

INTERIM JOINT COMMITTEE ON BANKING AND INSURANCE

Minutes of the 2nd Meeting of the 2021 Interim

September 14, 2021

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Banking and Insurance was held on Tuesday, September 14, 2021, at 11:00 AM, in Room 154 of the Capitol Annex. Senator Jared Carpenter, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jared Carpenter, Co-Chair; Representative Bart Rowland, Co-Chair; Senators Ralph Alvarado, Rick Girdler, Jason Howell, Morgan McGarvey, Dennis Parrett, John Schickel, Brandon Smith, and Brandon J. Storm; Representatives Danny Bentley, Joseph M. Fischer, Patrick Flannery, Deanna Frazier, Jim Gooch Jr., Norma Kirk-McCormick, Adam Koenig, Nima Kulkarni, Derek Lewis, Matt Lockett, Shawn McPherson, Michael Meredith, Rachel Roberts, Sal Santoro, Tom Smith, Cherlynn Stevenson, Ken Upchurch, and Susan Westrom.

Guests: Sharon Clark, Commissioner, Kentucky Department of Insurance; David Dillon, Lewis & Ellis; and Thomas Stephens, Executive Director, Kentucky Association of Health Plans.

LRC Staff: Jessica Sharpe, Breanna Patterson, and Elizabeth Hardy

Approval of August 3, 2021 Minutes

Representative Lockett moved to approve the minutes from the August 3, 2021, meeting. The motion was seconded by Representative McPherson. The minutes were approved.

Update on Long Term Care Insurance Care Rate Increases

Sharon Clark, Commissioner of the Kentucky Department of Insurance (KDOI), stated that long-term care insurance has been on the market for approximately 40 years and has been challenging economically and actuarially. The number of insurers writing long-term care policies has decreased from 100 to less than 20. It is crucial for insurance regulators to balance consumer protection while preserving solvency for these companies. Kentucky is one of many states seeking solutions to long-term care policy premium rate increases. The National Association of Insurance Commissioners (NAIC) has submitted proposals to the U.S. Congress for assistance to policy holders. One proposal would allow long-term care insurance to be purchased with 401K funds. The major challenge facing

this industry is pricing, which involves longer life spans, increase in care costs, underpriced legacy policies, and inaccurate actuarial assumptions.

David Dillon of Lewis and Ellis, presented graphs illustrating how a flat premium for older long-term care insurance policies did not work due to increasing claims costs. When long-term care was new, the pricing for premiums was insufficient. He explained that insurers failed to correctly estimate investment returns and how many people would make claims on their policies. He presented a graph showing the importance of addressing these issues quickly. If insurers had sought rate increases earlier, they would not have needed as much of an increase. However, it can be hard to know early on if your pricing is wrong.

Mr. Dillon explained that neither the insurer nor the consumer should take the full risk hit when an insurer is wrong. The NAIC has different committees to help address these issues and what needs to be done at a state level. States have different approaches to rate stabilization, which requires more conservative pricing, so hopefully if things go wrong, it doesn't go so badly that you need big rate increases. Several variations are being considered in states, which involve different alternatives, margins, and protections for consumers. Prospective present value, also called the Texas approach, is one of the key approaches. Other approaches include landing spots, which are benefit reductions, cap increases, blend increases, and buyout options, which mitigate the increases but still focus on company solvency.

Next, he presented charts to members showing that since 2010, approximately 300 rate filings were submitted to the KDOI and only one third of those rate increases were approved as requested. The average rate increase request submitted is almost 50 percent and the average approved increase is about half of what was asked for.

Mr. Dillon discussed the rate increase request for Transamerica, an insurance company that asked for a flat 61 percent rate increase for four blocks of business, the largest of which was a group of policies for the Kentucky Retired Teachers Association (KRTA). The KRTA group had very rich policy benefits, which contributed to a 100 percent loss ratio on that block of business. After reviewing all of the options for rate stabilization in this case, the KDOI approved a 40 percent rate increase for the KRTA coverage. The other blocks of business that has less generous benefits received approval for a 15 percent rate increase. These approvals included a ten year rate guarantee, so consumers will not get another increase for ten years.

