Approved 2/20/14

MINUTES
SENATE AND HOUSE INTERIM COMMITTEES ON INSURANCE AND COMMERCE
Committee Room MAC A, Little Rock, Arkansas
Monday, November 4, 2013

The Senate and House Interim Committees on Insurance and Commerce met jointly Monday, November 4, 2013, at 1:30 p.m. in Committee Room MAC A in Little Rock, Arkansas.

Committee members present: Senators Jason Rapert , Chair; Johnny Key, and Joyce Elliott. Representatives Tommy Wren; Chair, Robert Dale, Vice Chair; James Word, Les "Skip" Carnine, Terry Rice, Mark Perry, John Vines, Mark Biviano, Reginald Murdock, Jeff Wardlaw, Harold Copenhaver and Joe Farrer.

Non-Voting members present: Representatives Homer Lenderman, Kelley Linck, James Ratliff, Jeremy Gillam, Nate Bell, Mark Lowery, David Branscum, and Douglas House.

Also attending: Senators Missy Irvin, Jane English, David Sanders, Uvalde Lindsey, Eddie Joe Williams and Jonathan Dismang. Representatives Bob Ballinger, Scott Baltz, John Burris, Jim Dotson, Deborah Ferguson, Debra Hobbs, John Hutchison, Joe Jett, Sheilla Lampkin, Greg Leding, Mark McElroy, Betty Overbey, Sue Scott, Fredrick Smith, Butch Wilkins, Jim Nickels, Stephen Magie, and Andy Davis.

Representative Wren called the meeting to order.

CONSIDERATION TO APPROVE SEPTEMBER 9, 2013 and SEPTEMBER 25, 2013, MINUTES [EXHIBITS C1 and C2]

Representative Dale made a motion to approve the September 9, 2013, and September 25, 2013, meeting minutes, and without objection the motion carried.

DISCUSSION REGARDING SPECIALIST REIMBURSEMENT RATES UNDER STATE FEDERAL MARKETPLACE PARTNERSHIP

Representative Wren stated he called this meeting regarding BlueCross BlueShield's (BCBS) specialist reimbursement rates under the federal marketplace. BCBS proposes to reimburse specialists 15% less than primary care physicians.

Representative Deborah Ferguson was recognized and noted that during the regular session, the legislators all heard that the private option of a traditional Medicaid expansion will reimburse providers at private insurance rates. During the discussions, no one came forward to say there was going to be a new fee schedule that reduces reimbursement when all is said and done.

BlueCross BlueShield is going to reimburse family practice doctors more for doing services than a specialist would receive for providing the same service, i.e., if a family practice doctor delivers a baby, BCBS will pay him/her more than a board certified OB/GYN doctor. The payment disparity is problematic in addition to the reduction. She noted she had just received a copy of an amended BCBS contract, and it is a 25% reduction from the traditional BCBS schedule. She stated, it will, in the long-term, jeopardize access to care.

Dr. Dan Rahn, Chancellor, University of Arkansas for Medical Sciences (UAMS), stated that beginning in 2006, the Association of American Medical Colleges (AAMC) projected a physician shortage of 90,000 by the year 2020, split roughly 50-50 between primary care specialties and specialty areas.

Dr. Rahn stated there are approximately 800 residency slots in Arkansas. Residency education has been paid for predominately by federal funds and through add-on payments associated with Medicare payments and in traditional Medicaid payments. The federal government has capped the number of residency positions that are approved for

funding through Medicare since the mid 90s. There has been periodic redistribution of positions, but not an expansion. Medical schools responded to a call to increase class size, and the target set by the AAMC was to increase enrollment in the United States by 30%. Increase enrollment in medical schools over the past eight years is estimated at 22%. Graduating more medical students without an increase in the number of residency positions is a policy problem UAMS has argued federally on an ongoing basis.

Dr. Rahn also stated the career choice plays a role in the number of physicians in an area. The majority of UAMS medical students graduate with debt. That average debt is $145,000 (which is lower than the national average), so income expectations influence career choices.

Through a grant from the Health Resources and Services Administration, UAMS has funding for 30 additional family medicine residency positions. UAMS has increased its class size from 150 to 172 students per year, and there are currently a total of 160 family medicine residency positions. UAMS is focusing on the issue of primary care redesign patient center, medical home and team-based care. Dr. Rahn stated UAMS conducted a workforce planning exercise and produced a strategic plan for Governor Beebe that included active participation by nursing, allied health, physician and hospital leadership mechanism for engaging private business and expanding insurance to everyone in Arkansas with the physicians and insurers working together in payment redesign.

Senator Rapert asked Dr. Rahn how BCBS's payment levels for primary care and specialists would affect UAMS. Dr. Rahn stated 71% of UAMS's total budget is derived from patient care services, 9% from state appropriations, 3% from tuition and 11-12% from research grants and contracts. If payment rates are cut, UAMS would see a decrease in revenue. He stated UAMS uses this revenue to cross subsidize research and education. When federal sequestration occurred, UAMS took a 2% cut in Medicare payments, costing approximately $3.5 million. Dr. Rahn reiterated he does not believe there is anything more important for the future of the state in terms of quality of life or economic development than education and health.

