

Members:

Sen. Patricia Miller, Chair
Sen. Robert Meeks
Sen. Joseph Zakas
Sen. Rose Antich
Sen. Lonnie Randolph
Sen. Vi Simpson
Rep. William Bailey
Rep. Charlie Brown
Rep. William Crawford
Rep. Ralph Ayres
Rep. Vaneta Becker
Rep. David Frizzell

LSA Staff:

Al Gossard, Fiscal Analyst for the Committee
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Authority: P.L. 130-1998



SELECT JOINT COMMITTEE ON MEDICAID OVERSIGHT

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MEETING MINUTES

Meeting Date: July 30, 1998
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., Rm 233
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Sen. Patricia Miller, Chairperson; Sen. Robert Meeks; Sen. Joseph Zakas; Sen. Rose Antich; Rep. William Bailey; Rep. Charlie Brown; Rep. William Crawford; Rep. Ralph Ayres; Rep. Vaneta Becker; Rep. David Frizzell.

Members Absent: Sen. Lonnie Randolph; Sen. Vi Simpson.

Sen. Miller, Chairperson of the Committee, called the meeting to order at about 10:15 a.m.

EDS Update

Ms. Mary Simpson EDS

Ms. Simpson provided two handouts to the Committee. The first handout contained weekly statistics describing claims processing, suspended claims, and provider assistance telephone statistics. The statistics covered January through July of 1998.¹ Ms. Simpson provided a second document describing dental claims payment (including the number and percentage of claims paid and denied, and the total amount paid). The document also described processing statistics for dental claims (including average number of days to receipt, receipt to payment, and service to payment) and statistics for the number of dental providers and dental recipients (including numbers enrolled and participating, and the percent

¹This document is on file in the Legislative Information Center, Room 230, State House, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856 and the mailing address is 200 W. Washington St., Suite 301, Indianapolis, Indiana 46204-2789.

participating).²

Ms. Simpson stated that the Office of Medicaid Policy and Planning (OMPP) will carve dental services out of the risk-based managed care contract, effective August 1, 1998.

Ms. Simpson, responding to a question from the Committee, stated that suspended claims average about 500-600 per week and that this statistic will be included in future claims processing reports.

OMPP Update

Ms. Judith Becherer
Director of Long Term Care
Office of Medicaid Policy and Planning

Ms. Judith Becherer, OMPP, provided the Committee with an update of the Case-Mix Reimbursement System rules for nursing homes. She stated that Rule 14.6 had been approved and adopted by the Family and Social Services Administration (FSSA) Committee on July 14, 1998. The rules were approved by the Attorney General on July 28 and are now in the Governor's office for his approval. The Governor has 15 days to act on the rules, after which, the rules will be on file with the Secretary of State. This time line will allow an effective date for the Case-Mix rules of October 1.

Ms. Becherer also reported that the July 1st meeting with the Case-Mix Working Group focused on rule changes with respect to the audit process and MDS requirements (MDS - Minimum Data Set refers to the data required to be submitted by the nursing facilities.) Specifically, discussions involve error thresholds on data submission, as well as the schedule of sanctions that will be imposed on the facilities. Ms. Becherer indicated that OMPP has worked closely with the industry and the State Department of Health and has studied the situations in other states to try and develop appropriate error thresholds and sanctions. She added that the purpose of the audits is for the purpose of promoting the delivery of appropriate patient care.

Ms. Becherer stated that the July 29th meeting included the following topics: the development of a new cost reporting form; discussion of the changes resulting from the Balanced Budget Act of 1997; and discussion of the changes being required by the Health Care Financing Administration (HCFA). The topics to be considered at future meetings will include the electronic submission of cost report data and the question of how to proceed with the Alzheimer time study that is to begin in 1999.

Ms. Becherer further stated that OMPP has been conducting provider training regarding the MDS data requirements and that there has been good provider participation at the meetings. The Case-Mix provider training meetings are to be conducted at 10 different locations in the state. Ms. Becherer added that OMPP will be calculating and distributing estimated reimbursement rates to nursing facilities. OMPP will also be distributing provider education bulletins because of the changeover to the new system.

