

# **MEDICAID OVERSIGHT AND ADVISORY COMMITTEE**

## **Minutes**

**August 19, 2019**

### **Call to Order and Roll Call**

The 1st meeting of the Medicaid Oversight and Advisory Committee was held on Monday, August 19, 2019, at 10:00 AM, in Room 171 of the Capitol Annex. Representative Daniel Elliott, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stephen Meredith, Co-Chair; Representative Daniel Elliott, Co-Chair; Senators Ralph Alvarado, Danny Carroll, Jimmy Higdon, and Morgan McGarvey; Representatives Jim Gooch Jr., Melinda Gibbons Prunty, Steve Sheldon, and Lisa Willner.

Guests: Russ Ranallo, Vice President, Financial Services, Owensboro Health, Chairman, Hospital Medicaid Technical Advisory Committee, Kentucky Hospital Association; Steven D. Davis, Inspector General, Office of the Inspector General, Cabinet for Health and Family Services; Carol Steckel, Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services.

LRC Staff: DeeAnn Wenk, CSA, Chris Joffrion, Sean Meloney, and Hillary McGoodwin.

### **Approval of Minutes:**

A motion to approve the minutes of the July 8, 2019 meeting was made by Senator Meredith, seconded by Senator Carroll, and approved by voice vote.

### **Update on Hospitals and Medicaid Services**

Russ Ranallo, Vice President, Financial Services, Owensboro Health, Chairman, Hospital Medicaid Technical Advisory Committee, Kentucky Hospital Association, stated that 28 percent of hospital patients are covered by Medicaid but Medicaid reimbursements to hospitals are inadequate to cover costs of quality care such as: trained workforce, updates to equipment, and facility improvements. He emphasized that adequate Medicaid payments help hospitals recruit in the local job market by being able to pay administrative, frontline, and healthcare staff competitive rates. The 2019 Regular Session House Bill 320 (HB 320) will establish a new program to backfill losses incurred by recent Medicaid losses under the Affordable Care Act (ACA) at no cost to the state.

Under the ACA, Medicare rate updates have been below inflation resulting in a loss of \$7.4 million to Kentucky from 2010 to 2018 and Federal Disproportionate Share Hospital (DSH) redistributions will create a Kentucky loss of \$77 million by 2020. The 2018 baseline Federal DSH spending pool (with a state match) was \$227 million and will be reduced to \$60 million by 2021 for a reduction of 75 percent. The new supplemental payment program under HB 320, modeled after programs in Michigan and Virginia, are endorsed by KHA and all hospitals in Kentucky. The program will not impact existing supplemental programs. The program will backfill funding with 6 percent being paid under fee-for-service Medicaid and 94 percent under managed care. The program should raise a net of \$98 million after tax assessment.

Mr. Ranallo stated that KHA uses a bi-weekly forum with Managed Care Organizations (MCOs) to address issues facing hospitals. There has been a reduction in outstanding issues due to Aetna and Anthem not having any issues. The cumulative number of issues outstanding are 3,500 for Humana Care Source, 2,500 for Passport, and 1,500 for Wellcare. Common issues are with coding guidelines, pre-authorizations, payment reviews through auditors on outlier claims, and when Medicaid is a secondary payor. There are several MCO coding definitions that are contrary to Centralized Medicaid Services (CMS) definitions which hospitals follow and this results in denials of service and pre-authorizations denials. He stated that KHA has been working with the Cabinet for Health and Family Services to streamline coding guidelines and enforce MCO coding training. The open discourse between KHA and the MCOs should help to resolve the burdensome reimbursement issues that have been arising when Medicaid is the secondary payor, such as a two year post-reimbursement refund request due to the primary payor's error.

Mr. Ranallo stated that the Kentucky Hospital Engagement Network (K-HEN) created the Kentucky Hospital Innovation Network (K-HIIN) which is under CMS' Partnership for Patients to reduce errors and patient harm. 92 hospitals participate in K-HIIN. The hospitals receive funding and resources from CMS, and have as goals to reduce readmissions and improve education, coaching, including technical assistance, and tools. Improvements made include reductions in adverse drug events, MRSA, pressure ulcers, readmissions, sepsis, and worker safety.

