

INTERIM JOINT COMMITTEE ON BANKING AND INSURANCE

Minutes of the 3rd Meeting of the 2022 Interim

September 20, 2022

Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Banking and Insurance was held on Tuesday, September 20, 2022, at 10:00 AM, in Room 149 of the Capitol Annex. Representative Bart Rowland, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Bart Rowland, Co-Chair; Senators Julie Raque Adams, Ralph Alvarado, Donald Douglas, Rick Girdler, Dennis Parrett, and John Schickel; Representatives Danny Bentley, Joseph M. Fischer, Patrick Flannery, Deanna Frazier Gordon, Jim Gooch Jr., Norma Kirk-McCormick, Adam Koenig, Derek Lewis, Matt Lockett, Shawn McPherson, Michael Meredith, Michael Sarge Pollock, Rachel Roberts, Tom Smith, and Cherlynn Stevenson.

Guests: Representative Patrick Flannery, House District 96; Miranda Sloan, Executive Director, Kentucky Society of Clinical Oncology; Thomas Stephens, Executive Director, Kentucky Association of Health Plans (KAHP); Rusty Cress, AHIP; Sharon Clark, Commissioner, Department of Insurance.

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

Approval of June 2, 2022 Minutes and August 25, 2022 Minutes

Representative Lockett moved to approve the June 2, 2022 minutes, Senator Alvarado seconded the motion, and the minutes were approved by unanimous voice vote. Representative Lockett moved to approve the August 25, 2022 minutes, Senator Alvarado seconded the motion, and the minutes were approved by unanimous voice vote.

Insurance coverage for fertility preservation services

Representative Flannery discussed the need for insurance coverage for fertility preservation services. Fertility preservation coverage helps encourage patients to start treatment when necessary rather than postponing because of fertility concerns.

Ms. Sloan stated that patients with cancer, autoimmune diseases, or other medical issues are at risk of needing fertility preservation. Survivors express a desire to have

biological children and infertility subsequent to treatment is associated with distress. Ms. Sloan presented data on the costs and expenses of fertility preservation options. Thirty-three states and Washington D.C. have introduced fertility preservation insurance coverage legislation and 11 states have enacted coverage. She also discussed the rationales for coverage, including that it is medically necessary, treatments are standard of care, it promotes better medical outcomes, it is low cost and has potential cost offsets, and there is an ethical basis for coverage.

In response to Representative Rowland, Representative Flannery stated that he does not know the exact fiscal impact of this coverage, but there was a similar bill that was filed in 2018 and based on documents associated with that bill it appeared to cost zero to four cents per month.

In response to Representative Lewis, Ms. Sloan explained that she would have to gather research on annual storage costs. Representative Flannery stated that he thinks that \$300-\$600 is a typical range, but costs could differ depending on circumstances so he can't really be quoted on that figure.

In response to Senator Alvarado, Ms. Sloan said that she would provide research about what happens to biological material if storage is not maintained or it is not used by the donor. Representative Flannery stated that because the ages of cancer diagnosis differ greatly, the duration of storage will be an important piece of the legislation. He also stated that the age at which coverage is offered also needs to be addressed.

Representative Kirk-McCormick stated that she represents an area that has a thirty percent higher cancer rate than the national average and would like for the bill to include the cost of storage as many people do not have health insurance.

In response to Representative Smith, Representative Flannery stated that this legislation is intended for those that are already diagnosed but are pre-treatment because the treatment can impact fertility.

Senator Raque Adams shared that her niece passed away due to breast cancer and because she lived in Georgia, there was insurance coverage for her to preserve her eggs. She also explained that in Georgia, if there is not activity for a certain period of time, the eggs will be donated and transferred to a reproductive clinic.

Discussion of federal No Surprises Act

Mr. Stephens stated that the federal No Surprises Act (NSA) was one of the most significant mandates on the commercial market since the enactment of the federal Affordable Care Act and has required massive implementation efforts. The NSA prohibits out-of-network providers from balance billing commercial insurance members.

Mr. Cress stated that AHIP supported the NSA because it checks and balances balance billing. Keeping costs low and off of the consumer's backs is the primary focus of AHIP. Before NSA was enacted, one out of five patients on an inpatient basis received a balance bill. Additionally, one out of six patients that had an emergency room visit received a balance bill.

