Louisiana Health Care Commission Meeting Minutes
Meeting Held Via Zoom
Baton Rouge, Louisiana
March 5, 2021

Members present: Lauren Bailey, Katie Brittain, Derrell Cohoon, Jeff Drozda, Rachel Durel, Jack Duvernay, Susan Ellender, John Fraiche, Lisa Gardner, Arnold Goldberg, Faye Grimsley, Linda Hawkins, Rep. John Illg, Jennifer McMahon, Barbara Morvant, Ronnell Nolan, John Overton and Debra Rushing

Members absent: Jeff Albright, Josh Alford, Michael Andry, Lisa Colletti, Diane Davidson, Jeanie Donovan, William Ferguson, Randal Johnson, Jesse Lambert, Eva Lamendola, Darrell Langlois, Senator Robert Mills, Andrew Muhl, Frank Opelka, Ed Parker, Anthony Recasner, Butch Sonnier, Liz Sumrall, Judy Wagner, Scott Webre, Frances Wiggins and Lacosta Wix

Staff present: Crystal M. Stutes

Chairman John Fraiche called the virtual meeting to order at 9:05 a.m. via Zoom. Roll call was ascertained through registration and appearance online at the meeting; as such a quorum was noted for the record.

Chairman Fraiche asked for a motion to approve the September 2020 and December 2020 minutes. Lauren Bailey moved to approve the minutes. With no objections, the minutes were approved.

Chairman Fraiche then introduced Ms. Mary Moody, Health Policy Advisor with Senator Bill Cassidy's office who reviewed the Surprise Billing Federal Legislation, which addresses the burden of consumers being billed for the balance of services that are not covered by insurance.

Ms. Moody stated that in May 2018, Senator Cassidy's office began addressing the issue, which involved many interested parties including, providers, insurance carriers, etc. Opposing views included insurance carriers who felt an Independent Dispute Resolution (IDR) would only increase costs and exacerbate the problem and they preferred a benchmark payment policy. Providers, on the other hand, preferred an IDR and felt they absolutely would support a benchmark payment policy because they felt we must allow free market forces to be at play.

As such, in May 2019, the Stop Surprise Medical Bills Act was presented. By the end of the year, there were three other committees that also took up the task of addressing surprise billing, which brought momentum to the issue but also somewhat complicated the matter by presenting different approaches. Eventually, they arrived at a policy with a hybrid approach. A payment meeting the network rate would automatically go to the provider; then a "backstop" dispute resolution would be available to contest the amount that was paid. In December 2020, they were able to pass the Surprise Billing Act. Although there were certainly some changes due to the different parties involved, the end product was something everyone could live with.

Ms. Moody reminded the members that this Act would in no way preempt a state who has already enacted balance billing protections.

According to Ms. Moody, the bill "bucketed" certain services included in the No Surprises act, such as emergency services and certain ancillary procedures. She mentioned that air ambulatory transportation is covered; but not ground transportation. The bill requires cost estimates to be provided for certain procedures. Ancillary services cannot be balance billed to the patient, unless they were fully informed of the costs three (3) days prior to the bill. Also, the plan must provide a payment within 30 days of the provider submitting the claim. Within 30 days, the provider or insurance company has opportunity to dispute claim and enter arbitration. They submit one final offer and arbitrator must choose based on all of the information presented. Both parties can submit additional information during the process.

Ms. Moody added that the bill provides for a 90-day "cooling off" period. Once a decision has been made, there must be a 90-day period before either can go back to an arbitration on a single service. Additionally, the bill provided for better transparency; funds for an all-claims payer database; other requirements for updated provider directories; price comparison tools, etc.

Three agencies (HHS, Department of Treasury and Department of Labor) will be working furiously to promulgate guidance and regulations necessary to implement the requirements of the law, which goes into effect in January 2022.

Commission member Linda Hawkins asked for clarification on the federal versus state balancing billing preemption issue. Ms. Moody responded that patients are protected but if the state has a law that indicates what the provider would be paid in a certain situation, then that payment would apply, but if state does not have a provision in place, the federal bill would apply.