The KHA hospitals are partnering with the Cabinet for Health and Family Services as part of the Kentucky Opioid Response Effort (KORE) to launch the Kentucky Statewide Opioid Stewardship Program. The focus of the Stewardship Program will be on reducing opioid overprescribing, improving safe opioid use, and giving hospitals a mechanism to demonstrate commitments to their patients and their communities. Improvements have been seen across the state from consumers and prescribers alike.

In response to questions and comments from Senator Meredith, Mr. Ranallo stated that 30 percent of rural hospitals have been at financial risk and part of HB 320 is to help make up the financial deficit.

In response to questions and comments from Representative Elliott, Mr. Ranallo stated that since HB 320 worked well in Michigan and Virginia, he is confident it will work well in Kentucky.

## **Facility Citations and Recoupments**

Steven D. Davis, Inspector General, Office of Inspector General (OIG), stated the Division of Certificate of Need (CON), under the OIG's office, is responsible for implementation of KY's CON program. In Kentucky, all health care providers (unless exempt by KRS 216B.020) must obtain CON approval prior to: establishing a health facility or service; exceeding the capital expenditure threshold of \$2,913,541; making a substantial change in bed capacity; obtaining major medical equipment valued at, or more than \$2,913,541; altering a geographical area or specific location that has been designed on a CON or license; or developing or acquiring new health facilities.

Mr. Davis explained the OIG's Division of Health Care as the State Survey Agency, responsible for verifying how well federally certified health care facilities comply with the federal requirements for participation in the Medicare and Medicaid Programs as well as licensure oversight. The OIG receives and investigates thousands of hospital and healthcare setting complaints. Findings are issued through a statement of deficiency and facilities can fix the findings or issue an appeal.

The Centers for Medicare and Medicaid Services (CMS) is responsible for issuing and collecting civil monetary penalties (CMP) imposed on nursing facilities that do not meet the federal requirements. Effective January 1, 2012, all states must obtain prior approval from CMS for the use of CMP funds. CMP funds may be directed to a variety of organizations that submit a request for approval as long as the funds are to be used to support activities that benefit residents of Medicare/Medicaid certified nursing facilities. In accordance with KRS 216.557, long-term care facilities are subject to a Type A or Type B violation for noncompliance with applicable state or federal laws and regulations. All state penalties for a Type A or Type B violation are imposed only on personal care homes, family care homes, and any other long-term care facility that is not Medicare/Medicaid certified.

In response to questions and comments from Senator Meredith, Mr. Davis stated proposed legislation for the 2020 General Session will clean up the current CON statutes. Mr. Davis said that the capitol expenditures exceeding the \$2,913,541 threshold requirement is obsolete and only serves administrative purposes. He agreed to explore amending that in the proposed 2020 legislation.

In response to questions and comments by Senator Alvarado, Mr. Davis attributed breadth of enforcement and level of deficiencies to the oversight of CMS. Kentucky falls in Region 4 of CMS's oversight which is based in Atlanta. He stated that Region 4's office

is made up of long-serving staff who have not amended their governing practices with the changing times and needs of the region they oversee. With CMS overseeing most of the long-term care facilities in the state, the OIG is unable to intervene in CMS determined deficiencies. Mr. Davis noted that the CMS region that oversees the state of New York has no outstanding complaints or noted deficiencies because that region has lower CMS involvement than Region 4. Kentucky is the most heavily fined state in the country by CMS. CMS imposes the penalties and the OIG's office can help providers implement remedies.

In response to questions and comments by Senator Higdon regarding the opioid crisis, Mr. Davis stated that under Kentucky All Schedule Prescription Electronic Reporting (KASPER), the OIG has hired epidemiologists to create graphs and statistics, find trends, and send the data to their pharmacist reviewers to monitor upticks in dispensing and prescribing. This data also goes into a prescriber report card which shows prescribers how other prescribers in similar fields are dispensing opioids. The prescriber report card is part of Kentucky Opioid Response Effort (KORE). Mr. Davis stated that through KORE and the Federal Opioid Task Force, they are able to track upticks in Suboxone clinic abuse and investigate accordingly.

In response to questions and comments by Senator Carroll, Mr. Davis stated that regarding surveyor's lack of expertise on particular types of facilities, there is a technical program, an exam, and six months of field supervision, to ensure surveyor competency.

In response to questions and comments from Representative Gibbons Prunty, Mr. Davis stated that gaps in private duty nursing (PDN) care will be addressed in amendments to the current CON laws. PDN's do not accept Medicare which is a barrier. He added that there is an administrative regulation coming soon that will address PDNs.