In response to Senator Alvarado's questions regarding increasing premium rates and Kentucky-specific factors, Mr. Dillon stated that probably 80 percent of the increases are due to policy lapses and improved mortality, most new policies have corrected for the issue, and Kentucky is fairly comparable to other states in terms of rate increases because any Kentucky-specific factors that may impact policy costs were likely accounted for in the

initial premiums. In response, Senator Alvarado stated that he'd like to see a breakdown of Kentucky's baseline premium costs compared to those of other states.

Senator Schickel commented that he receives frequent questions from his constituents about long-term care insurance and that some consumers do not read the fine print and are led to believe that premiums will not go up. In response to Senator Schickel's question about the best benefit period for consumers, Mr. Dillon explained that a lifetime benefit is probably too expensive and that most sales are in the five year benefit period. He stated that the industry is working to modify policy language moving forward to ensure that the terms are clear.

In response to Representative McPherson's question relating to the average age of individuals going into long-term care, Mr. Dillon stated that he did not have that information. In response to Representative McPherson's question about families caring for loved ones because of three or five year benefit periods instead of lifetime benefits, Mr. Dillon explained that family care is being considered prior to a loved one moving into a facility due to the reduced benefit.

In response to Representative Smith's questions about assets being used for long-term care expenses, Commissioner Clark explained that people buy long-term care insurance to protect themselves from this situation. Commissioner Clark also stated that she was unaware of additional revenue in the recent budget for long-term care costs, and that the Cabinet for Health and Family Services may have more information about attaching assets for long-term care expenses.

In response to Representative Lockett's question relating to corrections that can be made to long-term care and what they think the future of long-term care will be, Commissioner Clark explained that the policies being sold today are hybrid policies which are tied in with annuities or with another type of financial planning. The legacy plans are no longer being offered. They are trying to reach the most fair and equitable conclusion when addressing rate increases. Mr. Dillon agreed with Commissioner Clark and said that he believes the hybrid products are the new direction for long-term care insurers.

Kentucky Association of Health Plans – Industry Update

Thomas Stephens, Executive Director of the Kentucky Association of Health Plans (KAHP), gave an industry update. KAHP is made up of seven major carriers that offer health plans in Kentucky. He provided information regarding the average employer contribution for single coverage, the percentage of single coverage premiums paid by employers, and the industry's contributions in terms of taxes and employees. Employer-sponsored health coverage utilizes the collective market power of plan members to achieve cost savings. It also provides a tremendous benefit to employees, with the top benefits being coverage for prescription drugs, emergency care, and preventive care.

Next, Mr. Stephens discussed the four pillars of the KAHP. The first pillar is advocacy. One critical area of advocacy for KAHP is mandates, which are benefits insurers are required to cover. Mandates are well-intended but typically result in higher premiums and can reduce access to care. Mr. Stephens stated that over the last four regular sessions, Kentucky had more introduced mandates than the national average, which if passed, would have resulted in over a half billion per year in additional premium costs. Mandates typically have adverse impacts on small businesses.

The second pillar is education. Mr. Stephens discussed the KAHP's efforts to work with stakeholders, which included working with ambulance providers to implement HB 8 from the 2020 Regular Session. He also discussed the importance of talking about prior authorization because it is a key element of the health insurance process. Prior authorization ensures that providers adhere to nationally recognized care criteria, encourages the use of generic drugs, prevents drug interactions, provides checks on cost drivers, and curbs waste, fraud, and abuse.

The third pillar is innovation. The biggest area of innovation is telehealth, which has been important during the COVID-19 pandemic. KAHP also addresses issues relating to social determinates of health, such as food insecurity, loneliness, and transportation.

