INTERIM JOINT COMMITTEE ON BANKING AND INSURANCE

Minutes of the 4th Meeting of the 2021 Interim

November 9, 2021

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Banking and Insurance was held on Tuesday, November 9, 2021, at 11:00 AM, in Room 154 of the Capitol Annex. Representative Bart Rowland, Chair, called the meeting to order, and the secretary called the roll.

Present were:

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

Guests: Sharon Clark, Commissioner, Department of Insurance; Shaun Orme, Executive Advisor, Department of Insurance; Melissa Cahill, Chair, Kentucky Eating Disorder Council; Justin Wallen, Business Manager, Louisville Center for Eating Disorders; Dr. Andrea Krause, MD, Norton Children's Hospital; Ruby Jo Lubarsky, Caregiver; Chris Brady, Senior Vice President and General Counsel, Air Methods; Elizabeth Ward, Regional Director of Kentucky Operations, Global Medical Response; and Jason Monday, National Director of Membership, AirMedCare Network, Global Medical Response.

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

Approval of October 5, 2021 Minutes

Representative Lewis moved to approve the minutes. The motion was seconded by Senator Alvarado. The minutes were approved.

Mental Health Parity

Sharon Clark, Commissioner of the Department of Insurance (DOI), discussed the federal Mental Health Parity and Addiction Equity Act of 2008, which generally provides that insurance requirements, such as co-pays, co-insurance, and treatment limitations, for mental health services cannot be more restrictive than those imposed for medical or surgical services. The federal government has created an online self-compliance tool to

explain the law and assist state regulators to implement it. In December 2020, Congress amended the law to require insurance companies to perform comparative analyses and submit reports to the DOI. House Bill 50, which was recently enacted in Kentucky, adopted the requirements of the federal law for nonquantitative treatment limitations and for submitting annual reports. DOI will be looking at ways to institute the requirements and is anticipating a regulation to be implemented. The DOI is waiting for an update to the online self-compliance tool.

Melissa Cahill, Chair of the Kentucky Eating Disorder Council, stated that there are roughly 900,000 individuals, of which 29,000 are children, struggling with an eating disorder in the state. Kentucky is lacking acute care programs, residential programs, and partial hospitalization programs for eating disorder treatment. Patients are forced to travel out of state to receive necessary care and many out-of-state providers refuse to work with Kentucky Medicaid, leaving those patients with few or no options. People who struggle with an eating disorder tend to have a high mortality rate, have average treatment costs of approximately $20,000 per month, and cope with debilitating symptoms, with the average time from diagnosis to recovery being approximately ten years. The Kentucky Eating Disorder Council works on the prevention, early detection, education, and research of eating disorders, as well as securing more access to quality care for Kentuckians.

Ms. Cahill discussed insurance barriers for eating disorder treatment. These barriers include lack of provider participation with insurance plans, limited number of eating disorder professionals, ineffective review criteria for eating disorder treatment, additional costs for in-network, out-of-state treatment, and no options for step down care. Due to low reimbursement rates, there are few providers that participate within network. She provided statistics illustrating the increased use of out-of-network care for mental health treatment compared to primary care treatment and decreased reimbursement rates for mental health providers compared to primary care providers. Surrounding states can offer these services while Kentucky does not, which should be investigated. Improving telehealth access to services will also help Kentuckians with geographic challenges.

Justin Wallen, Business Manager of Louisville Center for Eating Disorders, gave a provider perspective on treatment issues. His center is the only facility in the state that provides a higher level of eating disorder care that is covered by insurance. Providing this level of care requires a lot of specialized, extensive, and evidence-based treatments, as well as a continuum of education. Due to these requirements, providers deserve fair levels of reimbursement for services. Mr. Wallen discussed the difficulty working with insurance companies due to low reimbursement rates and extensive management of insurance requirements. From a patient's perspective, there is uncertainty involved because treatment can be discontinued any time due to last minute insurance denials that are many times arbitrary or made by people without experience with eating disorders.

