Insurance Federation of Pennsylvania

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January 28, 2020

To: The Honorable Members of the Senate Labor and Industry Committee

From: Samuel R. Marshall

Re: Paid family and medical leave – Senate Bill 580

Thank you for the opportunity to comment on the bill and, more broadly, on the best ways to encourage and provide paid family and medical leave.

We're insurers, and we strongly believe in the ability of insurance to meet the needs of consumers. The value of paid medical leave has long been recognized by consumers and therefore insurers: That's what disability insurance, both short and long term, provides, and it is a strong and growing market, with coverage offered to all shapes and sizes of employers and their employees. Paid family leave is increasingly sought, too, and insurers are engaged in providing it – right now, mainly in administering employers' self-funded plans, and increasingly in designing and providing insurance coverage.

To that end, we appreciate Senators Laughlin and Collett for bringing this issue to the fore – how to best get Pennsylvanians meaningful coverage in the event of an illness or injury, or the need to care for a family member, that forces them to miss time from work.

Again, we recognize the value of this coverage. At the same time, we recognize it competes with other types of insurance that employers and consumers also need – as with health insurance, retirement savings plans, and personal insurance for life, home and auto.

We also recognize that from your position, this type of program – really a mandate or a tax - would compete with other programs and mandates, and with other issues and priorities related to the budgets and pocketbooks of all working Pennsylvanians.

- We all struggle with making health insurance affordable – a de facto mandate, and a cost that increasingly falls on workers, not just employers. It highlights the challenge of government mandates: They have a lot of appeal but come at a cost to consumers already struggling with the cost of health care.

- We recognize the need for working Pennsylvanians to save for retirement, with Treasurer Torsella's auto-IRA proposal going in the same direction as this, albeit without the mandate and direct tax. That proposal at least allows workers to opt-out – no such choice is allowed here.

- We recognize the challenge in making auto coverage, which is also a mandate, affordable – the balance between mandating so much coverage that it isn't affordable for lower income Pennsylvanians, and making sure it is sufficient enough to be meaningful protection.

- And we recognize the debate you are having on the proper minimum wage – the effort to pay people, rather than tax people, more – and the debates you have on keeping our Personal Income Tax and taxes generally low.

Given those competing demands for insurance, we don't think the government mandate of this bill is the best or most viable way to provide meaningful medical and family leave benefits to working Pennsylvanians.

We think the Commonwealth should first explore approaches based on a well-regulated private market and incentives to employers to provide these benefits, rather than starting with a massive statewide mandate and huge tax increase on all working Pennsylvanians.

- As a general rule, we think government should step in with an expensive, mandatory, state-run monopoly – which is what is being proposed here – only if there is there is broad consumer demand that the private market won't or can't fulfill. Neither of those conditions is found here: We don't yet have that broad consumer demand, but we do have a private market that is willing and able to meet it.

Some comments on the bill itself and why we question the viability of its program:

- It calls this a Family and Medical Leave Insurance Program – but whatever it is, it isn't insurance. It charges a premium of almost .6% on every working Pennsylvania's income, a 20% increase in our Personal Income Tax. That will generate a fund of roughly $2.8 billion each year. But even with that, we haven't seen an actuarial analysis that this will be enough – and the bill provides that future increases (and maybe decreases) are to be made unilaterally by the Department of Labor and Industry.

    - Pennsylvania's experience with state monopolies as an alternative to true insurance shows the flaws in this approach. But if that is the route you want to go, and you really want a 20% increase in the PIT, at least make sure the tax will equal the cost of the program, and that future tax increases are set by the General Assembly, not just one agency. The starting tax of .588% (down to the thousandth of a percent!) suggests an actuarial analysis has been done – it deserves a thorough review.

    - This imposes the tax in year one, but it won't begin coverage until the second year. We appreciate the needs for reserves, but that's not what this is: It is a "pay as you go" program, the opposite of insurance. Again, Pennsylvania has had a long and expensive experience with the folly of that type of financing. You'd never let an insurer charge a premium and make the consumer wait a year for coverage, even while still paying premiums – why do it here?

