

INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND FAMILY SERVICES

Minutes of the 3rd Meeting of the 2022 Interim

September 28, 2022

Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Health, Welfare, and Family Services was held on Wednesday, September 28, 2022, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Ralph Alvarado, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ralph Alvarado, Co-Chair; Representative Kimberly Poore Moser, Co-Chair; Senators Julie Raque Adams, Karen Berg, Danny Carroll, David P. Givens, Jason Howell, Alice Forgy Kerr, Stephen Meredith, Michael J. Nemes, and Max Wise; Representatives Danny Bentley, Adam Bowling, Tom Burch, Ryan Dotson, Daniel Elliott, Ken Fleming, Deanna Frazier Gordon, Mary Lou Marzian, Felicia Rouborn, Josie Raymond, Steve Riley, Scott Sharp, Steve Sheldon, Nancy Tate, Russell Webber, Susan Westrom, and Lisa Willner.

Guests: Cathy Hanna, Chair, Board of Directors, Kentucky Pharmacists Association; Antonio Ciaccia, President, Three Axis Advisors; Josh Golden, Senior Vice President, Strategy, Capital Rx; Jessin Joseph, Senior Director, PBA Services, Capital Rx; Fred Barton, PharmD, Vice President, Account Management, EmsanaRx; George Huntley, Patient Pocket Protectors Coalition; Julie Babbage, Diabetes Patient Advocacy Coalition; Stewart Perry, Vice Chair, Diabetes Patient Advocacy Coalition; and Jim Musser, Senior Vice President, Policy and Government Relations, Kentucky Hospital Association.

LRC Staff: DeeAnn Wenk, Ben Payne, Logan Bush, Chris Joffrion, Samir Nasir, Becky Lancaster, and Eric Rodenberg.

Approval of Minutes

A motion to approve the minutes of the July 20, 2022, meeting was made by Representative Moser, seconded by Representative Sheldon, and approved by voice vote. A motion to approve the minutes of the August 25, 2022, meeting was made Representative Moser, seconded by Representative Burch, and approved by voice vote.

Consideration of Referred Administrative Regulations

The following referred administrative regulations were placed on the agenda for consideration: **202 KAR 007:560 Proposed** - Ground vehicle staff; **902 KAR 004:030 Proposed** - Newborn screening program; **902 KAR 008:060 Proposed** - Salary adjustments for local health departments; **902 KAR 008:100 Proposed** - Disciplinary procedures applicable for local health department employees; **902 KAR 010:140 Proposed** - On-site sewage disposal system installer certification program standards; **902 KAR 030:120 Proposed** - Evaluation and eligibility; **907 KAR 023:020 Emergency** - Reimbursement for outpatient drugs; **908 KAR 003:010 Proposed** - Patient's rights. (Previously Deferred); **922 KAR 001:310 Proposed** - Standards for child-placing agencies placing children who are in the custody of a state agency; **922 KAR 001:315 Proposed** - Standards for child-placing agencies placing children who are not in the custody of a state agency; and **922 KAR 001:340 Proposed** - Standards for independent living programs. The listed administrative regulations were reviewed by the committee.

Discussion on 2022 Regular Session House Bill 457, Pharmacy and Pharmacist Services

Representative Sheldon discussed the importance of reforming pharmacy benefit managers (PBMs) to reduce drug costs, the impact of the 2020 Regular Session Senate Bill 50 for the Medicaid program, the state fiscal year (SFY) 2022 Medicaid benefits budget, the impact of PBM reform on insurance premium costs for patients and payers, and other solutions for comprehensive reform of PBMs.

Cathy Hanna, Chair, Board of Directors, Kentucky Pharmacists Association, discussed the roll PBMs have in determining the cost of prescription medications, the domination by super PBMs of the prescription market, the 2020 Regular Session Senate Bill 50 positive reform results, proposed legislation to prohibit PBMs from requiring patients to use a pharmacy owned or affiliated with the same PBM, and the services local pharmacies provide to patients.