Dr. Andrea Krause, a pediatrician offering hospital-based care through Norton Children's Hospital, stated that for the past twelve years, she has helped stabilize sick eating disorder patients admitted to the hospital. She explained there are two elements that play into lack of care. The first is some providers may have slow recognition of signs associated with eating disorders and the second is poor access to appropriate care. In 2021, there was an almost two-fold increase in the number of medically unstable eating disorder patients admitted to Norton Children's Hospital, which is on top of an average annual 20 percent increase for the past ten years. Typically, 60 percent of patients have private insurance and 40 percent have Medicaid. She stated that insurance payors do not seem to be aware of eating disorder guidelines for care published by the American Psychiatric Association and the American Academy of Pediatrics. There are also no out-of-state residential facilities with an active Kentucky Medicaid number and because of low reimbursement rates, Dr. Krause suspects that facilities have no incentive to renew Kentucky Medicaid numbers.

Ruby Jo Lubarsky is a caregiver and grandmother of a teenager who struggles with anorexia and discussed her family's experience with the challenges to access appropriate treatment. Some treatments were covered by insurance while others were not. From 2018 to 2020, their family paid over $160,000 for inpatient and outpatient services that were not covered by insurance. For a continuum of care, they pay out of pocket about $25,000 a year for services that are not covered by insurance. She also discussed an article presented to members that explains why it is hard to find a therapist covered by insurance.

In conclusion, Ms. Cahill expressed that Kentucky needs to improve reimbursement rates for existing mental health providers, create incentives for mental health practitioners to want to practice in Kentucky, change the review criteria for eating disorder care, and ease cross-state licensing laws for telehealth access to care.

Senator Girdler discussed his personal experience with a family member that had an eating disorder. In response to Senator Girdler's question about media affecting the prevalence of eating disorders, Dr. Krause stated that eating disorders are affected by media, which is unavoidable. In response to Senator Girdler's question regarding coverage for eating disorders, Ms. Cahill explained that eating disorders are complex with both medical and mental aspects. Many insurance companies base decisions on calculable medical criteria, even though it is not just a medical situation. Ms. Lubarsky stated that both women and men suffer from eating disorders.

Representative Westrom thanked the speakers for educating the committee on this issue. In response to her question about the number of Kentucky citizens that are diagnosed with an eating disorder, Ms. Cahill reiterated that there are 900,000 individuals, over 29,000 of which are children or adolescents.

Senator Alvarado commented about his experience with eating disorder patients, stated that a task force was formed in 2013 to address provider shortage issues, with proposed recommendations, and that he has filed legislation to address these issues. He also noted that Kentucky has one of the best telehealth laws in the country. In response to Senator Alvarado's question, Dr. Krause stated that the types of specialists required to treat eating disorders include child psychiatrists and psychologists, registered dieticians that have eating disorder training, and different types of therapists.

In response to Senator Raque Adams' request for the DOI to comment on the testimony, Mr. Orme stated that there are no laws that specifically mandate coverage for eating disorders, but DOI will look at how House Bill 50 is going to affect insurers and how to enforce mental health parity laws. Commissioner Clark added that the department is willing to facilitate communication with health insurers and the Kentucky Eating Disorder Council to try to update insurers on the published eating disorder guidelines. Traditionally, the DOI does not regulate reimbursement rates. Sen. Raque Adams commented that this is both a parity and an equity issue and if other states have figured out how to achieve parity and equity, Kentucky should do the same.

Representative Roberts commented about her experience teaching mindfulness and meditation to an out-of-state eating disorder recovery center. In response to Representative Roberts' question surrounding early intervention, Ms. Cahill stated that the council is utilizing community mental health centers and is providing education and introducing prevention programs. The council is also engaging in many advocacy efforts. In response to Representative Roberts' question surrounding retention of younger specialized providers, Dr. Krause stated they do have a pediatric residency program at the University of Louisville, which provides ongoing education, and there are interns and post-doctoral fellows that work with her eating disorder psychiatric team.

