was a
19 concern then. We saw companies come into the Insurance
20 Department with great rate spikes thinking there would be a
21 tremendous catastrophic effect of that. Well, it didn't
22 develop.

23 REP. PICKETT: Okay.

24 DEPUTY COMMISSIONER ROHRBAUGH: So insurance
25 companies are very fearful. Actuaries are people that

1 really if they can't foresee the future, they'll be very
2 conservative. That's what happened here.

3 REP. PICKETT: Okay.

4 DEPUTY COMMISSIONER ROHRBAUGH: I don't know to
5 the extent what had happened. I know I personally made
6 phone calls to some of the insurance companies. They told
7 me they were not non-renewing their policies. So there was
8 a little bit of a misinformation going on.

9 REP. PICKETT: Okay.

10 DEPUTY COMMISSIONER ROHRBAUGH: However, I also
11 know the self-insurance programs with the municipalities
12 did not renew their portion of their coverage with the
13 firemen and sought coverage through SWIF and obtained
14 coverage through SWIF.

15 REP. PICKETT: Okay.

16 DEPUTY COMMISSIONER ROHRBAUGH: We don't have
17 information on whether there were claims developing or not.
18 The last time I heard there were not that many claims. It
19 was not a significant effect. Certainly, that could change
20 on a minute's notice.

21 REP. PICKETT: Sure.

22 DEPUTY COMMISSIONER ROHRBAUGH: But we didn't see
23 that happen. So likely I think what's going to happen is
24 the market will recorrect itself down the road.

25 REP. PICKETT: Okay.

1 DEPUTY COMMISSIONER ROHRBAUGH: It will take
2 probably a psych ward or two to do that. In the meantime,
3 the firemen do have coverage. They are protected by the
4 State's Workers Insurance Fund. And so I think there is a
5 safety net that's taking care of this probably. It was
6 just a lot of noise in the marketplace, a lot of fear, and
7 there was a little bit of transition.

8 REP. PICKETT: Okay. Thank you.

9 DEPUTY COMMISSIONER ROHRBAUGH: You're welcome.

10 REP. PICKETT: Thank you, Mr. Chairman.

11 MAJORITY CHAIRMAN ADOLPH: Thank you,
12 Representative.

13 Representative Mike Carroll.

14 REP. CARROLL: Thank you, Mr. Chairman.

15 Commissioner, thank you for being here this
16 afternoon.

17 COMMISSIONER CONSEDINE: Thank you,
18 Representative.

19 REP. CARROLL: I represent a district in
20 Northeastern Pennsylvania, so I'm thinking you can probably
21 predict the question here. Highmark and BlueCross of
22 Northeastern Pennsylvania --

23 COMMISSIONER CONSEDINE: I guessed correctly,
24 yes.

25 REP. CARROLL: -- and what's on the horizon

1 there. Can you give me a global sketch of what the folks
2 in Northeastern Pennsylvania can expect to transpire over
3 the next number of months?

4 COMMISSIONER CONSEDINE: Sure.

5 REP. CARROLL: Thank you.

6 COMMISSIONER CONSEDINE: I would be happy to talk
7 about the process because the filing is one that we have
8 just received and obviously haven't reached any final
9 judgment on.

10 REP. CARROLL: Okay.

11 COMMISSIONER CONSEDINE: But I can lay out for
12 you a little bit about, again, what you can expect going
13 forward in terms of process.

14 REP. CARROLL: All right.

15 COMMISSIONER CONSEDINE: We have a filing. That
16 filing is already up online and will continue to be online
17 and updated with each filing that we get.

18 REP. CARROLL: Okay.

19 COMMISSIONER CONSEDINE: What you see from us --
20 and again, we have a track record with a number of
21 substantial filings over the last year -- is a very
22 transparent and open process. So once the filing is in,
23 we'll evaluate it and make sure it's complete. And then
24 we'll open up a period of public comment where people are
25 free to send us public comments that will be made part of

1 the public record.

2 REP. CARROLL: Okay.

3 COMMISSIONER CONSEDINE: We will require the
4 companies to respond to all of those comments and
5 questions.

6 REP. CARROLL: Okay.

7 COMMISSIONER CONSEDINE: We will then move very
8 likely to a public hearing of some type, which is, again,
9 what we do when we have a very substantial, significant
10 transaction like this.

