

INTERIM JOINT COMMITTEE ON HEALTH SERVICES

Minutes of the 4th Meeting of the 2023 Interim

September 27, 2023

Call to Order and Roll Call

The fourth meeting of the Interim Joint Committee on Health Services was held on September 27, 2023, at 9:00 AM in Room 149 of the Capitol Annex. Senator Stephen Meredith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Kimberly Poore Moser Co-Chair; Senator Stephen Meredith Co-Chair; Senators Cassie Chambers Armstrong, Karen Berg, Danny Carroll, Donald Douglas, Greg Elkins, Shelley Funke Frommeyer, Michael J. Nemes, Lindsey Tichenor, and Max Wise; Representatives Steve Bratcher, Josh Bray, Lindsey Burke, Emily Callaway, Ryan Dotson, Robert Duvall, Deanna Frazier Gordon, Jacob Justice, Amy Neighbors, Ruth Ann Palumbo, Steve Riley, Rachel Roarx, Scott Sharp, Russell Webber, Lisa Willner, and Susan Witten.

Guests: Matt Rohrbach, MD, Deputy Speaker, West Virginia House of Delegates; Sally West, Regional Director State and Local Government Relations, Walgreens; Jim Musser, Senior Vice President, Policy and Government Relations, Kentucky Hospital Association; Donna Little, Director, Health Policy and Regulatory Affairs, Kentucky Hospital Association; Veronica Judy-Cecil, Deputy Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services; Steve Bechtel, Chief Financial Officer, Department for Medicaid Services, Cabinet for Health and Family Services; Ronald Hamm, Chief Executive Officer, HealthPlan Data Solutions; Clark Seiling, Chief Financial Officer, HealthPlan Data Solutions; Nick Trego, PharmD, RPH, Senior Vice President, Clinical Analytics and Client Services, HealthPlan Data Solutions; Missy Runyon, Program Administrator, Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services; Sarah Cooper, Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services; and Adam Mather, Inspector General, Office of the Inspector General, Cabinet for Health and Family Services.

LRC Staff: DeeAnn Wenk, CSA, Logan Bush, and Becky Lancaster.

Pharmacy Benefit Manager Reform Legislation in Neighboring States

Matt Rohrbach, MD, Deputy Speaker, West Virginia House of Delegates, discussed the details of various enacted West Virginia legislation relating to pharmacy audits, pharmacy audit integrity, and regulation of pharmacy benefit managers (PBMs).

In response to questions and comments from Senator Meredith, Dr. Rohrbach stated that there has not been an increase in healthcare premium amounts in two years in West Virginia and that

pharmaceutical costs have more than doubled due in part to PBMs and questionable administrative costs.

In response to questions and comments from Representative Moser, Dr. Rohrbach stated that patients love the fairness and benefits of a copayment accumulator and that with legislation in West Virginia, PBMs cannot discriminate against a 340B provider or non-340B provider with protections in place.

In response to questions and comments from Senator Berg, Dr. Rohrbach stated that a 340B institution must treat a designated percentage of Medicaid patients.

Approval of Minutes

A motion to approve the minutes of the August 24, 2023, meeting was made by Senator Douglas, seconded by Representative Dotson, and approved by voice vote.

Pharmacy Benefit Manager Reform

Sally West, Regional Director, State and Local Government Relations, Walgreens, discussed the basics of retail pharmacies, general business details for pharmacies and PBMs, five areas where PBMs make profit, and four recommendations to reform the PBM system.

In response to questions and comments from Representative Dotson, Ms. West stated that Walgreens does not own a PBM and that CVS does own a PBM and that she believes Walgreens does not have a PBM because there is a conflict of interest.

In response to questions and comments from Representative Tichenor, Ms. West stated that smaller, independent pharmacies do not have the advantage of having large front-end sales. In a larger chain pharmacy, typically 25 percent of the total front-end sales generates 50 percent of the net profits.

In response to questions and comments from Senator Berg, Ms. West stated that an advantage of Walgreens are the pharmacy technicians working the claims adjudication system to get medications approved for a patient.

White Bagging: A Growing Concern for Kentucky Hospitals

Jim Musser, Senior Vice President, Policy and Government Relations, Kentucky Hospital Association, discussed a standard hospital and health-system model, the potential issues in the payer-mandated white bagging model, white bagging patient access issues, and the negative impacts on the overall medication-use system. White bagging is when an insurance company requires a hospital to use a nonhospital pharmacy for patients in the hospital.

In response to questions and comments from Senator Meredith, Mr. Musser stated that it is unclear who is responsible if a problem was caused by white bagging a medication.

In response to questions and comments from Representative Callaway, Mr. Musser stated that he was not aware of any benefits to white bagging, and that insurance companies have their reasons for using the white bagging method.

Update on the 2020 Regular Session Senate Bill 50 and the Medicaid State Pharmacy Benefit Manager

Veronica Judy-Cecil, Deputy Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, discussed the provisions and implementation of the 2020 Regular Session Senate Bill 50 (2020 RS SB 50) and the evaluation of the total managed care pharmacy costs.

Steve Bechtel, Chief Financial Officer, Department for Medicaid Services, Cabinet for Health and Family Services, discussed the methodology of the analysis of the years prior to and after the implementation of 2020 RS SB 50, the results and trends found in the analysis, and the amounts paid out if 2020 RS SB 50 had not gone into effect.

Ms. Judy-Cecil discussed the 2020 RS SB 50 analysis of the 340B provider claims and the fee-for-service and managed care PBM contract with MedImpact implementation date.

