

## MINUTES

### ALC-ARKANSAS HEALTH INSURANCE MARKETPLACE LEGISLATIVE OVERSIGHT SUBCOMMITTEE

January 31, 2018  
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The ALC-Arkansas Health Insurance Marketplace Legislative Oversight Subcommittee met Thursday, January 31, 2018 at 2:30 p.m. in Committee Room A of the Big MAC Building, Little Rock, Arkansas.

**Senate Marketplace Legislative Oversight Subcommittee Members Attending:** Senators Ronald Caldwell, Co-Chair; Larry Teague, Vice-Chair; Cecile Bledsoe, Jonathan Dismang, Blake Johnson (Alternate), Terry Rice, and Bill Sample.

**House Marketplace Legislative Oversight Subcommittee Members Attending:** Representatives Deborah Ferguson, Co-Chair; David Meeks, Vice Chair; Ken Bragg, Karilyn Brown (Alternate), Les Eaves (Alternate), Jimmy Gazaway (Alternate), Michelle Gray (Alternate), Kim Hammer, David Hillman (Alternate), Mark McElroy (Alternate), Ron McNair (Alternate), Reginald Murdock, Chris Richey, Laurie Rushing (Alternate), Brandt Smith (Alternate), Jeff Wardlaw, and Carlton Wing (Alternate).

**Other Legislators Attending:** Senators Scott Flippo, Trent Garner, Missy Irvin, and Gary Stubblefield. Representatives Justin Boyd, Charlotte V. Douglas, Trevor Drown, Kenneth Ferguson, David Fielding, Jack Fortner, Justin Gonzales, Michael John Gray, Ken Henderson, Joe Jett, Fredrick Love, Roger Lynch, Clint Penzo, Aaron Pilkington, Mathew Pitsch, James Sorvillo, Dan Sullivan, and Danny Watson .

#### **Call to Order & Comments by the Chairs**

Senator Ronald Caldwell called the meeting to order, as he made an opening statement on the reason for today's meeting.

Senator Caldwell stated this subcommittee is responsible for ensuring that insurance companies pay the health providers fairly for their services to the insured individuals. The insurance companies have a responsibility for ensuring that contractors are not abusing the system and driving up the cost of health care. This is not happening in Arkansas and it has reached the crisis level. Most of the Pharmacy Benefit Manager (PBM) practices are currently unregulated by the state of Arkansas.

#### **Consideration to Adopt the December 14, 2017 Meeting Minutes (EXHIBIT C)**

Senator Caldwell stated that without objection, the December 14, 2017 meeting minutes are approved.

#### **Discussion of Pharmacy Reimbursement Practices Beginning January 1, 2018, and the Resulting Disparities by Certain Pharmacy Benefit Managers (PBMs) under Certain Insurance Plans Including Plans Offered on the Arkansas Health Insurance Marketplace & the Arkansas Works Program**

##### Presenters on this issue are:

- ❖ Scott Pace, Pharm.D, JD, Executive Vice President & CEO, Arkansas Pharmacists Association
- ❖ Randy Kassissieh, Pharm.D, Pharmacist, Cornerstone Pharmacy, Little Rock, Arkansas
- ❖ Cissy Clark, Pharmacist, Clark's Family Pharmacy, Earle, Arkansas
- ❖ John Ryan, CEO, Arkansas Health and Wellness—Ambetter (Centene)
- ❖ Max Greenwood, Director, Government & Media Relations, Arkansas Blue Cross/Blue Shield
- ❖ Katherine Bell, Regional Director of Government Affairs, Caremark/CVS
- ❖ Dom Gugliuzza, Vice President of Finance & Analytics, CVS Health
- ❖ Mike Stock, CEO, QualChoice
- ❖ Barry Fielder, Vice President of Pharmacy, QualChoice
- ❖ Liz Hubbard, Corporate Responsibility Officer, QualChoice
- ❖ Allen Kerr, Insurance Commissioner, Arkansas Insurance Department
- ❖ Suzanne Tipton, Deputy Commissioner, Arkansas Insurance Department
- ❖ Booth Rand, Managing Attorney, Arkansas Insurance Department
- ❖ Ryan James, Public Information Officer & Governmental Liaison, Arkansas Insurance Department
- ❖ Kelley Linck, Director, Legislative & Governmental Affairs, Department of Human Services

Scott Pace in his opening statement, echoed the statement of Senator Caldwell that Ambetter, Arkansas Blue Cross/Blue Shield (BC/BS), and QualChoice have not been reimbursing Arkansas pharmacies fairly for their service and prescription costs. Scott stated that this poses a serious threat to the well-being of these pharmacies and the individuals who have insurance through one of the above-named companies. Scott went on to say that the ability of pharmacists to care for their patients is at stake, as well as their livelihoods and professions.