11 REP. CARROLL: All right.

12 COMMISSIONER CONSEDINE: That public hearing
13 process is very important for us, again, to get community
14 reaction, community concerns. We take all of that
15 information and then ultimately we look at the transaction
16 and apply it against a set of statutory standards that
17 really look at whether the transaction is in the best
18 interest of the insurance company that is making the
19 acquisition.

20 REP. CARROLL: Okay.

21 COMMISSIONER CONSEDINE: Remember, one of our
22 duties is to make sure that we continue to have financially
23 sound insurance companies. We don't want them to be
24 engaging in transactions that will impact their solvency.

25 REP. CARROLL: Okay.

1 COMMISSIONER CONSEDINE: The other part of that
2 is looking at making sure it's in the best interest of
3 their policyholders. And then the community at large.

4 REP. CARROLL: Sure.

5 COMMISSIONER CONSEDINE: We will go through a
6 thorough review and issue an order. The timing for all of
7 that really depends on how effectively we can get
8 information exchanged between the parties to the
9 transaction and really until we reach a comfort level that
10 we have gotten maximum impact from stakeholders across the
11 area.

12 REP. CARROLL: Okay.

13 COMMISSIONER CONSEDINE: And only at that point
14 will we go into the process of making a determination.

15 REP. CARROLL: I'm not speaking to this
16 particular application but to applications of this nature.
17 Does the Department contemplate the effect of the merger,
18 the effect on the insureds' premiums with respect to
19 mergers like this?

20 COMMISSIONER CONSEDINE: Again, one of the
21 criteria certainly is looking at what's the impact on
22 policyholders. And that particular criteria would look at
23 premium impact costs generally.

24 REP. CARROLL: Okay.

25 COMMISSIONER CONSEDINE: But beyond that, we look

1 at, again, the competitive marketplace generally. What
2 happens when you have two large Blues combined? What's
3 that going to do to the market and pricing overall?

4 REP. CARROLL: Okay.

5 COMMISSIONER CONSEDINE: Not only for just those
6 policyholders but across the marketplace generally.

7 REP. CARROLL: Sure.

8 COMMISSIONER CONSEDINE: So it will be a very
9 thorough review.

10 REP. CARROLL: All right.

11 COMMISSIONER CONSEDINE: And, again, I think we
12 have an excellent track record of engaging the stakeholders
13 and making sure we bring a very high level of expertise to
14 the analysis.

15 REP. CARROLL: And then, again, speaking not to
16 this particular application but to an application of this
17 nature, does the Department contemplate the employment
18 conditions that exist for the workers of the merged
19 insurer?

20 COMMISSIONER CONSEDINE: Again, I think if you
21 look to past transactions, we have conditions that are
22 often related to employees, the marketplace.

23 REP. CARROLL: Okay.

24 COMMISSIONER CONSEDINE: Again, to the extent
25 that they are needed to meet certain criteria as required

1 by the law.

2 REP. CARROLL: That sounded like a qualified yes
3 then.

4 Then just, generally speaking, does the
5 Department have any concern with just the reduction in the
6 number of Blues in our Commonwealth by one? Is that
7 something that's problematic considering what transpired
8 with the last effort to merge two Blues?

9 COMMISSIONER CONSEDINE: And, again,
10 Representative, I want to be very careful, as the ultimate
11 adjudicator here, to keep a very open mind. And so we will
12 look very closely at what the competitive impact is with
13 the consolidation of two large companies. But it really is
14 premature for me to express whether or not that's
15 ultimately going to be something that we have a level of
16 concern about.

17 REP. CARROLL: I appreciate that.

18 COMMISSIONER CONSEDINE: Sure.

19 REP. CARROLL: And I have every expectation that
20 the Department will keep the best interest of the folks in
21 Northeastern Pennsylvania in mind when it comes to making a
22 calculation on this application --

23 COMMISSIONER CONSEDINE: Sure.

24 REP. CARROLL: -- those that are insured by
25 BlueCross in Northeastern Pennsylvania, those that are

1 employed by BlueCross of Northeastern Pennsylvania, to make
2 sure that our health network in that corner of the State is
3 as good as it has been for many years.

4 COMMISSIONER CONSEDINE: Absolutely.

5 REP. CARROLL: Thank you.

6 COMMISSIONER CONSEDINE: Sure.

7 REP. CARROLL: Thank you, Mr. Chairman.

8 MAJORITY CHAIRMAN ADOLPH: Thank you,
9 Representative.

10 Representative Glen Grell.

11 REP. GRELL: Thank you very much, Mr. Chairman.

12 Commissioner, I wanted to ask you to discuss a
13 little bit the marketplace for insurance for medical errors
14 and medical malpractice.