Ms. Kathy Gifford
Assistant Secretary
Office of Medicaid Policy and Planning

Ms. Kathy Gifford, OMPP, updated the Committee on the issue of Medicaid reimbursement for Viagra. Ms. Gifford provided the Committee with a copy of the July 14th press release on Governor O'Bannon's request of President Clinton to reverse a HCFA decision requiring states to provide Medicaid coverage for Viagra. Included with the press release, are copies of letters to President Clinton, Donna Shalala (Secretary of the U.S. Department of Health and Human Services), and U.S. Representative Lee

²Copies of this document are on file in the Legislative Information Center (See footnote 1).

Hamilton.³ Ms. Gifford added that a House Committee in the U.S. Congress is considering an amendment to a bill which would prohibit coverage of Viagra under the Medicaid Program. In addition, Ms. Gifford reported that the U.S. Veterans Administration had made public statements indicating that they were not in support of the HCFA decision to require coverage of Viagra. Ms. Gifford was requested to also provide letters from HCFA written in response to Gov. O'Bannon's request.

Ms. Gifford reported that the Indiana Medicaid Program is currently not covering Viagra. In response to a question from the Committee, Ms. Gifford stated that New York, Wisconsin, and Oregon had chosen the same course as Indiana was taking in not covering Viagra.

Concerns were expressed by Committee members questioning the relative importance of the Viagra issue. Concerns were also expressed about the potential repercussions from HCFA for not complying with the mandate to provide coverage. Ms. Gifford stated that, hopefully, the situation would never progress to the point of a fine being levied on the state. The current situation is that Indiana is asking for reconsideration of HCFA's administrative decision, especially in light of Congressional committee actions and Veterans Administration statements.

Responding to a question regarding the Drug Utilization Review (DUR) Board, Ms. Gifford explained that the DUR Board is advisory to OMPP, specifically with respect to drug interactions and utilization questions, and would usually not become involved in policy questions like the Viagra issue. However, if OMPP would choose to cover Viagra, but limit the coverage, then the DUR Board would become involved. (Indiana's current exclusion of coverage is based on exclusion of Viagra as a fertility treatment, and thus the DUR Board would not be involved.)

Sen. Miller stated that this Committee may need to: (1) examine the definition of medical necessity to consider whether any legislative action is required; and (2) examine the administrative decision-making process with respect to Indiana's refusal to comply with the federal mandates.

Ms. Gifford was requested to provide the Committee with a theoretical draft of how restrictions could be done using the medical necessity definition. Ms. Gifford was also requested to provide the Committee with an estimate of the Medicaid recipient population that would be affected by Viagra regulations.

**Mr. Charles Hiltunen
Hiltunen Communications**

Mr. Charles Hiltunen, Hiltunen Communications representing Pfizer, expressed concerns to the Committee about OMPP's refusal to provide Medicaid coverage for Viagra. He stated that the disabled population and victims of prostate cancer would suffer because of this action. Mr. Hiltunen also suggested that the DUR Board should work with the administration to establish proper parameters for usage of the drug and to determine what medical diagnoses are appropriate. He also expressed concerns that one out of four men would forego prostate surgery because of the fear of impotence. Mr. Hiltunen provided a supporting document to the Committee.⁴

Mr. Hiltunen also stated that Viagra is not approved by the Food and Drug Administration as a fertility drug (Indiana's current exclusion of coverage is based on exclusion of Viagra as a fertility treatment). In addition, two alternative treatments for erectile dysfunction are already approved by the Medicaid Program.

