

EXHIBIT C

MINUTES

HOUSE & SENATE INTERIM COMMITTEES ON PUBLIC HEALTH, WELFARE AND LABOR

July 2, 2018

The House and Senate Interim Committees on Public Health, Welfare and Labor met Monday, July 2, 2018, at 10:00 a.m. in Committee Room A, MAC Building, Little Rock, Arkansas.

Public Health Senate Members Attending: Senators Cecile Bledsoe, Chair; John Cooper, Lance Eads, Scott Flippo, Stephanie Flowers, and Missy Irvin.

Public Health House Members Attending: Representatives Jeff Wardlaw, Chair; Deborah Ferguson, Vice Chair; Mary Bentley, Bruce Coleman, Justin Gonzales, Kim Hammer, Ken Henderson, Jack Ladyman, Fredrick Love, Robin Lundstrum, Stephen Magie, Austin McCollum, David Meeks, Josh Miller, John Payton, and Donald Ragland.

Other Legislators Attending: Senators Ronald Caldwell, Alan Clark, Breanne Davis, Jonathan Dismang, Jane English, and Trent Garner. Representatives Fred Allen, Scott Baltz, Rick Beck, Charles Blake, Carol Dalby, Gary Deffenbaugh, Jana Della Rosa, Jim Dotson, Trevor Drown, Kenneth Ferguson, Charlene Fite, Vivian Flowers, Grant Hodges, Steve Hollowell, Laurie Rushing, Johnny Rye, Brandt Smith, James Sorvillo, and Dan Sullivan.

Comments by the Chairs

Senator Cecile Bledsoe reminded committee members that the Public Health Committee will begin meeting frequently so that all agency proposed rules and regulations will be reviewed before the 2017-2018 interim deadline. The next Public Health meeting is scheduled for August 6, 2018. Senator Bledsoe introduced Representative Donald Ragland, a new member of the Public Health Committee, and Senator Breanne Davis.

Consideration to Adopt the June 4, 2018 Minutes (EXHIBIT C)

Without objection, the June 4, 2018, meeting minutes were adopted.

Update on the Over-Prescribing of Opioid Drugs (EXHIBITS D-1 – D-5)

Updated reports on the over-prescribing of Opioid Drugs were presented by **John Kirtley**, Pharm.D, Executive Director, Arkansas State Board of Pharmacy; **Donna Cobb**, Executive Director, Arkansas State Board of Dental Examiners; **Sue Tedford**, MNSc, APRN, Executive Director, Arkansas State Board of Nursing; **Karen Whatley**, J.D., Executive Director, Arkansas Medical Board; and **Cara Tharp**, Executive Director, Arkansas State Board of Veterinary Medical Examiners.

Mr. Kirtley stated that the Board of Pharmacy has oversight for all legal drug distribution in Arkansas through the permitting of pharmacy wholesale distributors and both in-state and out-of-state pharmacies. The Board of Pharmacy is not an authority over prescribers of opioids rather the Board of Pharmacy has authority to ensure that the Prescription Drug Monitoring Program (PDMP) reporting is done in a timely manner. Thus far the Board has dealt with two (2) pharmacists that were alleged to not have fulfilled this requirement correctly by either failing to report prescriptions into the system or otherwise manipulating the system. Neither of the pharmacists are able to practice in Arkansas at this time and one of the two stores involved is no longer in operation. In a 3rd case, a pharmacist was found to have misused the PDMP by illegally accessing information on an individual and sharing that information with another party. This pharmacist was fined a maximum fine by the Board and is also being prosecuted for committing 2 felonies with the PDMP. To help with drug abuse issues including opioid issues the Arkansas Board of Pharmacy has been involved in the following:

- ❖ Legal educational programs for pharmacists and other health professional
- ❖ Naloxone Educational programs
- ❖ Prescription Drug Abuse Summit-Planning committee and organizer for the Clinical Section
- ❖ www.ARTakeback.org
- ❖ Labels Save Lives Campaign for drug takeback programs
- ❖ Meeting with the US Surgeon General on Opioid issues in Arkansas

