

MINUTES
SENATE AND HOUSE INTERIM COMMITTEES ON INSURANCE AND COMMERCE
State Capitol, Room 151
Little Rock, Arkansas
Tuesday, July 10, 2018

The Senate and House Interim Committees on Insurance and Commerce met jointly at 1:30 p.m. Tuesday, July 10, 2018, at the State Capitol, Room 151, in Little Rock, Arkansas.

Committee members present: Senators Jason Rapert, Chairman; Larry Teague, Joyce Elliott and Breanne Davis. Representatives Charlie Collins, Chairman; Reginald Murdock, Deborah Ferguson, Mark Lowery, Les Eaves, Grant Hodges, James Sorvillo and Les Warren.

Also attending: Senator Jonathan Dismang and Representatives Carol Dalby, Steve Hollowell, David Fielding, Jim Dotson, Dan Douglas, Jana Della Rosa, Scott Baltz, Johnny Rye, David Meeks, Matthew Shepherd and Kim Hammer.

Representative Collins called the meeting to order. He stated the Insurance Department will be providing information on the proposed Pharmacy Benefit Managers (PBM) Rule.

Senator Rapert thanked the legislature and Insurance Department for their work on the PBM legislation, noting it is being used for a National Model Statute that was introduced at the Atlanta National Conference of Insurance Legislators meeting in March to address the PBM issue across the country.

He added the Kentucky Insurance Department has penalized CVS Caremark \$1.5 million for 454 violations in their state and also 38 different times in which they did not give accurate information relating to Medicaid.

CONSIDERATION TO APPROVE DECEMBER 5, 2017, MINUTES

[EXHIBIT C]

Representative Eaves made a motion to approve the December 5, 2017, Senate and House Insurance and Commerce Committee meeting minutes, and the motion carried.

**ARKANSAS INSURANCE DEPARTMENT (AID), REVIEW OF PROPOSED RULE 118:
PHARMACY BENEFITS MANAGERS (PBM) REGULATION**

[EXHIBIT D]

Mr. Allen Kerr, Commissioner, AID, stated proposed Rule 118 is still open in the public comment period through tomorrow afternoon, and because of that, an overview will be given today.

Mr. Booth Rand, Managing Attorney, AID, noted Proposal 118 is implementing Acts 1 and 3 passed in the Second Extraordinary Session as the PBM Licensure Act. It authorizes the AID to implement a rule to regulate all aspects of PBM activities: To review their financial solvency stability; issue rules and regulations how they conduct themselves in the market; issue requirements related to compensating pharmacists on a discretionary basis; and also to issue rules regarding fees and/or application requirements that AID will need as a state agency to regulate PBMs.

Mr. Rand noted some of the acts' provisions are patterned after other states. There is a \$1 million cash surety bond requirement copied from Kentucky's recent amendments, adding this is a better solvency bond amount than Arkansas' previous \$25 thousand. The cost of this is \$10-\$12 thousand per year depending on the PBM's credit rating. For small Arkansas PBMs, there is a provision to petition the commissioner to base the bond amount on a PBM's smaller size.

There is a \$1 thousand application fee. Other application requirements relate to providing information such as ownership, location, regulatory contact, organizational structure, and an annual audit financial statement with balance sheet, needed for determination of the PBM's stability.

Mr. Rand noted Section 6 pertains to Contract Review Clarifications prohibiting PBMs from having language in their contracts that provides for payment retro activity, anti-gag clauses, anti-claw-back, and maximal outward costs. The rule will not let the PBM and the pharmacist wave those provisions by contracts, so a PBM and pharmacist cannot negotiate an agreement to not apply state law.

On the issue of prohibiting PBMs from charging fees to pharmacists, or applying different or higher certification standards to pharmacists for specialty drug vendors, the compromise provides they are prohibited unless the commissioner approves them. There is a mechanism in place for PBMs to request the commissioner's approval for those two particular provisions.

Mr. Rand explained Section 7 relates to Pharmacy Network Adequacy over reimbursement concerns and negative reimbursement patterns which were brought to the legislature's attention by Mr. Pace in January. The compensation reimbursement patterns the pharmacists were receiving through PBMs were causing many pharmacists to be in a negative reimbursement pattern. The cost to buy the drug was more than what they were reimbursed by the PBM. AID has determined how to reasonably regulate reimbursement amounts that the pharmacists receive from PBMs.

AID's legal responsibility is to look at the amount of hospitals, doctors, pharmacists, and specialists, etc. in network adequacy to be responsible to health plans through its carriers and to ensure there are enough health care professionals participating to qualify for licenses to conduct business in Arkansas.

At the commissioner's discretion, AID is permitted to review case compensation or PBM payment amounts where an approximate 10% change occurred in participation by pharmacies due to reimbursement or declining coverage. AID's Network Adequacy Division on Health, Tonmoy Dasgupta, is tasked to improve reporting language, etc. to determine if there is a significant compensation shortage causing pharmacists to drop out. This approach allows AID to keep its historical role and to view compensation relevant to network adequacy. The numbers will be worked out, and under the network adequacy rule, the commissioner may address compensation with insurance companies. He noted this rule is directed at PBMs and the health insurance companies. The PBMs are subcontractors of the insurance plans that choose to pay them. To effectively make pharmacy compensation and reimbursement changes work, the insurance company must be made responsible.

Mr. Rand continued with Section 8, noting AID has the right to do an exam at any time. Insurance companies are examined once every five years. But if a problem develops, such as a compensation issue, pharmacy association issue, or significant pharmacy crisis issue, this exam mechanism is a way for the AID to immediately examine the PBM.

By law, the AID was added to agencies that would regulate the Maximal Allowable Cost Law (MAC), so AID is jointly regulating MAC with the Attorney General's office. The AID needs MAC information such as how often appeals work, and how often PBMs actually make the adjustments, as the purpose of PBMs' reporting requirements to AID is to oversee compliance with MAC. The provisions make clear that the designated regulatory contact person is responsible to respond to agency emails and phone calls regarding compliance.

Spread Pricing Law under Act 769 of 2009, AID will require a report by health plans that use spread pricing, to include what the PBM was paid by the health plan and what the PBM pays the pharmacist.

This is the spread pricing discussed last spring where the legislature wants to know the spread amounts. AID is requiring insurance companies and PBMs to submit information to the All-Payer Claims Database (APCD). It is yet to be determined if the electronic information needed can be produced using APCD. If not, AID will develop a written report requirement to capture spread pricing information.

Mr. Rand concluded with brief explanations regarding licensing status and penalties. He said monetary penalties are a \$10 thousand fine for each pattern or practice and going up to \$50 thousand if intentional. AID's most significant penalties are in the trade practice cite, and AID will apply cease and desist provisions and the most significant penalties in the insurance code.

Representative Collins stated without objection, the rule stands as reviewed.

Representative Collins made a motion that following the public comment period, any non-substantial changes the agency makes to the rule can be approved by the chairmen.

Senator Teague asked that "non-substantial" be defined.

Representative Collins noted that Mr. Rand opened his presentation by saying there are typographical errors, technicalities and other changes he called non-substantial. During this comment period, over the next 48 hours or so, there could be additional things like that. If a member sees a change and considers it substantial, let a chair know and there can be another meeting if necessary. Mr. Rand stated the changes will be made known to the chairs and the committees.

Senator Elliott asked that a committee member make that motion. Representative Collins asked Senator Teague if he would make the motion, and with Senator Teague's agreement, **Representative Collins stated this is now Senator Teague's motion and Senator Elliott is seconding the motion. The motion carried.**

OTHER BUSINESS

With no further business, the meeting adjourned at 2:16 p.m.