In response to questions and comments from Co-Chair Elliott, Mr. Davis stated that he will provide data on CMS investigations and fines. He added that the state is trending down in scope and severity of deficiencies, the right questions are being asked by surveyors, data is being mined, and the review process is working.

### **Kentucky HEALTH Section 1115 Waiver Legal Status Update**

Carol Steckel, Commissioner, Department of Medicaid Services, Cabinet for Health and Family Services stated that the next hearing for the Kentucky Helping to Engage and Achieve Long Term Health (HEALTH) 1115 demonstration Waiver will be October 11, 2019 in Washington, DC before a three-judge panel. They expect a ruling in two to three weeks after that hearing with an appeal to follow that will be filed by whomever loses to the United States Supreme Court. No course of action to implement the waiver will be taken until July 1, 2020. The Substance Use Disorder (SUD) component of the Section 1115 Waiver went live July 1, 2019.

## **Update on the Kentucky Children's Health Insurance Program (KCHIP)**

Carol Steckel, Commissioner, Department of Medicaid Services, Cabinet for Health and Family Services stated that Kentucky Children's Health Insurance Program (KCHIP) KCHIP1 recipients are eligible for Medicaid up to 139 percent of poverty. KCHIP2 recipients are between 139 percent and 159 percent of the poverty level which is from \$1,959 a month to \$2,240 a month for a family of two. KCHIP3 is for children who fall between 160 percent and 218 percent of the poverty line which is \$2,254 to \$3,071 a month for a family of two. She stated that there are 8,258 children eligible for all KCHIP programs as of July 2019.

In response to questions and comments from Senator Alvarado, Commissioner Steckel stated that not knowing the familial circumstances can lead to children being uninsured but that KCHIP has expanded who can be covered. If cost effective, the employer premium for the family can be paid for by the department.

In response to questions and comments from Co-Chair Elliott, Commissioner Steckel stated that aggressive outreach campaigns in schools, health fairs, the State Fair, and mailings are helping to capture uninsured children who are eligible for KCHIP across the state.

In response to questions from Representative Gibbons Prunty, Commissioner Steckel stated that the family chooses the MCO and if the family does not choose, there is an algorithm used to place the child with an MCO. The algorithm uses that child's medical records to place them with their primary care doctor or a comparable provider.

## **Review of Kentucky's State Medicaid Plan**

Carol Steckel, Commissioner, Department of Medicaid Services, Cabinet for Health and Family Services stated that the Kentucky State Medicaid Plan is a roadmap for how the state operate the Medicaid program. The statutory structure of the State Plan has not changed since 1965. The 1115 waiver and 1915c waiver programs are federally approved ways the state can meet the changing healthcare landscape, including that people are living longer and that healthcare resources are expanding. The state will match service needs with waivers which would exempt persons from the traditional Medicaid requirements. Any updates to the state plan need a State Plan Amendment (SPA), which has a formal process of 90 days after submission for approval, and 90 days for a response, with effective dates at the beginning of the next quarter. Commissioner Steckel stated that in the past six weeks Kentucky has submitted 6 SPA's. In August 2019, a SPA was approved for an increase in graduate medical education and indirect medical education payments to university hospitals and 14 community hospitals. Despite not being approved until August 2019, the

SPA had a retroactive start date of July 1, 2019 and the increased payments were made accordingly.

In response to questions from Senator Meredith, Commissioner Steckel stated that a change in reimbursement or a healthcare marketplace update can create a need for SPA. For example, of increase in coverage of home healthcare would necessitate a SPA.

In response to questions from Representative Willner, Commissioner Steckel stated that to treat people where they are and increase access to healthcare, CMS requires a time/motion study to determine how much time, effort, and cost is involved in order for a SPA to be approved.

In response to questions from Senator Meredith, Commissioner Steckel stated that there are 1.2-1.4 million people eligible for Medicaid in Kentucky.

In response to Senator Carroll, Commissioner Steckel stated that her department is not doing well with the credentialing of Medicaid providers but she has her chief of staff on this full time and the creation of the provider portal is promising. A request for proposals (RFP) will be made to create a centralized credentialing component so providers don't have to go through all 5 MCOs to get credentialed. The providers will go to this central portal and will meet the credential requirements of all MCOs.

## **Adjournment**

There being no further business, the meeting was adjourned at 11:45AM.