In response to questions and comments from Senator Meredith, Ms. Judy-Cecil stated that Medicaid is overseeing the PBM and CHFS completes an annual performance evaluation, and regular audits of the PBM.

In response to questions and comments from Senator Wise, Mr. Bechtel stated that traditional and supplemental drug rebates were included in the savings report and the elimination of spread-pricing is one of the normalizations completed in the savings report. Ms. Judy-Cecil stated that the report will be available to the public as soon as it is approved to send out and that the savings from 2020 RS SB 50 has allowed for funds to be used for health services.

In response to questions and comments from Senator Tichenor, Ms. Judy-Cecil stated that there are no copayments or cost-sharing in Medicaid. She listed drug categories where brand name drugs have increased significantly.

In response to questions and comments from Representative Duvall, Mr. Bechtel stated that he could not guess the amount saved from PBM reform. Ms. Judy-Cecil stated that 2020 RS SB 50 brought transparency to the PBM process but that DMS is open to ideas for additional savings.

Pharmacy Payment Integrity for the Kentucky Employee Health Plan

Ronald Hamm, Chief Executive Officer, HealthPlan Data Solutions (HDS), discussed their requirements to ensure PBM payment integrity, the submittal of quarterly reports regarding the PBM's performance, the benefits to using HDS versus another company, and various elements of their cybersecurity.

Nick Trego, PharmD, RPH, Senior Vice President, Clinical Analytics and Client Services, HealthPlan Data Solutions, discussed examples of the findings which are located in their quarterly reports, collaborations used to correct the PBM's errors, and monetary recoveries completed due to overpayments to the PBM.

Clark Seiling, Chief Financial Officer, HealthPlan Data Solutions, discussed their vision and mission for pharmacy spending transparency in Kentucky, the need for their services, and highlights of their services.

In response to questions and comments from Representative Bentley, Mr. Hamm stated that HDS's system is agnostic. HDS has worked with single and multiple PBMs. HDS could run a new request for proposal (RFP) for a new PBM. The majority of HDS's business focuses on the three largest PBMs. Kentucky Employees' Health Plan is working on new RFP for a PBM that will allow for multiple PBMs to place bids on the RFP.

Consideration of Referred Administrative Regulations

The following referred administrative regulations were placed on the agenda for consideration:

201 KAR 020:240 Proposed - Fees for applications and services.

201 KAR 021:025 Proposed - Board; officers, duties, and compensation.

201 KAR 021:041 Proposed - Licensing; standards, fees.

201 KAR 021:042 Proposed - Standards, applications and approval of continuing education.

201 KAR 021:075 Proposed - Peer review committee procedures and fees.

201 KAR 021:095 Proposed - Licensure, registration, and standards of persons performing peer review.

201 KAR 021:105 Proposed - Telehealth chiropractic services.

201 KAR 022:045 Proposed - Continued competency requirements and procedures.

202 KAR 007:510 Proposed - Air ambulance services.

202 KAR 007:555 Emergency - Ground agencies.

900 KAR 014:010 Proposed - Essential personal care visitor programs; visitation guidelines.

902 KAR 020:018 Proposed - Operation and services; End Stage Renal Disease (ESRD) facilities.

906 KAR 001:210 Proposed - Health care services agencies.

907 KAR 003:190 Proposed - Reimbursement for treatment related to clinical trials.

907 KAR 020:010 Emergency - Medicaid procedures for determining initial and continuing eligibility other than procedures related to a modified adjusted gross income eligibility standard or related to former foster care individuals.

907 KAR 020:010 Proposed - Medicaid procedures for determining initial and continuing eligibility other than procedures related to a modified adjusted gross income eligibility standard or related to former foster care individuals.

907 KAR 020:045 Emergency - Special income requirements for hospice and 1915(c) home and community based services.

907 KAR 020:045 Proposed - Special income requirements for hospice and 1915(c) home and community based services.

907 KAR 020:075 Emergency - Eligibility provisions and requirements regarding former foster care individuals, and individuals who were in out-of-state equivalents to foster care.

907 KAR 020:075 Proposed - Eligibility provisions and requirements regarding former foster care individuals, and individuals who were in out-of-state equivalents to foster care.

907 KAR 020:100 Emergency - Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

907 KAR 020:100 Proposed - Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

910 KAR 003:030 Proposed - Traumatic brain injury trust fund operations program.

The listed administrative regulations were reviewed by the committee.

In response to questions and comments from Representative Moser, Adam Mather, Inspector General, Office of the Inspector General, Cabinet for Health and Family Services, agreed to defer the referred administrative regulation **902 KAR 055:015 Proposed – Schedules of controlled substances.**

Legislative Hearing on the Community Mental Health Services Block Grant and the Substance Abuse Prevention and Treatment Block Grant

Missy Runyon, Program Administrator, Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services, discussed the Substance Abuse and Mental Health Services Administration (SAMHSA) funding, Kentucky's unified block grant application, the SAMHSA block grant purposes, the unified block grant components, the Mental Health Block Grant (MHBG) requirements, MHBG priority populations, MHBG planned funding allotments, Substance Use Prevention, Treatment & Recovery Block Grant (SUBG), requirements, SUBG priority populations and services, SUBG planned funding allotments, additional funds provided through the block grants, and the Kentucky performance indicators for fiscal year 2024 - 2025.

A motion to approve the Community Mental Health Services Block Grant and the Substance Abuse Prevention and Treatment Block Grant was made by Representative Moser, seconded by Representative Duvall, and approved by voice vote.

Adjournment

There being no further business, the meeting was adjourned at 1:09 PM.