    - The program's proposed benefit structure leaves most workers paying far more in premiums than they get in coverage or benefits. That's distinct from the underwriting aspects of this – this doesn't consider the health status or family size or structure of anyone. It is a matter of the bill's benefits. For full-time, middle-income workers, the bill's actual benefits are low – about half your own wage; on the other hand, if you make less than that, as with a part-time or seasonal worker, you get 90% of that – a much more generous benefit. That's a policy decision - but everyone should acknowledge that this isn't an insurance program so much as it is a cross-subsidization tax.

- The scope of the bill will make implementation of it a challenge – and that's an understatement. The bill applies to part-time and self-employed workers - anyone who worked at least 18 weeks and earned at least $2,718 in the past year. So the Department will have to figure out how to tax Uber drivers, waiters and waitresses, seasonal workers and those putting together a combination of jobs. That's really a call for the Revenue Department and employers in making sure this tax is assessed and collected.

  And the bill extends to those caring for not just traditional family members, but anyone with a close enough relation as to be equal to a family member – a laudable sentiment, but a subjective eligibility standard that will be hard for the Department to oversee with any degree of control.

- The size of this tax alone should give everyone pause: $2.8 billion in annual revenue is real money, and it comes right out of every worker's paycheck. Putting it into a state monopoly, run by an agency with no experience in this area, for a benefit that while valuable is hardly the only benefit working Pennsylvanians want or can afford – that should give everyone reason to step back and explore other approaches.

As for other approaches – better ways to get paid medical and family leave coverage to more working Pennsylvanians:

- <u>**Build on the private market, rather than replace it.**</u> As we said at the outset, we are strong proponents of this coverage. We don't have Pennsylvania-specific numbers, but nearly 40% of all American workers have short-term disability coverage, including recovering from childbirth, and generally with more benefits in dollars and duration than in this bill – and that extends to small as well as large employers. It is a competitive and robust market – why replace it with a statewide monopoly that will cost more and provide less benefits?

  - Pennsylvania does well when it regulates the insurance industry; its taking over the health insurance exchange is the most recent example.

But Pennsylvania doesn't well when it tries to run a mandated monopoly, as shown with our Mcare Fund, or when it tries to run rather than regulate an insurance company, as shown the SWIF. This bill isn't regulating a market or giving consumers options – it is monopolizing a market that is established and working well.

- We don't hear consumer complaints about the disability coverage they are getting through the private market – either in its cost or how it is administered. If there are means to improve our policies, focus on that, not on summarily abolishing an effective private market and replacing it with an unproven and costly state monopoly. Workers will be better served by expanding that market, not monopolizing it.

- Focus on building the private market for paid family as well as medical leave. We don't believe there are any statutory prohibitions on this. We are working with the Insurance Department to establish minimum standards for family leave just as it has for medical leave.

- Consider tax incentives to stimulate this market, for both medical and family leave. The bill's approach to "stimulating" this market is to impose a hefty tax hike, and to replace a well-regulated and well-received private market with a state monopoly run through a department with no experience in pricing or administering this type of coverage. That seems a last resort, not a first step. Why not first try approaches like tax incentives and deductions to employers and employees rather than an expensive and costly mandate on them?

We realize the philosophical divide here: Should the state not only mandate this coverage, but monopolize it? We are, at the national level, going through this with health care, with the debates on whether to repeal, maintain or expand the ACA and its private market reforms, and whether to replace the ACA with a "Medicare for all" government program to exclusively provide health coverage. That's a fair debate, and we have ideas and experience on those issues.

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But wherever you fall on that, we'd caution against going with an exclusive government program for this coverage. If you want that, at least examine if and why the private market isn't working. We think it is, and we think that merits expanding it, not replacing it.

We are happy to work with you and anyone else interested in getting more of this coverage to Pennsylvania workers, and we hope this begins the dialogue.