Mr. Cal Kellog, PhD, Executive Vice President and Chief Strategy Officer, Arkansas BlueCross BlueShield, provided background on how BCBS came to the decision to decrease payments to specialty physicians, noting this decrease in payments is only on the metallic plan and only for individuals on the private option. BCBS chose to maintain the reimbursement levels for existing product lines at their current levels. Dr. Kellog stated the following:

- BCBS heard from the state and communities they serve that people wanted to have competitive lower rates for the consumers.

- The private option approach to expand Medicaid had rates that would allow that program to have comparable costs for the current Medicaid programs. Dr. Kellog stated some of the legislation that was passed in the last session, in terms of the intent of the legislation, clearly indicates the insurance competition should be enhanced to lower insurance premiums and prices for citizens within the state.

- BCBS was given the charge to develop the lowest premiums possible. The only way to have lower premiums is to start addressing the overall costs. Cost is driven by the prices that are paid to someone and the quantity that use the services.

- BCBS needed to be sure they had statewide access for residents in all areas of the state. This required a broader network, and as a result, had to negotiate rates that would be lower for that much broader network so that coverage is available to citizens in all regions of the state.

- There was also a very clear message that the direction the state wanted to go in terms of dealing with the reworking of medical practices and health care delivery. There was a strong emphasis on medical homes, primary care medicine, and those types of activities. For a qualified health plan to sell on the exchange in year two, carriers to have to participate in the payment improvement initiative, have medical home capability, and

assign every individual to a primary care physician. With all of those things in context, it is important to maintain reimbursement levels for primary care.

- Because of the greater revenue potential for both hospitals and specialty providers, it would be reasonable to assume you could lower the price because there was going to be a higher quantity and you would ultimately end up with those individuals having higher revenue.

- Through the private option, instead of getting reimbursed at Medicaid reimbursement rates, they will be getting reimbursed at rates that are higher than Medicaid reimbursement rates for all of the newly-eligible individuals.

- In terms of who made the decision regarding specialist reimbursement rates, there were several individuals involved: the chief executive officer, the senior leadership group of the organization, chief operating officer, chief strategy officer, and medical directors.

Mr. Steve Spalding, Senior Vice President of Enterprise Networks, Arkansas BlueCross BlueShield, stated their commercial insurance plans are going to continue as usual. These are new qualified health plans under the exchange and the expanded private option. The reimbursement levels under these new plans are tied to those new plans.

Dr. Kellog stated overall BCBS believes with the conversations they have had with physicians across the state, there is not any argument that it is a good idea to support additional compensation for primary care. BCBS will be asking primary care physicians to take on more patients at the entry level, because that is the most efficient way to handle care. BCBS also believes financially, physicians will be better off, but how they get there is different from the approach currently. For example, and obstetrician at the private option reimbursement rate will be paid somewhere in the neighborhood of 30% more than they had been paid under traditional Medicaid.

Representative Biviano asked the impact to specialty physicians if they chose to opt out of this plan. Dr. Kellog stated the amendment is tied to BCBS's True Blue PPO contract. He stated BCBS chose an amendment to the contract due to the timeline when the products and rates were approved. BCBS could not send out the premium pricing or the reimbursement levels until their premiums were approved. If the Arkansas Insurance Department (AID) would have come back and said we need you to cut your premium rates by 20%, then the rates that BCBS had anticipated to pay wouldn't have supported the product. Dr. Kellog stated BCBS received approval for the premium rates in late July, and a product had to be offered the first of October. They had already committed to a statewide network. Therefore, if BCBS's only option was an amendment to the current contract in order to guarantee they would be able to deliver an acceptable network to offer the product in all counties. The amendment applies to metallic or the qualified health plan products, and if you do not chose to accept these rates, then your True Blue contract is terminated. Dr. Kellog stated that in the future when BCBS makes changes to their contracts, they will go through a negotiation process and individuals will have the opportunity decline participation without any ramifications in terms of existing products.

Representative Ferguson asked why BCBS was paying based on the specialty and not the procedure code. Dr. Kellog stated the idea was that overall there was a desire to financially support the primary care infrastructure in the state. That was the reason for the decision.

Dr. Kellog stated that looking at the requirements to become a qualified health plan in 2014, it states that beginning in year two, when you develop the private option, you would have to participate in the medical home and assign all of the members to a primary care physician. In the context of that piece of guidance that BCBS received from the regulatory agencies, it made it abundantly clear to BCBS that the emphasis would be on primary care and trying to build and maintain that type of structure.

Mr. Michael Stock, President and Chief Executive Officer, QualChoice of Arkansas, was recognized. He stated QualChoice took the following approach in developing its plans for the private option and exchange:

- The benefit structure was provided by the AID in a bulletin referred to as "Appendix D". All carriers bidding were to follow this structure in terms of cost-sharing.

- For all the other products offered on the exchange, we were required to use an actuarial model that was developed by the Center for Consumer Information and Insurance Oversight (CCIIO) and put out for all carriers across the country to use in pricing their plans so that they would fall into one of the metallic categories that were designed under the Affordable Care Act.