15 COMMISSIONER CONSEDINE: Sure.

16 REP. GRELL: Specifically the status of the MCARE
17 Fund, which was established, for those who may be watching
18 this hearing, about ten years ago or so to provide a level
19 of reimbursement for people who are injured as a result of
20 medical errors or malpractice in excess of their primary
21 coverage.

22 COMMISSIONER CONSEDINE: Sure.

23 REP. GRELL: Could you just tell us a little bit
24 what the status of that fund is? If you start with telling
25 us just the status of the marketplace for malpractice

1 insurance in the first place and then tell us a little bit
2 about the status of the fund.

3 COMMISSIONER CONSEDINE: Sure.

4 REP. GRELL: We hear from time to time a desire
5 to phase out that fund. What steps are being taken, if
6 any, or what steps could be taken to implement a phase-out
7 of the fund?

8 COMMISSIONER CONSEDINE: Thank you for the
9 question, Representative.

10 REP. GRELL: Sure.

11 COMMISSIONER CONSEDINE: And it really is two
12 parts.

13 REP. GRELL: All right.

14 COMMISSIONER CONSEDINE: So let me start with the
15 overall picture on our medical malpractice marketplace.

16 REP. GRELL: All right.

17 COMMISSIONER CONSEDINE: It's another really good
18 story to tell. There was a time not too long ago where we
19 had a crisis in this Commonwealth in terms of the number of
20 insurance companies that were writing that line of business
21 and the increasing premiums that were being experienced by
22 our doctors and hospitals.

23 REP. GRELL: Okay.

24 COMMISSIONER CONSEDINE: We've turned that
25 around.

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REP. GRELL: Okay.

COMMISSIONER CONSEDINE: And we, as a collective we, in terms of the Legislature and the laws that you passed to reform the MCARE system, some of the tort reform efforts that this Governor has pushed, as well as things that we have tried to do at the Department to make our system more efficient and effective.

REP. GRELL: Okay.

COMMISSIONER CONSEDINE: So the good news is we now have, I think, a total of 300 companies writing business. It's a slightly smaller number that are actively writing. But it is a significant improvement over what we saw a decade ago.

REP. GRELL: Okay.

COMMISSIONER CONSEDINE: We also have seen rates stabilize. In fact, over the last few years they have been going down in large part.

REP. GRELL: Okay.

COMMISSIONER CONSEDINE: We just had a recent filing by the JUA, the Joint Underwriting Association, which sort of pegs some of the malpractice premiums that we see in the marketplace.

REP. GRELL: Okay.

COMMISSIONER CONSEDINE: And they filed for a 9.4 percent decrease, if I got that correct, Randy, in that

1 marketplace?

2 DEPUTY COMMISSIONER ROHRBAUGH: Yes.

3 COMMISSIONER CONSEDINE: So, again, that's an
4 indication that this market, the med mal market, continues
5 to be competitive. We have companies that are newly
6 entering space here.

7 REP. GRELL: Okay.

8 COMMISSIONER CONSEDINE: And that premiums are
9 stable, if not decreasing.

10 REP. GRELL: All right.

11 COMMISSIONER CONSEDINE: Switching next to MCARE
12 and really its future, you're correct. You know, we have a
13 system here in Pennsylvania that's pretty unique to us in
14 having the State involved in a layer of the medical
15 malpractice insurance that doctors and hospitals are
16 required to carry.

17 REP. GRELL: Okay.

18 COMMISSIONER CONSEDINE: Governor Corbett, you
19 know, is very focused on getting us out of the business of
20 writing medical malpractice insurance. And we continue to
21 look at ways to do that but in a way that doesn't shock the
22 marketplace and lead us into a situation, again, where we
23 are driving hospitals and doctors, in particular, from our
24 market.

25 REP. GRELL: Sure.

1 COMMISSIONER CONSEDINE: Any phaseout of the
2 MCARE would very likely result in increased premiums that
3 they would pay for the higher commercial coverage they
4 would be required to carry, as well as continuing to pay
5 MCARE assessments for the period it's in runoff. That fund
6 has about a \$1.6 billion unfunded liability that we're
7 going to somehow have to address as part of any MCARE
8 phaseout.