Regulation of Air Ambulance Membership Subscriptions

Representative Deanna Frazier discussed air ambulance membership subscriptions. On the surface, air ambulance membership subscriptions claim to cover out-of-pocket costs, in the rare event of transportation by an air ambulance. Memberships are products that transfer an unknown amount of risk from the policyholder to an air ambulance company in exchange for a premium payment, despite most people being covered by their traditional insurance policies. She stated they do not want to ban memberships but instead want to provide Kentucky citizens with consumer protection from predatory marketing tactics as well as rate transparency, which is required for all other insurance products. Global Medical Response, Inc. (GMR) reportedly has over 287,000 memberships with an annual cost of $85 a year, coming to a total of $24.4 million in revenue, despite only one-tenth of one percent of members utilizing this service.

Chris Brady, Senior Vice President and General Counsel at Air Methods stated that they support state regulation by the DOI for the reasons stated by Rep. Frazier. The federal No Surprises Act that will go into effect on January 1, 2022, virtually eliminates financial risk for air ambulance services received by insureds because it prohibits balance billing, leaving those patients responsible for only copays and deductibles. Despite the federal act and the importance of state regulatory oversight, Kentucky citizens are still being sold these products to protect them from a problem that will no longer exist without any actuarial adjustment to premium pricing to ensure that policyholders are charged a fair premium.

Purveyors of these subscriptions are now describing memberships as a prepayment of deductibles or copayments. There are two issues with these products. The first is many consumers are sold memberships without appropriate disclosure with fear-driven pressure tactics and the second is memberships can automatically renew leaving consumers locked into yearly premiums. The predatory nature of air ambulance membership marketing is highlighted by the fact that millions of subscriptions are sold each year to Medicare recipients, despite these policyholders only having limited coinsurance costs. In some states, 35 percent or more of subscriptions are purchased by Medicare beneficiaries and the second largest Medigap product in the United States is sold by AirMedCare Network. In contrast, in 2019, roughly 70 percent of AirMethods Medicare patients paid less than $50 out of pocket. Seniors that live in rural areas are particularly vulnerable to air ambulance subscription marketing that does not provide appropriate disclosures.

Positioning these products as covering copays and deductibles also ignores basic principles of emergency air services. In addition to the rarity of needing air ambulance services, the services can only be dispatched by a first responder or physician to ensure that the services are necessary. Also, air ambulance services often coincide with other medical services provided to the patient and those other services may fulfill the patient's maximum out-of-pocket responsibility. Finally, Mr. Brady stated that AirMethods has documented over 200 instances where patients have delayed care to wait for a covered air ambulance membership service provider and an out-of-state Medicare patient that delayed care eventually passed away in the hospital. Florida and New York regulate these subscriptions and the National Council of Insurance Legislators is studying model legislation.

Elizabeth Ward, Regional Director of Kentucky Operations at GMR stated that Air Evac Lifeteam has 17 bases of operation physically in Kentucky and a total of 33 aircraft to respond in Kentucky. Air Evac Lifeteam responds whenever dispatched, without regard to membership status or ability to pay. Membership subscriptions matter because members take pride in having memberships and it helps give a sense of comfort.

Jason Monday, National Director of Membership, AirMedCare Network, expressed opposition to the proposed legislation. GMR has provided air ambulance

memberships in Kentucky for over 21 years. Over 200,000 Kentuckians, most of whom live near GMR's bases in rural communities, have made a consumer choice to be part of the AirMedCare Network membership program. GMR is in-network with over 92 percent of the air transport provided and is contracted with the two largest commercial insurance companies in the state.

GMR's membership program is a prepaid plan that covers an insured's cost sharing for air ambulance services provided by GMR. According to the Kaiser Family Foundation, average cost sharing for a family has increased 70 percent, with both employer and employee spending increasing faster than wages, and deductibles can be up to $10,000. Members acknowledge during the enrollment process that the program does not cover transports by non-GMR companies. Patients who do not have a membership are supported throughout the insurance claim process by GMR's patient advocates. Finally, air ambulance memberships do not constitute the business of insurance under the federal McCarran-Ferguson Act. GMR has won lawsuits in North Dakota and West Virginia, substantiating that states cannot regulate air ambulance memberships as insurance. These products are consumer friendly. Wyoming actually reversed course by changing a regulation that attempted to regulate air ambulance memberships.

