INTERIM JOINT COMMITTEE ON BANKING AND INSURANCE

Minutes of the 3rd Meeting
of the 2021 Interim

October 5, 2021

Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Banking and Insurance was held on Tuesday, October 5, 2021, at 11:00 AM, in Room 154 of the Capitol Annex. Senator Jared Carpenter, Chair, called the meeting to order, and the secretary called the roll.

Present were:

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

Guests: Mark Treesh, Insurance Institute of Kentucky; Owen Caster, Progressive Insurance; John Bush, Bush and Osbourn PLLC; Ron Green, Green, Chesnut and Hughes PLLC

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

Approval of September 14, 2021

Representative Gooch moved to approve the minutes from September 14, 2021. Senator Parrett seconded the motion. The minutes were approved.

PIP Reform

Mark Treesh of Insurance Institute of Kentucky, provided general information about personal injury protection (PIP) laws in the United States. PIP laws require no-fault medical coverage as part of a person's automobile liability insurance policy. In Kentucky, the policyholder can reject PIP, and it is optional for motorcycles. PIP typically covers medical expenses, lost wages or income, some funeral costs, and replacement services. PIP insureds receive payment for losses without consideration of fault and generally cannot sue an at-fault party for damages until a threshold is met. In states that have PIP laws, there are two kinds of thresholds: a monetary threshold and a verbal threshold. A monetary threshold is a specified dollar amount. In Kentucky, that amount is $1,000 in medical bills. A verbal threshold is statutory language that requires the presence of serious injury or death prior to initiating a lawsuit for damages. Mr. Treesh discussed states with PIP laws, states that repealed their PIP laws, and differences between states with PIP laws. Most states do not have PIP laws, including all of the states that border Kentucky.

Ron Green of Green, Chestnut, and Hughes PLLC, explained that PIP was a well-intentioned law when it was passed in 1975, but the law was modified to comply with state constitutional requirements, which led to some irregularities, and has conflicting purposes. Initially, Kentucky's $1,000 threshold was effective, but increasing medical costs and court decisions have resulted in the threshold becoming meaningless. Mr. Green discussed court interpretations of the PIP laws. These interpretations have led to PIP insurers paying the highest prices for medical expense claims and make it very difficult to challenge or investigate the claims, no matter how suspicious they are.

Mr. Green acknowledged that charging high prices to PIP insurers is beneficial for providers because providers are required to accept discounted rates in other areas, such as in Medicare and private health insurance. However, this hurts the injured person because their PIP benefits will not cover as much as they could otherwise cover. Because of this, the PIP statute creates bad incentives for people and that is partially why fraud is an issue, especially in Louisville.

John Bush of Bush and Osbourn PLLC, discussed fraud associated with PIP in Kentucky. Because medical providers can get paid 100 percent of what they bill to PIP insurers, there is a huge incentive to provide medical services to injured PIP insureds. In contrast, medical providers get at most 40 percent of what they bill to private health insurers and even less for what is billed to Medicare or Medicaid. This incentive creates a catalyst for a few unscrupulous medical providers and personal injury attorneys to abuse the system. The incentive to abuse the system is exacerbated by court decisions that took away the industry's tools to investigate and challenge claims. The only way for the industry to investigate questionable claims at this point is through an independent medical exam process, which is expensive.

Mr. Bush discussed the exportation of PIP fraud from Florida, as Kentucky's statute is similar to the Florida PIP law, which then spread to Kentucky citizens participating in fraud. Unscrupulous personal injury lawyers benefit from the current system because higher medical bills support higher pain and suffering awards. Mr. Bush agreed that even though the PIP statute was well-intended, it has unintentionally created the catalyst for fraud because there is no objective way to address the billing costs and there are no fee schedules. PIP fraud leads to both higher PIP premiums and higher liability coverage premiums.

Owen Caster of Progressive Insurance, discussed whether PIP has outlived its usefulness. He noted that no state has adopted a no-fault PIP scheme for over 30 years. For injured insureds without health insurance, PIP coverage can cover medical bills. It can also help an injured person keep an income stream because the law allows insureds to reserve benefits for the things they need. For providers, the law is useful because they get paid the most from PIP claims and the payments are made promptly. On the other hand, prompt payment at retail prices has led to the PIP system being taken advantage of. PIP coverage doesn't go very far when medical bills are high. PIP insurers can try to negotiate outrageous medical bills down, but the provider has no incentive under the law to do so. One recourse is to file a lawsuit, but that is not an effective way to manage the situation. There is a 12 to 15 percent interest rate requirement for bills that are not paid promptly, which also makes PIP claims difficult to manage. Finally, the PIP laws have resulted in Kentucky insurance rates being a little more expensive than the rates in other states, especially states that do not have PIP. Other coverages exist that can replace PIP coverage, but PIP is mandatory and you have to fill out forms to reject it. Mr. Caster stated that it will be up to Kentucky citizens and the legislature to decide if PIP is still useful.

In response to Senator Alvarado's questions about using a model like surprise billing for PIP or having an all payers database, Mr. Treesh stated that they have offered PIP legislation in the past that would have used the workers' compensation fee schedule, but it was deemed not the best approach by a number of providers. Mr. Caster added that he believes a database would be great for PIP because of its flexibility. Senator Alvarado also explained a model that would force the provider and an insurance company to negotiate a rate for the consumer. In response, Mr. Bush explained that there is nothing in Kentucky's no-fault PIP law that mandates or incentivizes negotiation. He also stated that picking a database or solution that is fair to everyone is important, which may mean that both sides are unhappy.

In response to Representative Gooch's comment regarding lost wages as an important part of PIP, Mr. Bush explained PIP provides up to $200 a week in lost wages for basic coverage and even more if the consumer has additional coverage. Mr. Treesh added that claimants have the right to direct which benefits they wish to use their PIP money for, so an insured can save all of his or her PIP coverage for lost wages if they choose to do so. Representative Gooch also stated that the legislature may need to change or eliminate the PIP law, but if that happens he would prefer that the legislature mandate medical payment coverage and maybe even lost wages coverage in automobile insurance policies.

In response to Representative Smith asking if there is a regulation that school buses have a $20,000 PIP coverage cap and private individuals only have $10,000, Mr. Green stated that it could possibly be that the school district had $10,000 of basic PIP coverage and purchased another $10,000. Mr. Treesh explained that he could get that information for Representative Smith.

In response to Representative Flannery's question regarding whether minimum PIP coverage amounts have changed over the years, Mr. Green and Mr. Bush stated that the minimum PIP coverage requirement in Kentucky has been $10,000 since it was enacted in 1975. Some states have significantly higher minimums, and some states have lowered their minimums in the past couple of years. Mr. Bush and Mr. Treesh stated that they would not want to raise the minimum coverage amount without tools to manage the current problems.

Chairman Carpenter commented that in 1975, PIP was a great idea and a great tool, but over time, issues have developed that need to be addressed. There are valid arguments on both sides. Hopefully, the legislature can come to a solution that protects consumers, keeps rates affordable, provides quality, and keeps people from abusing the system.

There being no further business, the meeting was adjourned.