9 REP. GRELL: Okay.

10 COMMISSIONER CONSEDINE: So we are actively
11 talking to all of the stakeholders that are involved and
12 looking for ways that we can effect a phaseout in a way
13 that gets us out of the business of writing that health
14 insurance at some point in the not-too-distant future but
15 also in a way that does not put an undue premium or
16 financial burden on doctors, hospitals, and other medical
17 professionals at a time when they are already dealing with
18 a fair amount of disruption in that marketplace.

19 REP. GRELL: And just one brief followup.

20 COMMISSIONER CONSEDINE: Sure.

21 REP. GRELL: Who are the major stakeholders that
22 are involved in those discussions, are involved in the
23 phaseout issue?

24 COMMISSIONER CONSEDINE: Well, certainly members
25 of the Legislature.

1 REP. GRELL: Sure.

2 COMMISSIONER CONSEDINE: But also associations
3 representing hospitals and doctors.

4 REP. GRELL: Because that's where the burden
5 would fall in terms of the payoff of the unfunded
6 liability?

7 COMMISSIONER CONSEDINE: Correct.

8 REP. GRELL: Okay. All right. Thank you very
9 much.

10 COMMISSIONER CONSEDINE: You're welcome.

11 REP. GRELL: Thank you, Mr. Chairman.

12 MAJORITY CHAIRMAN ADOLPH: Thank you,
13 Representative.

14 Representative Matt Bradford.

15 REP. BRADFORD: Thank you, Chairman Adolph.

16 Commissioner, I just wanted to follow up. I know
17 there was some litigation last year. I think the
18 Commonwealth Court had a ruling regarding the ending of
19 adultBasic.

20 COMMISSIONER CONSEDINE: Yes.

21 REP. BRADFORD: I was just wondering if you could
22 tell me kind of how the Commonwealth has terminated that
23 litigation or dealt with it, disposed of it, if it has?

24 COMMISSIONER CONSEDINE: I believe,
25 Representative, that litigation is still pending I believe

1 in the Supreme Court at this point.

2 REP. BRADFORD: Okay.

3 COMMISSIONER CONSEDINE: So to the best of my
4 knowledge, it has not been resolved in terms of the
5 litigation aspect of that issue.

6 REP. BRADFORD: Okay. Can you give me an idea of
7 kind of what the Commonwealth Court ruling was? My
8 understanding was they weren't requiring you to reinstate
9 the program but to basically put the dollars into an
10 insurance program for the uninsured.

11 COMMISSIONER CONSEDINE: That was similar to an
12 adultBasic-like program. You are correct in terms of the
13 general, as I understand it, holding by the Commonwealth
14 Court. That has been appealed to the Supreme Court. And
15 that's where it currently stands at this point.

16 REP. BRADFORD: Got you. Thank you,
17 Commissioner.

18 COMMISSIONER CONSEDINE: Sure.

19 REP. BRADFORD: I wanted to also just ask you
20 about the status of the exchange or the Federal
21 marketplace.

22 COMMISSIONER CONSEDINE: Sure.

23 REP. BRADFORD: I know in your testimony you talk
24 again about the desire for the State to take the lead. And
25 actually looking back at your testimony in 2012, you were

1 pressing about some of your concerns at the Federal
2 exchange. And actually I believe at that time you stated a
3 desire to have a State-run exchange.

4 COMMISSIONER CONSEDINE: Yes.

5 REP. BRADFORD: Now, two years later, obviously,
6 there has been more than a little bit of problems with the
7 rollout at the Federal level with that exchange. But we at
8 the State level, two years later -- and I believe the Feds
9 gave us a \$34 million grant to set up a State exchange --
10 realizing that -- and again, do you still believe a State
11 exchange would be preferable considering the position we're
12 in? Is there any movement now to getting that State
13 exchange up and going?

14 I know in 2012 you were concerned about the
15 constitutionality of the law. And that, you said, was what
16 was keeping you guys from acting on a State exchange. What
17 now prevents you from doing a State exchange?