- ❖ Development and presentation on the Naloxone Statewide Protocol agreed upon by Medical Board
- ❖ Co-Teaching Law Enforcement Drug Classes with DEA through the University of Arkansas Criminal Justice Institute
- ❖ Training of Law Enforcement officers to become Certified Law Enforcement Prescription Drug Diversion Investigators
- ❖ Pharmacist Facebook Group to help answer pressing questions on issues and spread awareness of educational opportunities

Ms. Cobb discussed the proactive steps that the Arkansas State Board of Dental Examiners have taken:

- ❖ Enacted Act 820 of 2017, which outlines strict guidelines for prescribers
- ❖ Using the PDMP for investigative purposes
 - This has been very useful and has resulted in disciplinary action
- ❖ Working with the Arkansas Dental and the Pharmacy Associations to promote continuing education for prescribers
- ❖ Encouraging all Arkansas dentists to attend and participate in the annual Prescription Drug Abuse Summit

Ms. Tedford listed the Arkansas State Board of Nursing's (ASBN) proactive steps:

- ❖ Since 2004, the Arkansas State Board of Nursing has been educating all nurses and Advanced Practice Registered Nurses (APRN) about prescribing habits
- ❖ Use the PDMP reports all the time
- ❖ The ASBN stays updated with all legislative and medical board rule changes
- ❖ Yesterday the ASBN received appropriations to fund the treatment of nurses who have a prescription drug abuse problem and who have entered treatment.

Ms. Whatley stated that the Medical Board works extensively with the PDMP. The board issues a subpoena regularly to the Prescription Drug Monitoring Program requesting a PDMP report on an Arkansas physician. The board works closely with Denise Robertson, P.D. Administrator of the Prescription Drug Monitoring Program at the Arkansas Department of Health, who regularly shares needed information with the board.

Regulation Two (2) is presently the Medical Board's biggest concern to get passed, as it sets the definition of "excessive". This regulation will be brought back to Rules and Regulations Committee. The Medical Board is proactive with prescribing education, and has a pain management review committee that reviews allegations of over-prescribing.

Ms. Tharp stated that many veterinarians are reporting to the PDMP. There are also many veterinarians who are choosing not to dispense controlled drugs from their clinic pharmacy, but instead write a prescription to a human pharmacy to be physically delivered by the animal's owner. If situations of drug abuse through theft or diversion of drugs from veterinary clinics occur, they will alert the Drug Enforcement Administration (DEA), as they work closely with the DEA. The Arkansas State Board of Veterinary Medical Examiners is currently looking at implementing a continuing education program very soon.

Representative Wardlaw asked each presenter to answer the following question: As of December 2017, only 78% of Arkansas prescribers are registered users of the PDMP; so what are your respective agencies doing to bring that number to 100%?

- ❖ *Mr. Kirtley*
 - The Board of Pharmacy does not license any prescribers, but the board has been reaching out to medical service providers, and sponsoring classes to educate medical personnel on the importance of using the PDMP.
- ❖ *Ms. Cobb*
 - The Dental Board has enacted a rule on non-compliance that has been distributed to all dental licensees.

- ❖ *Ms. Tedford*
 - The Nursing Board sponsors continuing education and promotes the PDMP. There are APRNs who state they do not prescribe any controlled substance; and therefore will probably not register with the PDMP. The Arkansas Health Department (AHD) always lets the board know if someone is prescribing controlled substances and are not checking with the PDMP—then we take action.
- ❖ *Ms. Whatley*
 - The Medical Board sends notifications through email to subscribers as well as to the Medical Society about regulation changes as they relate to the PDMP. In the Medical Society’s monthly journal, information is posted regarding registering for the PDMP, and the mandatory checking of the PDMP. Information is also posted on the Board’s website.
- ❖ *Ms. Tharp*
 - She would echo what the other presenters said and has not been alerted of any veterinarians currently over-prescribing. Ms. Tharp keeps an open line of communication with the Arkansas Department of Health and the DEA.

The PDMP database is based at the Arkansas Department of Health (ADH), and Robert Brech, JD, General Counsel with the Arkansas Department of Health, stated that some licensing boards and practitioners may not be checking as often as others. The number of physicians registering with the PDMP increased substantially after the passage of Act 820 of 2017. However, there are still some issues that the ADH is currently handling, and PDMP reports have been mailed to all Arkansas practitioners. The ADH is communicating with the boards and licensing entities routinely. There is currently an issue with the veterinarians which may be due to miscommunication, but the ADH is presently working on this issue. Since the passage of Act 820, prescribing rates have been decreasing.