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Dr. John Werner
Psychiatrist
Clarian Health Care

Dr. John Werner, Clarian Health Care, stated that mental health patients can have a real medication compliance problem, especially with respect to medication with side effects resulting in sexual dysfunction. Dr. Werner stated that the average dosage of Viagra out of his office is five doses per month and that Viagra is monitored closely and discontinued if not effective. Dr. Werner stated that Viagra is also useful for victims of prostate cancer surgery, diabetes, and vascular disease. The key is to not continue medication that doesn't work.

Ms. Pat Nolting
Director of Program Operations
Office of Medicaid Policy and Planning

Ms. Pat Nolting, OMPP, updated the Committee on a situation involving several chiropractic clinics in the northwest portion of the state suspected of engaging in questionable utilization practices. Written documentation of the details of the allegations and the course of the investigation were provided to the Committee.⁵ The document also provided data on Medicaid chiropractic expenditures from FY90 through FY98. Data included chiropractic expenditures, expenditures per recipient, number and percent of eligible recipients receiving chiropractic services, and the number of eligible recipients.

Responding to a question as to the types of audits that are conducted, Ms. Nolting stated that EDS has conducted audits in the past and that EDS has performed some desk reviews of some chiropractors and, at times, usage of certain tests has been found to be very high. OMPP was asked by the Attorney General's office not to conduct reviews in northwestern Indiana, at this time, because of the on-going investigation.

Report on the Quality of Care In Nursing Homes by State Department of Health

Mr. Gerald Coleman
Assistant Commissioner of Health Care Regulatory Services
State Department of Health

Mr. Gerald Coleman, Assistant Commissioner of Health Care Regulatory Services for the State Department of Health, testified regarding the department's role in nursing home regulation, inspection and enforcement following news articles that appeared in the Indianapolis Star/Indianapolis News.

Mr. Coleman's testimony is based on a document being provided to the Committee.⁶ Issues addressed in these documents include: (1) the number of Medicare and Medicaid certified nursing homes in the state; (2) enforcement actions taken by the state; (3) details of the state complaint system; (4) consumer information; and (5) compliance history of nursing facilities. Additional documentation provided by Mr. Coleman includes (1) a summary of federal and state responsibilities in nursing home regulation, surveying, and enforcement; (2) past and current initiatives of the State Department of Health's Health Care Regulatory Services; and (3) a classification of rule violations.

Responding to a question from the Committee as to whether nursing home inspectors are expected to find problems in a facility, Mr. Coleman explained that the Department's Quality Assurance Review procedure makes sure that there is evidence to support survey or findings.

⁵Copies of this document are on file in the Legislative Information Center (See footnote 1).

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Responding to a question from the Committee as to whether the system is working well or not, Mr. Coleman stated that perception is a problem and that the Department may need to publish fines that are levied against facilities. Mr. Coleman added that there probably needs to be more consumer information provided in a more accessible manner.

Mr. George Slater
Elder Law Attorney

Mr. George Slater, elder law attorney, stated that the lack of training for staff in nursing facilities is a major problem. He also suggested that State Department of Health surveyors should, in addition to their policing activity, help train nursing facility staff members.

Mr. Coleman, State Department of Health, responded that there could be some problems with this approach since, by federal law, surveyors are prohibited from consulting with a facility.

Mr. John Cardwell
Indiana Home Care Task Force

Mr. John Cardwell testified that he does not have much confidence in the inspection system that Mr. Coleman described. Mr. Cardwell stated that he personally has made unannounced visits in the evening and late hours to visit his father in a nursing facility. He added that if the family of the nursing home resident is not heavily engaged in monitoring the care of the resident, the care may not be very good.

Mr. Cardwell suggested that additional training of nursing home staff was needed, as well as additional State Department of Health staff. He also suggested that the Long-Term Care Ombudsman Program should be upgraded. Mr. Cardwell added that Indiana needs to take a long hard look at the long term care system and that too many dollars are going to this form of care.

Sen. Miller stated that home health care, as an alternative to institutional care, also has problems in that in some cases unlicensed, untrained individuals come into the patient's home.