18 COMMISSIONER CONSEDINE: Well, it's a lot of the
19 same considerations that ultimately led us to determine
20 that a State exchange really wasn't in our best interest at
21 this point in time. And, you know, as you just pointed
22 out, we have a significant history of looking at this
23 issue. And we went through a very exhaustive process of
24 engaging the community, holding hearings across the State,
25 and really looking at what would be the best way for

1 Pennsylvania to go, State exchange or Federal exchange?

2 REP. BRADFORD: Okay.

3 COMMISSIONER CONSEDINE: And you're correct.

4 There was a point when we thought a State exchange might be
5 in our best interest. But as we got further into the
6 process, what we found, again, at that point, a year and a
7 half or so ago, you still have the Federal Government not
8 really giving a lot of guidance on some key questions that
9 we had raised in terms of the cost, the flexibility to
10 design an exchange that we thought would work for us.

11 REP. BRADFORD: Okay.

12 COMMISSIONER CONSEDINE: And we went as far as
13 putting together a concept paper on what a State exchange
14 might look like in Pennsylvania. We even came up with a
15 name for it.

16 REP. BRADFORD: Okay.

17 COMMISSIONER CONSEDINE: We met with stakeholders
18 on it.

19 REP. BRADFORD: Okay.

20 COMMISSIONER CONSEDINE: But the feedback we kept
21 getting from Washington at that point was, we had pretty
22 limited flexibility. I think they've expanded that
23 flexibility since we've talked with them. But it was also
24 issues with costs and just the lack of certainty at that
25 point.

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REP. BRADFORD: Okay.

COMMISSIONER CONSEDINE: So we made, I think, the informed judgment and the Governor did that this was not the time for us to move forward with a State exchange.

REP. BRADFORD: Okay.

COMMISSIONER CONSEDINE: We opted for the Federal exchange which was our right under the law.

REP. BRADFORD: Sure.

COMMISSIONER CONSEDINE: And from a consumer perspective, you know, they are getting access to the same products that they would have gotten under a State exchange at this point.

REP. BRADFORD: Okay.

COMMISSIONER CONSEDINE: Certainly there were issues with the rollout of the Federal exchange. You know, we were as frustrated by, you know, that experience as many of your constituents were, simply because really up until the launch of that, we kept being told that it's going to work. It's going to work fine. We've got it covered. And it didn't.

REP. BRADFORD: Okay.

COMMISSIONER CONSEDINE: And we wanted to be engaged. We wanted to be able to help our consumers get through this process. But we were somewhat limited.

REP. BRADFORD: Sure.

1 COMMISSIONER CONSEDINE: You know, we've left the
2 door open to looking at a State exchange. I will tell you
3 again in talking to my colleagues across the country who
4 have done State exchanges, there are certainly some
5 examples of ones that are working better than the Federal
6 exchange.

7 REP. BRADFORD: Okay.

8 COMMISSIONER CONSEDINE: Kentucky is often cited,
9 Connecticut. But there are a lot more examples of states
10 that continue to have very significant problems with their
11 exchanges where they've invested hundreds of millions of
12 taxpayer dollars into systems that aren't working.

13 REP. BRADFORD: Okay.

14 COMMISSIONER CONSEDINE: Concerns are still
15 there. We're looking at our options.

16 REP. BRADFORD: All right.

17 COMMISSIONER CONSEDINE: But I will also say
18 we're doing a lot behind the scenes, which I would consider
19 falling under our traditional regulatory role, which
20 ultimately do factor into the operation of the Federal
21 marketplace.

22 REP. BRADFORD: And I don't mean to quibble. But
23 my understanding of the status of the State exchange is,
24 with possibly two notable exceptions, Maryland and Oregon,
25 most of those exchanges have gone off much smoother and

1 have had higher enrollment rates than the Federal exchange.

2 COMMISSIONER CONSEDINE: Again, I think we
3 certainly have been looking very closely at a number of
4 those state exchanges. And my sense is a number of them
5 continue to have significant issues. Compared, again, to
6 the Federal exchanges launched, they're doing much better.
7 But that's not much of a comparison given the very bad
8 rollout that that Federal exchange experienced.

9 REP. BRADFORD: Okay.

10 COMMISSIONER CONSEDINE: But by and large, yes,
11 there are some that are working better. But there are many
12 that continue to struggle. They are getting enrollment. A
13 lot of it's in the Medicaid space. A lot of the states
14 aren't seeing what they would hope to be in terms of
15 commercial people coming into that marketplace.

16 REP. BRADFORD: All right.

17 COMMISSIONER CONSEDINE: We've, you know,
18 accumulated quite a bit of data in terms of the experiences
19 in other state exchanges. And we'd certainly be happy to
20 share that with you.