Mr. Pace stated that the health insurance companies who insure individuals in the Arkansas Works program and in the Marketplace Exchange plans are paying Pharmacy Benefit Managers (PBM) more than what they pay the pharmacies for their services and the prescription costs. This practice is known as “spread”, and Mr. Pace stated this has been illegal in state-funded plans in Arkansas since 2009.

Mr. Pace said that on January 25, 2018 (the day it was announced this subcommittee would meet on January 31, 2018), Arkansas BC/BS and Caremark CVS arbitrarily slashed the rates on *all* of their commercial plans. Mr. Pace said this action, if allowed to continue, will be devastating to all Arkansas pharmacists statewide and to the insured individuals of BC/BS. Mr. Pace said these insured individuals are currently being turned away at pharmacy counters and will continue to be turned away because pharmacists cannot afford to continue to operate at a loss. Mr. Pace listed three things that need to be addressed on this critical issue:

- ❖ Fair payment
- ❖ Existing laws enforced regarding low cost reimbursement, transparency, and state-funded plans
  - Insurance Commissioner Allen Kerr and Attorney General Leslie Rutledge have voiced support of this recommendation
- ❖ Comprehensive oversight of the Pharmacy Benefits Manager business model in Arkansas

On January 15, 2018, CVS sent a passive addendum to the pharmacy’s contracts to all Arkansas pharmacies, reminding them that CVS Caremark may terminate them from the network at any time without cause. This would cause the customer to have to change pharmacies or pay for the prescription out-of-pocket.

Mr. Pace said traditional Arkansas Medicaid and the Arkansas Employees Benefit Division reimburse pharmacies fairly by using a transparent payment model that reimburses the price of the medication plus a true professional fee to Arkansas pharmacies.

Mr. Pace said that according to Act 769 of 2009, it is illegal for PBMs to charge one price to health insurers, and pay pharmacies a different price in state-funded plans.

Cissy Clark and Randy Kassissieh testified on their pharmacies’ experiences and possible futures as a result of this crisis with CVS Caremark. They pleaded for CVS Caremark to be held accountable for their actions.

The following people testified next: John Ryan, Max Greenwood, Katherine Bell, and Dom Gugliuzza.

Mr. Gugliuzza explained in detail CVS Caremark’s business processes and practices. Since representatives from CVS/Caremark were not able to provide any definite information to the questions posed by the subcommittee members, Senator Caldwell asked Ms. Bell and Mr. Gugliuzza (CVS/Caremark representatives) why more knowledgeable staff and executives did not come to this meeting. Ms. Bell stated the short notice of calling the meeting today prohibited other CVS personnel from attending.

After a long question, answer, and discussion period, subcommittee members and other attending legislators expressed significant dissatisfaction with the situation and resolved that something had to be done.

Mr. Ryan (Ambetter-Centene), stated that Arkansas Insurance Commissioner, Allen Kerr, has requested an audit of the Arkansas insurance companies (which is currently in progress) of their actual drug expenditures from Caremark and their administration costs, to ensure the insurance companies are meeting their reporting requirements.

Subcommittee members requested the following information:

- ❖ For CVS to furnish the data on their spread (what CVS is reimbursing the pharmacy and what CVS is retaining). CVS agreed to furnish this information.
- ❖ CVS's Generic Effective Rate (GER)
- ❖ The reason pharmacists are not receiving responses to their appeals
- ❖ The number of appeals that have not received a response
- ❖ Are the rebates that are received, part of the Medical Loss Ratio (MLR)
- ❖ A request for the Arkansas Insurance Department to look at the language in the Arkansas Works appropriation bill

Senator Sample made a motion to have a meeting as soon as possible; whereby knowledgeable company representatives from CVS who are able to provide full and accurate information to all questions posed by subcommittee members and other legislators in attendance; and are subsequently able to make decisions now to help resolve this critical issue. Future meeting needs to be scheduled when these representatives from CVS are able to attend.

Senator Caldwell requested Angela Lowther to look at and consider lowering the premiums that Arkansas tax payers are paying on Arkansas Works insurance plans—based on the new tax rates the insurance companies will be paying. Ms. Lowther said she would follow up on this request and get this information to the subcommittee.

The meeting adjourned at 5:35 p.m.