In response to questions and comments from Senator Berg, Representative Sheldon stated that PBM reforms would be a savings for consumers. Rebates should be passed to the consumer.

In response to questions and comments from Senator Wise, Ms. Hanna stated that bills are being introduced on a federal level and the Federal Trade Commission had hearings to start addressing the PBM issues. Representative Sheldon stated that there was a unanimous federal decision to thoroughly investigate the PBMs' vertical integration.

In response to questions and comments from Representative Moser, Representative Sheldon stated that he has reviewed legislation similar to 2022 Regular Session House Bill (HB) 457 that passed in Tennessee, Colorado, and other states.

In response to questions and comments from Senator Givens, Representative Sheldon stated that HB 457 was intended to affect all PBMs that do business in Kentucky. The language in HB 457 ensures that PBMs cannot force a patient to only use a particular mail-order prescription service owned by the PBM. In order for the consumer to be serviced properly, the prescription must be accessible to the local pharmacy. The consumer needs to be charged at the point of sale.

Presentation on Pharmaceutical Pricing, Pharmacies, Pharmacy Benefit Managers, and Managed Care Organizations

Josh Golden, Senior Vice President, Strategy, Capital Rx, discussed his knowledge of and experience working with PBMs, typical operating strategies of PBMs, key elements of the PBM model that are broken, and the use of National Average Drug Acquisition Cost (NADAC) pricing benchmark to create a baseline for reimbursement to pharmacies.

Antonio Ciaccia, President, Three Axis Advisors, discussed his experience and research in the prescription drug pricing field, the various participants in the drug distribution system, the various ways prescription drugs are priced creating price discrimination and manipulation, the complicated, evolving role of PBMs, the Ohio Medicaid audit of PBMs and following lawsuit settlements, and pricing research regarding small self-insured employers, rebates, and PBMs spread pricing.

Fred Barton, PharmD, Vice President, Account Management, EmsanaRx, discussed being a part of the coalition of Purchaser Business Group on Health employers that want to fix healthcare, a case study of CVS/Caremark, a PBM, and the Kentucky Employee Health Plan (KEHP) with examples of pricing variances for the same medications, generic drug utilization, average wholesale price (AWP) discounts from 2017 to 2021, variable contract rebate language, and opportunities for KEHP to cut spending and create revenue.

In response to questions and comments from Representative Bentley, Mr. Barton stated that most PBMs belong to the Pharmaceutical Care Management Association (PCMA). EmsanaRx is not a member of PCMA and was denied admission because of the company's mission and work.

In response to questions and comments from Senator Carroll, Mr. Barton stated that it is concerning that PBMs decide what they pay their pharmacies and essentially themselves with spread pricing. Mr. Golden stated that the prescription discount card companies are behind the scenes leveraging existing PBM network deals to get the lower prices.

In response to questions from Representative Marzian, Mr. Barton stated that PBM and pharmacy profits are determined by how much the pharmacy is purchasing the drug for from the wholesaler at a minimal amount. The example in the presentation, the PBM

Caremark is paying CVS pharmacies, which is also paying themselves, because Caremark owns CVS pharmacies.

In response to questions from Representative Fleming, Mr. Ciaccia stated that his research has found that approximately half of the prescriptions dispensed at a pharmacy are done at a loss, 40 percent of claims are paid as a break-even proposition for the pharmacy, and there is the smaller percent where pharmacies are overpaid for medicines. His research shows that when pharmacies make a lot of money on specific drugs, those drugs are traditionally being disproportionately dispensed at pharmacies owned by the PBM.

In response to questions and comments from Senator Alvarado, Mr. Ciaccia stated that in international drug pricing, some brand name products are cheaper than in the United States, but typically generic drugs are more expensive internationally. Other countries may engage in pricing controls but that can hinder access to the medications in those countries. Jessin Joseph, Senior Director, PBA Services, Capital Rx, stated that out-of-state pricing depends on the plan sponsor, however, the products are not necessarily covered by the Food and Drug Administration (FDA) but a different regulatory body.

Adjournment

There being no further business, the meeting was adjourned at 2:55 PM.