

INTERIM JOINT COMMITTEE ON BANKING AND INSURANCE

Minutes of the 4th Meeting of the 2018 Interim

November 27, 2018

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Banking and Insurance was held on Tuesday, November 27, 2018, at 10:00 AM, in Room 154 of the Capitol Annex. Senator Tom Buford, 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, Jared Carpenter, Rick Girdler, Morgan McGarvey, Dennis Parrett, Dorsey Ridley, John Schickel, and Dan "Malano" Seum; Representatives Jim DuPlessis, Jim Gooch Jr., Dennis Keene, Stan Lee, Chad McCoy, Michael Meredith, and Steve Riggs.

Guests: Patrick O'Connor, Deputy Commissioner for Policy, Kentucky Department of Insurance; Charles Vice, Commissioner, Kentucky Department of Financial Institutions; and Steve Robertson, Frost Brown Todd, LLC.

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

Minutes

A motion and second to approve the minutes of the October 23, 2018, meeting carried by voice vote.

Department of Insurance Update

Patrick O'Connor, Deputy Commissioner of Policy, Kentucky Department of Insurance (DOI), provided an update on hospital data obtained during the review of the medical billing process under the Kentucky Personal Injury Protection (PIP) System. Aggregate data was obtained through three insurance companies reporting 98,962 total transactions, \$78,214,568 billed and \$54,846,225 allowed. Forty-eight percent of total transactions were paid at the billed amount. A substantial number of claims were not paid either due to exhaustion of PIP benefits or redirection of expenses at the individual's request. In order to compare the collected data to the Workers' Compensation Fee Schedule (WCFS) it was refined by eliminating hospitals not included in the WCFS cost-to-charge ratio, or had a zero percent WCFS ratio, and eliminating claims not paid. The WCFS uses a cost-to-charge ratio to reimburse hospitals. Hospitals included in the cost-to-charge ratio submit claim forms and receive a pre-determined percentage of billed charges ranging from

ten to 60 percent with an average of 35.66 percent. After refining the data, 78,411 claims remained representing a billed charges total of \$60,114,298 and which were paid out at a total of \$53,856,081. Once the WCFS was applied and repriced the total that would have been paid for these services under the fee schedule decreased to \$19,973,808. The WCFS amount represented about 33 percent of PIP billed amount and 37 percent of the amount actually paid under PIP. Mr. O'Connor outlined the most commonly billed hospital procedures.

Deputy Commissioner O'Connor said hospital re-pricing occurs but much less frequently than non-hospital bills. Most hospital bills are paid using billed charges or, if PIP benefits have been redirected or exhausted, by the patient. The WCFS cost-to-charge ratio significantly reduces amounts paid to hospitals. DOI reprocessing indicates the average amounts coincide with the overall cost-to-charge ratio average. The WCFS does however result in higher reimbursements than other fee schedules like Medicaid.

In response to Representative Gooch's question Mr. O'Connor said the next step would be analysis of cost versus reimbursement. The WCFS is developed based on profitability. Data indicates the adoption of the WCFS for PIP claims would result in a substantial reduction in reimbursement rates.

Responding to Senator Girdler, Mr. O'Connor said date of service was either not requested or was not available. Insurers reported bill dates, loss dates, and date received or paid. Claims with Current Procedural Terminology (CPT) emergency codes were presumed to be an approximate accident date. Senator Girdler said the PIP program subsidizes other programs like Medicaid and Medicare which underpay providers and providers who contract for lower amounts.

Deputy Commissioner O'Connor gave an update on DOI. Consumer Protection Division analysts are available to the public to review health insurance denials. He noted that open enrollment closes December 15. There have been 18,295 new plan enrollments on the health care exchange. The National Association of Insurance Commissioners' Life Insurance Locator Tool has successfully located approximately \$4.4 million in life insurance proceeds and annuity contracts for 421 Kentuckians since November 2016. The DOI is working on a regulation to House Bill 69 regarding medical necessity criteria. The agency is collaborating with the Department for Medicaid Services as required by statute. He said DOI's legislative priorities include an association health plan cleanup bill that will clarify statute language to permit these new associations under revised federal regulations in Kentucky. There is a regulatory sandbox proposal in discussion, and a NAIC accreditation bill that addresses the annual disclosure form and some supervision of a very simple revision to the insurance holding company system regulatory act that deals with internationally active insurance groups.

In response to Representative Lee, Deputy Commissioner O'Connor said the DOI does not regulate Employee Retirement Income Security Act (ERISA) plans therefore, the consumer protection division only investigates non-ERISA plan complaints. Analysts will investigate after the consumer has exhaust internal appeals with their insurance company.

Check Cashing Licenses

Steve Robertson, Frost Brown Todd, LLC, representing PLS Financial Services provided an overview of the company and the products the company offers including check cashing, free money orders, prepaid debit cards, bill payment, and money transmission.

Mr. Robertson explained that PLS worked with the Department of Financial Institutions to create a new limited license for check cashing transactions that did not meet the definition of a deferred deposit transaction. PLS asks that the legislature delineate between a pure check cashing license and a deferred deposit transaction license in statute. The state's moratorium on new issuances of deferred deposit transaction licenses was implemented and check cashing fell under that umbrella.

In response to Chairman Buford's question, Mr. Robertson said that while they are currently able to offer this service in Kentucky the concern is regulation interpretation may change and prohibit the service from being offered under the current moratorium.

Department of Financial Institutions 2019 Legislative Proposals

Charles Vice, Commissioner, Department of Financial Institutions, discussed 2019 proposed legislation. The Consumer Loan Act is a modernization bill that will align KDFI supervisory authority with all industries the agency regulates. Currently, the primary regulatory authority of the department is license revocation which is considered a worst case scenario with a negative economic impact. KDFI held extensive discussions with industry leaders to reach a consensus on legislative language. The bill will give KDFI the authority to address unlicensed activity, give hearing rights to a company, make reports of examination confidential, allow for change in leadership control including access to funding, and additional flexibility for a licensee. The bill allows for more flexibility in recordkeeping requirements. It gives KDFI regulatory tools including bonding requirements, order issuance, and issue of restitution, fines, and penalties. The bill will prohibit unfair and deceptive acts and practices and will allow the use of the Nationwide Multistate Licensing System and Registry (NMLS) for licensing. The NMLS is a system owned and operated by the states. All mortgage and money transmitter licenses are processed through the NMLS. The bill would provide consistency in the licensing and registration processes for all nondepository industries. A separate bill will be submitted to address deferred deposit. Industry benefits include a one-stop concept for registration, online applications and collection of an electronic security bond as well as online payment processing and increased efficiency and accuracy. KDFI will benefit through efficiency and accuracy which in turn will increase volume of applications and renewals.

In response to Chairman Buford, Commissioner Vice said KDFI has not revoked any consumer loan company licenses this year. The agency has been working with two agencies. Commissioner Vice said he has not received opposition to the proposed legislation. He said there are fine recommendation levels that are consistent with other industries they regulate within the bill.

In response to Senator Seum, Commissioner Vice said every company that offers mortgage loans in Kentucky should be licensed through KDFI. If not, action is taken to stop them.

Responding to Chairman Buford, Commissioner Vice said PLS has followed the process correctly. There have been no complaints and appear to be very good operators within the state.

There being no further business, the meeting adjourned at 10:55 AM.