Representative Kim Hammer asked each agency to disclose how many disciplinary actions they have had:

- | | |
|---------------|--|
| ❖ Ms. Tharp | Nothing related to over prescribing of opioids |
| ❖ Ms. Whatley | None |
| ❖ Ms. Tedford | None |
| ❖ Ms. Cobb | 1 |
| ❖ Mr. Kirtley | 3 |

Representative Deborah Ferguson suggested requiring prescribers to validate their PDMP registration whenever they renew their license. The presenters agreed this would be more efficient and this could be enacted.

Arkansas Department of Environmental Quality, Office of Land Resources, Review of Regulation #36, the Used Tire Recycling and Accountability Program (EXHIBIT E)

Tammy Hynum, Manager, Tire Accountability Program, Office of Land Resources; and Michael Grappe, Chief Program Officer, Arkansas Department of Environmental Quality (ADEQ), presented a review of Regulation #36.

Mr. Grappe introduced a review of proposed changes to Regulation #36 as permanent amendments that will:

- ❖ Simplify the name of the program to the Tire Accountability Program (TAP)
- ❖ Provide comprehensive program administration information in compliance with Act 317 of 2017, the Used Tire Recycling and Accountability Act to include:
 - Permitting
 - Licensing
 - Enforcement
 - Beneficial uses
- ❖ Remove preliminary implementation dates and deadlines that reference 2017
- ❖ Add references to new or renamed forms
- ❖ Make minor revisions to include correcting of typographical, grammatical, formatting, and stylistic errors throughout the emergency regulation
- ❖ Act 317 of 2017 also establishes the Commission’s authority for rulemaking

The proposed changes to Chapters 1-17 of Regulation 36 are to ensure compliance with the changes in Act 317 of 2017.

Representative John Payton suggested incorporating a grading system to identify tires that still have useable road life, whereby they could be sold to individuals for use on their vehicles. Mr. Grappe said this is a good idea, and that ADEQ would follow up on this suggestion.

Senator Bledsoe stated that without objection this rule will stand as reviewed.

Department of Human Services (DHS), Division of Medical Services, Review of Rule to Allow a Medicaid Beneficiary to Receive up to Four (4) Primary Care Visits Per State Fiscal Year, by Either a Hospital-Based Walk-in Clinic, or an Emergent Care Clinic without a Primary Care Physician (PCP) Referral, if the Beneficiary has not Been Assigned to a Primary Care Physician (EXHIBIT F)

Tami Harlan, Chief Operating Officer; and Ann Santifer, Business Operations Manager, Health Care Innovations, Division of Medical Services, DHS, presented the proposed rule change which would allow Medicaid recipients 4 (four) primary care visits annually, to a hospital-based walk-in clinic or to a hospital-based emergent care center without a referral from a primary care physician—provided they have not been assigned a primary care physician. The proposed rule change will bring the Division of Medical Services (DMS) into compliance with Act 546 of 2017. If approved, this rule change will be effective on or after May 1, 2018.

Senator Bledsoe stated that without objection this rule will stand as reviewed.

Department of Human Services, Division of Medical Services, Review of Rule Section 1-2-18 which Updates Medicaid Software to Make Managed Care Payments Prospectively with an Annual Reconciliation (EXHIBIT G)

Tami Harlan, Chief Operating Officer; and Ann Santifer, Business Operations Manager, Health Care Innovations, Division of Medical Services, DHS, presented the proposed rule change which will provide new Medicaid billing software that will make capitation payments prospectively with an annual reconciliation feature. Payments will stay the same, but the scheduled payment dates have changed.

Senator Bledsoe stated that without objection this rule will stand as reviewed.

Department of Human Services, Division of Medical Services, Review of Rule which Updates State Plan Amendment 2018-005 Regarding Outpatient Hospital Services for Border Hospitals which Provides Special Consideration to Border City University-Affiliated Pediatric Teaching Hospitals Due to Higher Costs Associated with Such Hospitals (EXHIBIT H)

Tami Harlan, Chief Operating Officer, Division of Medical Services, DHS, presented the proposed rule change that will provide special consideration to border-city, university-affiliated, pediatric teaching hospitals; regarding outpatient hospital access payments, due to the higher costs usually associated with these hospitals. The Centers for Medicare and Medicaid Services (CMS) approved these proposed changes and the projected effective date is August 1, 2018.