In response to Representative Frazier's request for Commissioner Clark's opinion, Commissioner Clark believes that air ambulance membership subscriptions are insurance products and states have a right to regulate them. She stated that it is possible for these products to be regulated at another level than a full certificate of authority and once regulated, if someone needed to file a complaint against one of these companies, DOI could administratively review the complaint.

In response to Representative Kirk-McCormick's comment that her research indicates that state law cannot regulate air ambulance memberships, Mr. Brady stated that Air Methods disagrees with this research and it comes down to whether or not these memberships are insurance products. Representative Kirk-McCormick stated that air ambulance services are important in her rural area, that there is potential savings in having an air ambulance membership subscription, and that she'll be taking a close look at the issue.

In response to Co-Chair Rowland's questions regarding the availability of membership subscriptions if legislation were to pass, Mr. Monday stated that he does not believe that GMR provides an insurance product, nor are they an insurer, so if legislation passes stating otherwise, it could jeopardize GMR's ability to provide memberships in Kentucky. GMR would have to evaluate the impact on their business model.

In response to Senator Girdler's question regarding the proposed legislation's impact on Federal Aviation Administration (FAA) laws, Mr. Brady explained that from Air Method's perspective, there is no issue with the federal Airline Deregulation Act.

FAA is one of the only avenues for customers to raise any concerns relating to these products. Mr. Monday disagreed and explained that the federal Airline Deregulation Act has preemption built into it that controls air ambulance services at the federal level. Customers have the chance to raise any complaints at the state attorney general level. In response to Senator Girdler's next question regarding the development of an air ambulance coverage product through insurance, Mr. Monday stated that they are unaware of any state laws that control pricing on memberships. In response to Senator Girdler's last question regarding what consumers will be paying, Mr. Brady stated that on January 1, 2022, regardless of whether an air ambulance is in or out-of-network, the consumer will only be responsible for the in-network copays. With regard to the remaining financial impact of these services on consumers, AirMethods and GMR have charity programs to assist consumers.

In response to Representative Smith's questions relating to GMR's organization and class action lawsuits, Mr. Monday stated that GMR is private equity and that he is unaware of any cases. Representative Smith commented that he does not agree with government oversight when it is not needed, especially over private businesses, and that he has not heard of any issues with air ambulance membership subscriptions in his district.

In response to Representative Meredith's question regarding companies that sell air ambulance membership products that are not air ambulance service providers, but rather work with multiple air ambulance service providers, Commissioner Clark stated that DOI is reviewing the practice he described.

In response to Representative Stevenson's question about communicating the federal No Surprises Act to consumers, Mr. Monday explained that GMR's product is not marketed towards balance billing, but rather it is marketed to out-of-pocket expenses. In response to Representative Stevenson's question regarding the difference between air ambulance membership subscriptions and gap coverage insurance, Mr. Monday stated that GMR relieves debt, does not pay anything to other providers, does not guarantee the service, and there is no reciprocity.

Representative Frazier commented that the reason there are so few complaints is because the need to receive air ambulance services is so rare.

Representative Bentley commented that there can be difficulty with ground ambulance services in rural areas. In response to Representative Bentley's questions surrounding the value of air ambulances in rural Kentucky, Ms. Ward explained that they are similar to an emergency room, with critical care drugs and equipment, licensed critical care paramedic, and certified critical care nurse. Representative Bentley stated that there is value in air ambulances in rural Kentucky since they are able to provide a heightened level of care.

Representative McPherson commented that as long as there is full disclosure, the free market system will act appropriately in this situation. If people continue to buy the product, it has value, but if they do not, it will go away.

Representative Lewis commented that companies should not use the legislative body to impair other private companies and that government should not be picking winners and losers.

Representative Frazier commented that to her, relieving people of the requirement to pay deductibles and copays is the definition of insurance.

There being no further business, the meeting was adjourned.