Mike Bertaut from Blue Cross Blue Shield stated that he had seen research that showed a $300 to $500 per claim cost for arbitration; as such he inquired as to why there was not a minimum amount that could be arbitrated in the bill. Ms. Moody responded that in terms of the range of services that would be impacted, there was a wide variety of costs, so they felt it would be unfair to rule out those claims not meeting a threshold. However, they added safeguards that have the "loser" of arbitration paying for the arbitration costs. She also stated that the Congressional Budget Office stated that the administrative costs of arbitration would pale in comparison to the savings that could be yielded from this policy.

Commission member Jack Duvernay, with the LA Health Underwriters Association stated that his counterparts in New York are stating that arbitration has driven up premium costs due to instructions given to arbitrator; one of which is giving billed charges consideration. He asked what factors will the arbitrators take into account? Ms. Moody stated that the Department of Financial Services in New York actually showed some savings under the plan, which does have the support of insurance industry and businesses. In response to the second part of Mr. Duvernay's question, Ms. Moody stated that the criteria they are instructed to look at include network rates, market share of plan and provider; teaching status; quality metrics, etc. There is an open opportunity for both plan and provider to submit relevant information.

A member of the public asked if the new law preempts all state laws as to ERISA regulated plans? Ms. Moody replied yes. Another member of the public asked for clarification

as to who the arbitrators will be. Ms. Moody responded private contractors would handle arbitration.

Commissioner Donelon thanked Ms. Moody for her time with the Commission today. He mentioned that about half of the states have enacted some type of balance billing legislation.

Chairperson Fraiche then introduced Mr. David Pearce, Legislative Liaison with the Louisiana Department of Insurance. Mr. Pearce reviewed the following health bills:

- ***SB (TBD), Senator Talbot****: Health Reinsurance with 1332 Waiver*

This bill would create an individual market reinsurance program for use in a 1332 Waiver, which would be funded by a combination of:

•A fee on all health policies statewide, capped at $2.50 and

•1332 Waiver "pass through" of money the federal government saves on ACA subsidies as a result of reduced premiums under the program.

Mr. Pearce stated that the purpose of the bill is to reduce premiums in the individual market and foster more participation by the healthy under/un-insured population.

He also stated that 14 states currently have approved 1332 Waivers for reinsurance program and another two are pending.

Commission member Ronnell Nolan asked a question regarding the 1332 waiver; she asked if they have considered the federal legislation being discussed now that would increase tax credits for over 100% of the poverty level and under 400% of poverty level which will change how much consumers pay for their premiums. Mr. Pearce responded that he has not yet discussed this with Deputy Commissioner Opelka but he will absolutely do that.

- ***HB (TBD), Representative Illg:*** *State Based Health Insurance Exchange*

Mr. Pearce stated that this bill would authorize the Commissioner to establish a state based individual health insurance exchange. State-administered exchanges can often operate more efficiently, reducing the amount charged to insurers and passed on through premiums.

He also mentioned that the lower fees, capped at 2 percent of monthly premiums, should also make the exchange, and Louisiana, a more attractive marketplace for additional insurers to enter and offer more options.

Ms. Hawkins asked about the effectiveness of a state-based exchange and Mr. Pearce responded that he felt it would be more efficient as opposed to more effective. He stated that they hope to run an equally effective exchange, but hopefully at a lower cost.

Commissioner Donelon said the goal is to allow individuals to obtain a policy that is not so cost prohibitive while also increasing the number of carriers in the marketplace. He also stated that there would be subsidies for those who could not afford it, as subsidies are required to be included in all the state-based exchanges.

- ***HB (TBD), Representative DuBuisson****: Prohibition of using Genetic Information in Life, Disability and Long-Term Care Underwriting;*

Mr. Pearce stated that this bill would prohibit the requiring and/or use of genetic information in the underwriting of life, disability and long-term care insurance.

Next, Dr. Fraiche introduced Dr. Joseph Kanter, State Health Officer and Medical Director at the Louisiana Department of Health.

Dr. Kanter stated that Louisiana hit three distinct "peaks" during the past 12 months; the first being in March in the New Orleans region. For a period of two weeks, it was considered the fastest growing outbreak of anywhere in the world. Cases went back up in July/August for a second statewide spike. The third spike was in November, which rolled into the New Year holiday. However, since then, cases have steadily declined.