21 REP. BRADFORD: And I appreciate that. Again,
22 I'm -- your testimony from 2012 is actually quite
23 informative on it.

24 COMMISSIONER CONSEDINE: Yes.

25 REP. BRADFORD: And you talked about your

1 preference for a State exchange. And you're saying, well,
2 some state exchanges have had problems. The Federal
3 exchange is worse. So why did we -- obviously, we chose a
4 Federal exchange, the Governor chose a Federal exchange.

5 COMMISSIONER CONSEDINE: Yes.

6 REP. BRADFORD: Why aren't we now looking at a
7 State exchange when clearly they've done better than the
8 Federal exchange and the law has been held constitutional?
9 I mean, is there any reason at this point not to do a State
10 exchange? You're saying the Federal exchange has been
11 inferior to the State exchange.

12 COMMISSIONER CONSEDINE: Again, it's a question
13 of, would we have the flexibility to build an exchange that
14 really worked for us? It's something that we've left the
15 door open to. But we continue to get a lot of guidance
16 from HHS, even at this point, that doesn't give us a lot of
17 comfort that they've made firm decisions about what states
18 can and can't do when it comes to exchanges.

19 REP. BRADFORD: And, again, I don't want to read
20 you back testimony that's two years old because I think,
21 you know, it's unfair, frankly.

22 COMMISSIONER CONSEDINE: Yes.

23 REP. BRADFORD: But it goes, now just within the
24 last couple of weeks, Federal HHS has suggested that
25 they're willing to even lower the thresholds for their

1 certification process, which they're going to start in
2 2013. So it's going to be a much lower barrier than what
3 they originally envisioned to not have a Federal exchange
4 in place.

5 It would seem -- and again, I realize this is
6 going back quite a bit of time. But it seems like even at
7 that time there was an idea in your Department that the
8 Feds were being much more accommodating than they
9 originally envisioned and were looking to do something to
10 make these state exchanges work.

11 Again, obviously, the Federal exchange has not
12 been rolled out as smoothly as anyone would have liked. It
13 just seems like a State exchange would offer you the
14 preference that seems to have always been there and the
15 opportunity to make this a much smoother rollout as opposed
16 to, you know, saying we're just going to, you know, wash
17 our hands of it. It's the law of the land. Let's try to
18 make it work.

19 COMMISSIONER CONSEDINE: And, again, if we have
20 the ability to build and operate an exchange that truly
21 worked for Pennsylvania, then we would pursue it or we
22 would certainly look to pursue it. We have not gotten that
23 feedback from HHS that it really is something that we could
24 build and operate.

25 REP. BRADFORD: Okay.

1 COMMISSIONER CONSEDINE: And, again, the
2 experience we've seen in other states doesn't lead us to
3 believe that right now is the time to do that. We've
4 certainly left the door open. And it's a discussion we
5 continue to have with HHS in our options going forward.

6 REP. BRADFORD: Can you just give me an idea --
7 again, I don't pretend to know what these communications
8 are -- what is it that's not getting resolved? It seems
9 like it's just, oh, we're not getting the answer we're
10 looking for. You know, what it seems like from an outsider
11 is we're just moving the goal post and we're saying, oh, we
12 just can't do it; oh, you know, constitutionality; oh, you
13 know, the Federal is what we're going to use as a fallback.

14 Why aren't we doing it? They have better
15 enrollment rates. And I think by your own concession, they
16 are doing better as a whole than the Federal exchange. Why
17 wouldn't we -- what specifically are the Feds not giving us
18 that's prohibiting us?

19 COMMISSIONER CONSEDINE: What's the long-term
20 costs that the State would ultimately have to be personally
21 responsible for so the taxpayers would be responsible for?
22 What's our ability to utilize commercial enterprises rather
23 than expanding State bureaucracy to build something within
24 a state that we likely could have the commercial sector do
25 for us much better? What are the restrictions on sharing

1 personal health information? What are the restrictions on
2 designing benefits?

3 You know, we certainly would be happy to sit down
4 with you. And, you know, it's an ongoing dialogue we have
5 with them around a variety of issues that go to both the
6 policy and also some very archaic technological concerns
7 that we would have.

8 REP. BRADFORD: Okay. Well, I appreciate your
9 answer. And again, like I said, I know it's a complex
10 issue.

11 COMMISSIONER CONSEDINE: Yes.

12 REP. BRADFORD: I think that conversation needs
13 to continue obviously. You know, the law is here. And
14 it's got to be implemented.