Mr. Rick Richardson
American Association of Retired Persons (AARP)

Mr. Rick Richardson, AARP, stated that he has been involved with a workgroup looking into the Long-Term Care Ombudsman Program. The purpose of the workgroup was to examine the current Long-Term Care Ombudsman Program and to make recommendations for ways in which the program could be strengthened and possibly expanded into other settings. Mr. Richardson stated that a report describing the workgroup's recommendations would be forthcoming and would be provided to this Committee.⁷

Constituent Concerns

Ms. Paula McDonald
Mr. Ryan McDonald

Ms. Paula McDonald related her concerns and problems regarding the receipt of home health care services for her son, Ryan. She has had Blue Cross/Blue Shield insurance for eight years. She stated that suddenly the decision was made to cut home health care hours for Ryan. OMPP had indicated that it would be cheaper to put Ryan in a nursing home. Ryan wants to go to Ball State University and he needs assistance. The situation has since been resolved but she was concerned that it was because she was

⁷Copies of this document are on file in the Legislative Information Center (See footnote 1).

acting as a "squeaky wheel". Ms. McDonald suggested that the state needs to have a centralized location to find out what organizations can help, what people should do, and where they should go to resolve problems.

Ryan McDonald also commented on his situation and that his mother works full-time while helping him with everything. He suggested that dollars can often be wasted because federal and state programs conflict.

Ms. Judith Becherer, OMPP, responded to Ms. McDonald's concern by stating that prior authorization problems can occur in either EDS, the state's Medicaid claims processor, or with OMPP. She stated that resolution of the problem was not because someone was acting as a "squeaky wheel". The Indiana Administrative Code [405 IAC 5-16-3(2)] governs the process that OMPP must follow. She stated, however, that there is an institutional bias in the Medicaid Program, but her staff has worked diligently with multiple providers to arrange for services that Ryan had never been provided before. Ms. Becherer stated that the package of services that Ryan will now be receiving is both appropriate and cost-effective.

Rep. Becker related her involvement with another situation involving constituents in the Evansville area and their problems receiving home health care services. Rep. Becker provided a newspaper clipping describing the problem and she also provided a set of patient orders which cut off home health care services for several different patients.⁸ The situations involved Managed Health Services, a provider of home health services and a subcontractor of MaxiCare of Indiana. Rep. Becker stated that she had spoken with Ms. Pat Nolting, Director of Program Operations with OMPP, and that Ms. Nolting had responded that the problem was really caused by a miscommunication and the patients were not being terminated from the Medicaid program or from receiving home health services.

**Ms. Shelley Stewart
Executive Director
Managed Health Services**

Ms. Shelley Stewart, Executive Director of Managed Health Services, stated to the Committee that the company's Medicaid director, the patient's primary care physician are doing a case review of the situation and if services are to be decreased, that will be communicated to the recipient. She indicated that in no case would services be terminated before the next meeting of this Committee.

Additional Information Regarding Area Agencies on Aging (AAA)

Additional information regarding the programs and funding administered by Indiana's 16 AAAs was requested by the Committee at the June 25th meeting. In response, written documents were provided by the Division of Disability, Aging, and Rehabilitative Services, FSSA.⁹ Information provided includes: (1) information on the monitoring of AAA performance, services provided and persons served, expenditures and administrative costs; (2) a copy of The Cost Effectiveness of Home Health Care: A Case Study of Indiana's IN-Home/CHOICE Program by William Styring III and Thomas J. Duesterberg, Hudson Institute, November 1997; and (3) a copy of the 1997 Annual Report of the Statewide IN-Home Services Program, FSSA, July 1997.

Due to the length of the meeting, Sen. Miller announced that the agenda item on asset provisions under the Medicaid Program would be deferred until the next meeting of the Committee.

Sen. Miller indicated that she would like to hold three more meetings for this year, provided that the Committee receives additional funding and authorization from the Legislative Council. The next meeting

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will be Thursday, September 8, 1998, at 10:00 a.m. at the State House.

There being no further business to conduct, the meeting was adjourned.