- Developing those benefit designs started with our existing cost structure from our existing contracts and our existing levels of utilization for the people we take cover in Arkansas and taking into account what we believed about the new population to be impacted by these benefits plans, what we expected the age and sex composition of that population to be, and the morbidity factors.

- Working with our internal actuaries, we then came up with the pricing for the different benefit plans to offer.

- We then used outside actuaries to review what was done and get their take on it so we had a separate set of eyes, and then submitted those through the state to go through the approval process.

- In doing all that, everything was based upon our existing cost structure and our existing contracts and at this point we have made no adjustments to those contracts and plan to make no adjustments to the contracts for the reimbursement under these exchange products.

Mr. Stock stated QualChoice did consider there may be an opportunity to negotiate lower rates with providers, but as they listened to the process during the legislative session, heard the expectation that these people would be reimbursed at traditional commercial rates. QualChoice backed away from the idea of alternate fee schedules. Mr. Stock stated QualCoice operates in a market where there are only two domestic healthcare insurers in this state, one of them has over 80% of the market share and QualChoice has a little bit less than 7% of the market. QualChoice does not have the luxury to do some of the things BCBS does in the marketplace. QualChoice offers products through the exchange in five of the seven regions in the state (not offering products in the far southeast or southwest regions).

Mr. Thomas Stormanns, Chief Executive Officer, Pinnacle Point Hospital, Little Rock, stated Pinnacle Point Behavioral Healthcare, Rivendell Behavioral Health Services of Arkansas and The Bridgeway hospitals represent approximately 304 psychiatric specialty beds in Arkansas. He introduced Mr. Dwight Lacey, CEO, Rivendale Behavioral Health Services of Arkansas and Mr. Jason Miller, of the Bridgeway hospital.

Mr. Stormanns noted:

- BCBS required Pinnacle Point, Rivendale and Bridgeway to accept rates without negotiation. They were required to accept the rates or have their existing contracts terminated.

- BCBS rates are not comparable to private insurance rates. The rates for plans sold on the exchange are substantially lower than current rates with BCBS's own network and far off Medicare rates.

- Other insurance companies offering plans on the health exchange are providing rates based on fair market value. They do not require them to accept their rates or forfeit all business. Current agreements are not affected.

- BCBS has presented one standard rate for all plans sold on the exchange, and as a result, there will be instances where we would provide treatment below our cost. High deductibles and copays would likely

significantly increase our bad debt, and high bad debts and below-cost reimbursement will make it difficult for our facilities to adequately treat those with moderate to severe conditions.

Senator Rapert stated the AID is given the charge to provide a fair and equitable marketplace for insurance in all aspects and in all lines, because they approve the rates. He stated he has a problem with what is occurring.

Mr. David Wroten, Executive Vice President, Arkansas Medical Society (AMS), was recognized and stated the AMS represents all physicians. There are approximately 4000-4500 physicians in the state, approximately 2500 are primary care, and the rest are specialists. He spoke with both primary care and specialty physicians and both groups agree BCBS's fee schedule is unfair. He stated the AMS met with BCBS twice, once before the contracts were sent out and informed them there was going to be a problem. The AMS met with BCBS again last week and asked them to go back and talk about this issue to come to some resolution. The AMS made the following suggestions to BCBS:

- If BCBS felt like they needed to get a reduction in reimbursement for providers, do a flat reimbursement cut across the board affecting everyone the exact same way.
- Do what other carriers have done – nothing.
- Observe what happens with the private option and the exchange for one year.
- Cut specialty services 15% instead of cutting specialists 15%.

Mr. Wroten stated legislators should send BCBS a message to correct this. There is plenty of time for discussion and correction. BCBS has until January 1 to send out provider contracts. Mr. Wroten stated even if BCBS can justify the change to the reimbursement rates, they should want to implement it in a way that is least disruptive to the provider community.

Mr. Jay Bradford, Commissioner, AID, was recognized and stated that from a practical standpoint, if the parties can get together they can certainly reverse their position. He stated under this managed care portion, the AID has no authority. If the legislature would like him to sit in on the discussion and with the Governor's approval he would do so.

Mr. Booth Rand, Chief Counsel, AID, stated the AID has never regulated or approved provider reimbursement fee schedules.

Senator Rapert asked why other providers do not do business in Arkansas. Mr. Bradford stated that it has been his total effort to try and open the doors of the state to get competition. One issue is companies want to stand back a year or two to see what happens with the Affordable Care Act and the private option. Insurance companies like to look at history. Also, BCBS has a tremendous coverage in the state.

CONSIDERATION TO <u>ADOPT</u> FOR INTERIM STUDY [EXHIBIT G]

ISP 2013-174 *TO ESTABLISH A UNIFIED HEALTH CARE BENEFIT PROGRAM FOR ALL PUBLICLY FUNDED EMPLOYEES AND RETIRED EMPLOYEES.*

<u>Representative Copenhaver made a motion to adopt ISP 2013-174 for study. The motion carried.</u>

Senator Rapert stated he will follow-up with Mr. Bradford on the issues discussed.

There being no further business, the meeting adjourned at 5:25 p.m.