15 COMMISSIONER CONSEDINE: Yes.

16 REP. BRADFORD: And it seems to me that we should
17 be engaging on it as opposed to just washing our hands of
18 it.

19 COMMISSIONER CONSEDINE: And we have been very
20 engaged and will continue to be very engaged.

21 REP. BRADFORD: Thank you, Commissioner.

22 COMMISSIONER CONSEDINE: Thank you,
23 Representative.

24 REP. BRADFORD: Thank you, Mr. Chairman.

25 MAJORITY CHAIRMAN ADOLPH: Thank you,

1 Representative.

2 Commissioner, Executive Deputy, thank you so much
3 for your testimony today.

4 COMMISSIONER CONSEDINE: Certainly.

5 DEPUTY COMMISSIONER ROHRBAUGH: You're welcome.

6 MAJORITY CHAIRMAN ADOLPH: I want to wish you
7 good luck with your new funding mechanism.

8 COMMISSIONER CONSEDINE: Thank you again,
9 Mr. Chairman.

10 MAJORITY CHAIRMAN ADOLPH: It will be nice that
11 we won't have you coming in front of us looking for
12 additional money and us looking for additional money to
13 take from you.

14 COMMISSIONER CONSEDINE: Please don't do that.

15 MAJORITY CHAIRMAN ADOLPH: That will be something
16 refreshing.

17 COMMISSIONER CONSEDINE: Yes.

18 MAJORITY CHAIRMAN ADOLPH: If I could have the
19 members' attention. I just want to state for the record
20 that I want to thank Chairman Markosek for his cooperation
21 and his help during these three weeks of Budget Hearings.

22 MINORITY CHAIRMAN MARKOSEK: Thank you.

23 MAJORITY CHAIRMAN ADOLPH: I want to thank all
24 the members for their participation over the three weeks.
25 At times, the debate, the questions sometimes hit the

1 nerves of other members of the Committee. That's all part
2 of Democracy.

3 I think that we all need to thank our staffs on
4 both sides of the aisle for giving us all this information
5 that we have been able to talk about and debate about and
6 question about over these three weeks.

7 Obviously, the Governor came out with a
8 blueprint. We're going to be taking a very close look at
9 the revenues as they come in over the next several months.
10 We're also going to be looking at the decisions that the
11 Federal Government is going to be making regarding Healthy
12 Pennsylvania and also the various legislative proposals
13 that are tied to this budget and where they're going to
14 move over the next several months.

15 I want to thank everyone. I'm looking forward to
16 working with you. My door is always open. Chairman
17 Markosek knows that.

18 MINORITY CHAIRMAN MARKOSEK: Yes.

19 MAJORITY CHAIRMAN ADOLPH: Also on behalf of
20 myself and Chairman Markosek and the rest of the
21 Appropriations Committee, I'm not sure if everybody knew
22 this but the Governor had a scheduled operation today. And
23 I hope the Governor is resting and recovering and will be
24 back to work real soon.

25 Chairman Markosek for some closing comments.

1 MINORITY CHAIRMAN MARKOSEK: Thank you, Chairman
2 Adolph.

3 Just very briefly. For the information of the
4 members and the folks that are here and maybe watching back
5 home, I only accidentally drank out of Chairman Adolph's
6 coffee cup one time through this whole budget process.
7 When I realized it wasn't mine, I said, is this yours? And
8 he looked at me and said, not anymore.

9 MAJORITY CHAIRMAN ADOLPH: That's right.

10 MINORITY CHAIRMAN MARKOSEK: But that's the kind
11 of relationship that we've had here. It's been great,
12 Bill. We'll deformatize a little bit here.

13 And really all the members, both sides of the
14 aisle, you know, we're all part of the same team here. And
15 certainly the folks that have come before us for the most
16 part have been very, very articulate. We don't agree on
17 everything. But I think they've done a pretty good job.

18 The tough part now is moving forward. We look
19 forward to working with everybody involved to get the
20 budget done.

21 Thank you.

22 MAJORITY CHAIRMAN ADOLPH: Thank you, Chairman
23 Markosek.

24 Thank you, everybody. The Budget Hearings are
25 adjourned. Thank you.

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(The hearing concluded at 4:15 p.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this is a correct transcript of the same.

Jean M. Davis
Notary Public