

INTERIM JOINT COMMITTEE ON BANKING AND INSURANCE

Minutes of the 3rd Meeting of the 2018 Interim

October 23, 2018

Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Banking and Insurance was held on Tuesday, October 23, 2018, at 10:00 AM, at the Kentucky Farm Bureau Headquarters, Louisville. Representative Bart Rowland, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Tom Buford, Co-Chair; Representative Bart Rowland, Co-Chair; Senators Julie Raque Adams, Rick Girdler, Morgan McGarvey, Dennis Parrett, John Schickel, and Dan "Malano" Seum; Representatives Jim DuPlessis, Joseph M. Fischer, Jim Gooch Jr., Dennis Keene, Adam Koenig, Chad McCoy, Michael Meredith, Steve Riggs, Dean Schamore, and Addia Wuchner.

Guests: Mark Haney, President, and John Sparrow, Executive Vice President/Chief Executive Officer, Kentucky Farm Mutual Insurance Company; Patrick O'Connor, Deputy Commissioner of Policy, Kentucky Department of Insurance; Bradley Salyer, Morgan & Pottinger, P.S.C.; Lawrence Ford, Senior Director of Government Relations, Anthem Blue Cross and Blue Shield; and Robert Byrd, Regional Director of Government Relations, Air Evac.

LRC Staff: Sean Donaldson, Jessica Sharpe, and Dawn Johnson.

Approval of Minutes

A motion by Senator Buford and second by Senator DuPlessis to approve the minutes of the September 25, 2018, meeting carried by voice vote.

Opening Remarks, Kentucky Farm Bureau Mutual Insurance Company

Mark Haney, President of Kentucky Farm Bureau Mutual Insurance Company, gave a history of the company. With representatives in all 120 Kentucky counties, the company represents more than just rural communities. In 2019, Kentucky Farm Bureau will celebrate its centennial having been the voice of agriculture for 100 years, and will continue to advocate for rural members.

John Sparrow, Executive Vice President and Chief Executive Officer said Kentucky Farm Bureau, is the only farm bureau in the United States to be the number one market

shareholder in its given state. Each county office has a governing group of community leaders who are advocates for the organization.

In response to Chairman Rowland's question, Mr. Haney said Kentucky Farm Bureau is the fourth largest farm bureau with 475,000 family memberships.

Mandated Study of Medical Costs

Patrick O'Connor, Deputy Commissioner of Policy, Kentucky Department of Insurance (DOI), reviewed the Kentucky Personal Injury Protection (PIP) System and its medical billing process. PIP is "no-fault" coverage with a baseline amount of \$10,000 that typically pays for medical expenses, funeral expenses, wage loss, survivor benefits, and rehabilitation. It is an alternative to the tort system where an individual gives up the right to sue except under certain circumstances. Consumers have the option to reject no-fault coverage. The study is the product of 2018 General Assembly House Bill 464 directing the DOI to perform a comparison study of billing rates for medical bills submitted by providers in the PIP system with other fee schedules. DOI surveyed five insurance companies on process, data intake, and data storage and compared this information to relevant fee schedules. DOI determined that PIP medical bills are processed in two ways—internal processing with very limited reductions to the bill and extended use of third party vendors. To make an accurate comparison to the Kentucky Worker's Compensation Fee Schedule (WCFS), DOI requested medical billing data that, at a minimum, captured Current Procedural Technology (CPT) codes. DOI requested information from three insurance companies that use re-pricing to compare billed amount, allowed amount, and the WCFS rate. The data received was on 600,328 individual transactions, \$140,483,820 in billed charges and approximately \$107,914,238 in allowed charges in 2017. This data was refined to take into account various limitations. Physical medicine was the most frequently billed section, combined with evaluation and management frequency, and radiology, to comprise 87 percent total of non-hospital, non-unit codes. The majority of providers billing in these areas are chiropractors, physical therapists, multi-use spine and rehab facilities, and some general practitioners. The majority of bills originated in Jefferson County. Other notable locations were Hardin, Laurel, and Perry Counties. Mr. O'Connor reviewed the data comparison process. He noted that the fee schedule has a greater impact on less frequently billed codes but higher per transaction cost.

The Division of Insurance Fraud Investigation reviewed internal PIP fraud claims. A substantial uptick in fraud referrals in 2011-2012 was seen. In 2017, there were over 1,800 fraud referrals, a substantial amount being PIP fraud referrals with many being health care fraud referrals. Common fraud referrals are excessive treatment, billing for services not rendered, duplicate billing, illegal solicitation, and unqualified person performing the billing. DOI will continue to review data and will update the report with a comparison of hospital-specific transactions. Overall PIP is a beneficial system that serves to streamline medical treatment following an accident. The WCFS would reduce amounts payable and have a greater impact on higher dollar transactions.

In response to Senator Buford's question, Mr. O'Connor said in 2017 PIP premiums collected were approximately \$200 million.

Responding to Representative Koenig, Mr. O'Connor said he is in contact with other states that have enacted fee schedules and will report to the committee at a later date.

In response to Representative Gooch's questions, Mr. O'Connor said data was not processed to determine how many PIP claims exhausted their amount. PIP does not pay property damage. He did not know if items like eyeglasses would be covered as medical equipment.

Representative Riggs suggested the committee look into legal fees associated with PIP. Mr. O'Connor said the only data collected was if claims were in litigation. Amounts were not included.