The last pillar is collaboration, which promotes fellowship and the sharing of knowledge. KAHP's chief medical officers and behavioral health teams get together on a regular basis to share their experiences. KAHP also regularly collaborates with the KDOI, Cabinet for Health and Family Services, and Department for Medicaid Services. KAHP is a member of the HJR 57 task force, which studies the feasibility of a bridge insurance program, and recently joined the chamber of commerce.

Mr. Stephens discussed the KAHP's COVID-19 vaccine outreach efforts. They have utilized radio commercials, social media, and YouTube videos. In Eastern Kentucky and other areas, KAHP is working to find novel ways to encourage vaccinations, such as partnerships with local officials, programs, and events. Mr. Stephens also discussed the outreach efforts in Clay County as a case study and referred to a list of the several other outreach programs being run by KAHP members.

In response to Representative Rowland's questions regarding the health plans offered by KAHP members, Mr. Stephens stated that by January 1, 2022, all seven members plan to be in the individual insurance market space and that depending on the membership, members are also involved in employer-sponsored plans, Medicare advantage, and Tricare. In response to Representative Rowland's question about where Kentucky ranks with the number of member companies offering plans in the state versus other states, Mr. Stephens stated that he has not seen that but can get the number. Rep. Rowland also commented that Kentucky has the first in the country insurance regulatory

sandbox and that KAHP members looking for opportunities to do something new and creative that might expand health plan access to citizens should keep the sandbox in mind.

Senator Alvarado informed the committee that KAHP presented inaccurate information in its presentation relating to inappropriate diagnostic imaging and misleading information relating to unnecessary or unsafe ordered medical care.

In response to Representative Lewis' question as to whether insurers will continue flexibility in prior authorizations relating to pharmacy services, Mr. Stephens stated that he believes it is an obligation of the health insurance industry to proactively eliminate prior authorization when it's not required. He said it is a challenging area and that insurers waived prior authorization in most cases when asked to do so by the state.

Senator Girdler commented that tort limits for medical malpractice will cut health care costs and be better for consumers because consumers can no longer afford to pay for perfect care.

In response to Representative Stevenson's question relating to proposals to increase insurance costs for unvaccinated people, Mr. Stephens replied that the proposal to stop waiving cost sharing is not something his membership has seen in Kentucky. In regard to higher premiums, he stated that it is an interesting idea to push people to make certain health decisions, similar to giving a discount on policies to those who are nonsmokers, and that it's a possibility if it gives a competitive advantage or benefit to the consumer.

Representative Koenig said he agreed with KAHP regarding the problems with mandates. In response to his question surrounding incentives to get the COVID-19 vaccine, Mr. Stephens stated that Kentucky actually ranks third in the southeast in vaccination rates and that Kentucky is improving their vaccination numbers.

In response to Chairman Carpenter's question relating to partnerships in the community, Mr. Stephens stated that they set up an outreach booth at the state fair and have partnered with different health departments across the Commonwealth. It is important for KAHP to have partnerships to help spread positive information in rural communities. Chairman Carpenter commented that genuine conversations with trusted community members works better to increase vaccinations and discussed his personal experience with vaccination.

Senator Alvarado stated that COVID has resulted in Kentucky being in a crisis situation with access to critical care, that he doesn't want to continue seeing bad things happen to people because of COVID or the lack of access to care, and that compassionate discussions with people about getting information from the medical community is needed because the medical community is going to be looking out for your best interest.

In response to Representative Lockett's question as to where Kentucky ranks in the southeast in terms of positivity rate, Mr. Stephens stated that he does not have that information. Representative Lockett commented that a correlation between the vaccination rate and positivity rate would be a great selling point to convince individuals to receive the vaccine. Senator Alvarado commented that Kentucky's positivity rate is high, but that projections are showing a flattening out or decline. He urged caution as there are two additional variants of the virus that make the future uncertain.

There being no other business, the meeting was adjourned.