What causes Dr. Kanter concern are the variants that are circulating that put us at risk for a fourth surge. There are only a few known variants simply because they do not do a great deal of genome sequencing in the US. As such, it is difficult to know how many cases are really out there. There are 18 confirmed B117 variants (UK variant) and 69 suspected cases of the variant. They are in almost all regions of the state, but clustered mostly in the Lake Charles and New Orleans area. They have not identified the South African B1351 variant in Louisiana yet, but it has been identified in 17 states. They have also not identified the Brazilian variant in Louisiana yet. With respect to the UK variant, Dr. Kanter stated that it is more transmissible and more virulent.

Dr. Kanter hopes that they can suppress transmission of the variants a bit longer and provide time for more vaccinations. Vaccinations will determine if that happens. We are getting very close to having significant immunity but we need to continue vaccinations. Dr. Kanter stated that each state has gone about vaccinations differently. He reiterated that Louisiana elected to use pharmacies/chains, hospitals - large and small and that they felt confident in doing large events for vaccinations.

According to Dr. Kanter, Louisiana has enrolled over 2000 vaccine providers. The limited supply of vaccines is the main thing limiting the big events for vaccine dissemination. He stated that the first shipment of Johnson and Johnson vaccines was set to arrive this week, but they were notified that they would not receive more until the end of the month. The goal is to use every dose of vaccine received by the feds as quickly and as equitably as possible. He stated we have much more capacity to administer vaccines than they have supply.

Racial disparity and inequity continue to be a challenge across the nation and in our state. They added visibility to the LDH public dashboard; racial demographics are now available as well as the number of doses initiated by region and parish. In our state, data shows that about 24 percent of vaccines have been given to black residents; 63 percent to white residents and about 10 to 13 percent categorized as unknown/other. The biggest challenge is identifying where they need to go to bring vaccines.

Dr. Kanter feels Johnson and Johnson vaccine will be a game changer. This would be a single shot - "one and done".

Representative Illg asked if there was any correlation between blood type and susceptibility to contracting the virus. Dr. Kanter stated that they still do not have any definitive data regarding this correlation.

Dr. Fraiche asked Dr. Kanter what he thought about Texas lifting the mask mandate and Dr. Kanter stated that he felt it was too soon considering how close we are to getting it under control.

Ms. Hawkins asked if there are any plans to offer a mobile unit to go into hard to reach communities similar to a book mobile. Dr. Kanter stated that the biggest challenge is to know where to send those teams. He also mentioned it would likely be a tent, but not a mobile unit.

Dr. Kanter also felt that booster shots would be a way of life; although he does not know how often they would need to be administered. He also stated that only 9 percent of our citizens have been completely vaccinated. Another 16 percent have received the first dose. He also mentioned that he feels by the end of May vaccine supply will meet demand.

Dr. Fraiche asked if he felt that vaccinations would become mandatory. Dr. Kanter stated that he certainly did not think that would happen at least until the vaccines received full FDA approval as opposed to emergency approval.

Commission member Arnold Goldberg asked if the 9 percent of citizens vaccinated included the VA vaccinations. Dr. Kanter responded that no, that does NOT include the members vaccinated by Department of Defense. Often, they do not report those numbers to the other government organizations. He surmises that the VA recipients could have been approximately 20,000 or 30,000 additional vaccinated citizens.

Dr. Fraiche and Commissioner Donelon both thanked Dr. Kanter for his time.

In his closing remarks, Commissioner Donelon mentioned that the genetic testing bill came to him from a doctor acquaintance who serves as a research head at Tulane University Hospital and Medical School. This individual reached out to him after seeing that Florida presented the same bill last year where it bans genetic testing for health insurance. Apparently, this incentivizes people to come forward and volunteer to help with research in genetic testing knowing it will not be used against them in the future.

Commissioner Donelon also mentioned the reinsurance bill that the LDI is proposing again this year would allow us to access $100 million of federal money that would go to a reinsurance program which would bring down the cost of health insurance. The main push back last year was from the ERISA plans opposing the idea of the state regulators imposing a fee on the ERISA plans. The entire fee would generate about a $20 million match to access the federal money. We now have 14 states taking advantage of this type of reinsurance program.

Ms. Stutes announced that our next meeting is tentatively scheduled for May 21.

With no further business, the meeting was adjourned at 11:15 am.