In response to Representative Girdler, the Deputy Commissioner said there is a correlation in the consistent increase in PIP claims in Kentucky and 2011 legislation to reform Florida PIP laws. He said more information would be available at a later date on hospital fees. Representative Girdler thought the PIP program is subsidizing the health insurance.

Responding to Representative DuPlessis, Mr. O'Connor said excessive billing fraud is difficult to prove. The DOI receives complaints from insurance companies that are then investigated by the agency fraud unit using existing treatment guidelines.

In response to Senator Seum, Mr. O'Connor said the \$10,000 PIP amount has not changed since the program's inception. Consumers are not specifically told at the time of usage that PIP forfeits many of their legal rights. The information is contained in the policy.

Insurance Issues Surrounding Air Ambulances

Senator Morgan McGarvey said that he asked the committee chairmen to address the air ambulance billing issue after sending letters to several insurers earlier in the year and failing to receive responses from some. He became concerned about the issue after a medical event experienced by a coworker, Bradley Salyer.

Bradley Salyer, attorney with Morgan & Pottinger, P.S.C., explained a recent medical event that happened to one of his twin sons who had been born prematurely. While just a few months old, both twins contracted an infection resulting in multiple doctor visits and extensive treatments. While one son slowly recovered the other experienced a respiratory medical emergency. Their pediatrician sent him to the Bowling Green Emergency Room. After being stabilized the hospital determined they did not have the pediatric intensive care needed and recommended he be flown to Vanderbilt Children's

Hospital as no ground transportation was equipped with high-flow oxygen for the trip. His son is now doing well. Later, a representative from their insurer, Anthem, explained that the air transportation guidelines were in their written policy. Mr. Salyer explained that they began receiving bills from the air evacuation company, Air Methods for \$57,621.99 for the emergency air flight. Anthem covered \$10,632.59 of the flight claim. The Salyers would be responsible for the balance. Anthem denied all appeals referring the Salyers to their policy. Mr. Salyers commented that, under current law, everyone is one illness or one accident away from potential financial ruin.

Senator McGarvey explained that air ambulances fall under the Federal Aviation Administration (FAA) and the Airline Deregulation Act preventing flight cost regulations. He said Kentucky needs to create a framework that requires insurance companies to work with air ambulance companies and pay for the services provided. Several states have enacted such legislation. Senator McGarvey explained that he has drafted a bill that mirror's North Dakota's approach. The bill requires insurance companies to pay for air ambulances services, both in and out of network, requiring an average of the contracted rates that an insurance company has with in-network air providers with this representing final payment to the air ambulance company. The bill also provides a system for arbitration promulgated by the DOI. It also creates a system for prior authorization. To the extent possible, medical personnel must get the written authorization of the patient.

Responding to Senator Buford's question, Senator McGarvey said he thought the legislation could be made retroactive.

Responding to Representative Wuchner's question regarding the cost per member to expand the service, Senator McGarvey said he sent a letter this summer to several insurance companies, including Anthem. A representative of Anthem said they did not receive the letter.

In response to Representative DuPlessis regarding huge variances in insured versus uninsured air ambulance costs, Senator McGarvey said insurance companies should work with air ambulance agencies to distribute the cost and to establish standards. Representative DuPlessis said medical costs are exorbitant because there is no longer a free market condition.

Responding to Representative Meredith, Mr. Salyer said he did not know if an in-network provider was available.

Lawrence Ford, Senior Director of Government Relations, Anthem Blue Cross and Blue Shield agreed that air ambulance fees and coverage have been an issue for years. In 2013, Anthem determined a nonparticipation rate for air ambulance providers which was 200 percent of the Medicare Rural Rate equal to 300 percent of the Medicare Metropolitan Rate. In 2016, Anthem contracted their first rotary service. Since then Anthem has worked

diligently to contract with additional carriers. Mr. Ford explained that Anthem has successfully contracted with two additional carriers and now contract with five companies. He said he cannot address the past but there will be continued conversations on the issue. Mr. Ford said he was unaware of a letter being sent to Anthem. Anthem has diligently pursued contracts to avoid exorbitant consumer bills.

Senator Buford said the committee appreciates Anthem moving forward on this issue. Representative Rowland concurred and noted the air ambulance companies' work as well.

Responding to Representative Koenig's question, Mr. Ford said Anthem believes the solution is through contracts to distribute the risk. If it is available on a rider basis, there would be a tendency to be selected against. In regard to the Air Ambulance memberships, the person is at the mercy of who picks up the person.

Addressing Representative Meredith's questions, Senator McGarvey said an air ambulance call is made by medical personnel because they have determined a person is in dire circumstances. Even if Anthem covers 90 percent of flights, 10 percent are not insured resulting in astronomical bills that would put over 99 percent of Kentuckians into crippling debt. Because of this, legislation is necessary. Senator McGarvey said he has not prefiled his bill in hopes of both sides coming to an agreement.

Robert Byrd, Regional Director of Government Relations, Air Evac said he was asked to brief the committee on Federal House Resolution (HR) 302. Mr. Byrd thanked the chairman for pursuing this matter because Air Evac is now under contract with Anthem. This is a big win for consumers. Air Evac wants the patient held harmless and kept out of the middle of payment issues. Mr. Byrd said HR 302 forms an advisory committee on air ambulance patient billing to address consumer protections. While it does not remove the air ambulance industry from the deregulation act, it could be a start.

There being no further business, the meeting was adjourned at 12:00 PM.