Mr. Stephens discussed a timeline of implementation for the NSA and who is covered under the NSA, noting that ground ambulance services were not included. The act applies to, and prohibits charging more than in-network cost sharing for, most emergency services and some nonemergency services for plan years beginning January 1, 2022. It also requires providers and facilities to give patients a "plain-language" billing notice. For services subject to the NSA, additional discussion covered how a consumer's cost-sharing will be determined and the independent dispute resolution process for determining the amount to be paid when the insurer and provider cannot agree.

Mr. Cress added that a survey was released which indicated that in the first couple of months in 2022, the independent dispute resolution provisions prevented more than 2 million potential surprise medical bills across all commercially insured patients.

Mr. Stephens discussed provisions of the NSA that are subject to good faith compliance or are delayed pending further federal rulemaking. These provisions include requirements for provider directories and insurance identification cards and a requirement for plans and issuers to provide an advance explanation of benefits for scheduled services upon receipt of a provider's "good faith estimate". He also noted additional reporting requirements and an implementation checklist for reference.

With regard to air ambulance services, Mr. Stephens stated concern that there is a shift towards for-profit entities and that air ambulance providers are not allowed to send balance bills to privately insured individuals under the NSA as of January 1, 2022. Finally, there is litigation pending concerning the NSA, which has been raised by various interest holders in the health care system.

In response to Representative Rowland's question, Mr. Cress said that his understanding is that the air ambulance provisions in the NSA are helping in other states with unsettled air ambulance issues, but there is still an issue with private equity firms trying to get involved with ownership of the provider. Mr. Stephens added that a number of the legal actions pending are related to air ambulance implementation.

Representative Bentley stated that he believes all insurance identification cards should look the same to make it easier on consumers and providers.

Senator Alvarado commented that he worked on this issue for at least two and half years and was surprised that the federal government provided a solution for balance billing.

Typically, the amount that insurance pays with balance billing is \$0 and this occurs when a provider is out-of-network and the insurance company says that it is not their responsibility because they are out-of-network. The NSA prevents patients from being stuck with the entire amount because insurance is unwilling to pay. He also stated that when the Kentucky legislature tried to fix this problem on a state level, insurance companies and other lobbyists were saying that this was not an issue but the KAHP presentation demonstrated that it was. Lastly, he was pleased to see that dispute resolution and transparency was included in the NSA to provide consistency and better help patients.

Commissioner Clark stated that in her 15 years of working for the Department of Insurance (DOI), this is one of the most significant pieces of enacted legislation to help Kentuckians. She agreed that there have been issues with balance billing in Kentucky.

Commissioner Clark also discussed the DOI's responsibilities with respect to enforcement of the NSA. When it was passed, DOI filled out an extensive survey from the federal government asking for statutory and regulation citations to DOI authority to enforce the act. The DOI does not have authority to enforce the NSA against providers. DOI has the ability to enforce certain provisions related to insurers, but the federal government will enforce provisions related to providers. The commissioner noted that many of the federal rules are still being developed. The air ambulance issue has been significant, but DOI does not have any data on air ambulance yet as this is a new law.

Representative Meredith shared his experience with surprise billing, stating that he was sent to collections for radiology services because the provider did not have his insurance information and did not attempt to collect any contact information. These nonintegrated services are not working with providers to get patients billed correctly. Commissioner Clark stated that in instances like that, it is an issue to take to the Attorney General, because DOI does not have authority over providers.

In response to Representative Meredith, Senator Alvarado stated that health care providers have been driven into corporate structures because it is tougher for independent providers to survive.

In response to Senator Alvarado, Commissioner Clark stated that there are not any nonprofit health insurance companies in Kentucky. Senator Alvarado commented that the top 10 most profitable companies in the country are not medical providers.

In response to Representative Frazier Gordon, Commissioner Clark stated there is not any data in yet, but personally, she does not see a need for air ambulance subscriptions now that the NSA has been enacted.

In response to Representative Smith, Commissioner Clark stated that her understanding is that air ambulance subscriptions are voluntary but that complaints and questions concerning the subscriptions would go to the Attorney General's office.

There being no further business, the meeting adjourned.