Senator Bledsoe stated that without objection this rule will stand as reviewed.

Department of Human Services, Division of Medical Services, Review of Rule is to Comply with Act 203 of 2017 which Allows Arkansas Medicaid to Cover the Originating Site Facility Fee for Telemedicine Services. (State Plan Amendment 2018-002, Section 1-1-18, Section III-1-18, Outpatient Behavioral Health Services 2-18, Federally Qualified Health Clinic 1-18, Hospital 1-18, Physician 1-18, Rural Health 1-18) (EXHIBIT I)

Tami Harlan, Chief Operating Officer, Division of Medical Services, DHS, presented the following proposed rule change: To be in compliance with Act 203 of 2017, the originating site for telemedicine services will be covered for Arkansas Medicaid beneficiaries. The proposed effective date is August 1, 2018, and benefits will be paid for services retroactive back to April 10, 2018.

Senator Bledsoe stated that without objection this rule will stand as reviewed.

Department of Human Services, Division of County Operations, Review of Rule which Revises Medical Services Policy to Comply with Arkansas Works Waiver, by Reinstating Original Eligibility Income Limit for the Program to 138% of Federal Poverty Level, Removing References to Employer Sponsored Insurance, and Adding Extenuating Circumstances as a Good Cause Exemption for the Work and Community Engagement Requirement. The Rule was filed as an Emergency Rule with the Arkansas Legislative Council/ALC/Executive Committee, and Approved for an Effective Date of May 1, 2018. (EXHIBIT J)

Mary Franklin, Director, Division of County Operations, DHS, presented the proposed rule change. The change will revise the Medical Services Policy to comply with the Arkansas Works Waiver, by:

- ❖ Reinstating the original eligibility income limit for the program to 138% of the federal poverty level
- ❖ Removing references to employer-sponsored insurance
- ❖ Adding extenuating circumstances as a good cause exemption for the work and community engagement requirement

The rule was approved as an emergency rule by the Executive Committee on April 19, 2018 with an effective date of May 1, 2018. The proposed effective date for permanent promulgation is August 1, 2018, and there is no financial impact.

Senator Bledsoe stated that without objection this rule will stand as reviewed.

Consideration of Interim Study Proposals (ISPs) for Adoption and Study and Referral to a Subcommittee of the Senate and House Public Health Committees (Human Services, Health Services, and Labor and Environment) (EXHIBITS K-1 – K-6):

1. **ISP 2017–101, Sponsored By Representative Pilkington** – “To Establish the Arkansas Breast Milk Depository in Arkansas.”
2. **ISP 2017–102, Sponsored By Representative Pilkington** – “To Authorize a Pharmacist to Dispense Oral Contraceptives without a Prescription.”
3. **ISP 2017–117, Sponsored By Representative Gonzales** – “To Amend the Definition of "Practice of Certified Registered Nurse Anesthesia"; to Clarify the Scope of Practice of a Certified Registered Nurse Anesthetist; and to Remove Supervision Requirements.”
4. **ISP 2017–118, Sponsored By Representative Gonzales** – “To Authorize the Arkansas Medicaid Program to Recognize an Advanced Practice Registered Nurse as a Primary Care Provider.”
5. **ISP 2017–119, Sponsored By Representative Gonzales** – “To Create the Transition to Prescriptive Authority Act; and to Amend the Prescriptive Authority of Advanced Practice Registered Nurses.”
6. **ISP 2017–121, Sponsored By Representative Sullivan** – “An Act to Amend the Telemedicine Act; to Ensure that Telemedicine is the Least Restrictive Method to Deliver Healthcare Services Remotely; to Expand the Definition of “Professional Relationship”; to Increase Access to Telemedicine Healthcare Services; and for other Purposes.”

Representative Deborah Ferguson made a motion to adopt all of the above listed ISPs and to refer them to the Health Services Committee. The motion passed without objection

The meeting adjourned at 11:50 a.m.