

Members

Doug Stratton, Chairperson  
Sen. Vaneta Becker  
Sen. Sue Landske  
Sen. James Lewis  
Sen. Samuel Smith  
Rep. Craig Fry  
Rep. Ron Herrell  
Rep. Dick Dodge  
Rep. Gerald Torr



# INTERIM STUDY COMMITTEE ON DIALYSIS COVERAGE

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## MEETING MINUTES<sup>1</sup>

**Meeting Date:** August 20, 2008  
**Meeting Time:** 10:30 A.M.  
**Meeting Place:** State House, 200 W. Washington St., Room 233  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 2

**Members Present:** Doug Stratton, Chairperson; Sen. Vaneta Becker; Sen. Sue Landske; Sen. James Lewis; Rep. Craig Fry; Rep. Ron Herrell; Rep. Dick Dodge; Rep. Gerald Torr.

**Members Absent:** Sen. Samuel Smith.

Mr. Stratton called the meeting to order at 10:40 a.m. and asked the members to introduce themselves. Mr. Stratton read the Committee's responsibilities under SEA 1284-2008, SEC. 7, to the attendees.

John Willey, Anthem, articulated his conviction that Anthem is a good company that considers its customers first. He requested that anyone present who knows of any individual who is harmed by an action of Anthem to let him know personally and he will address the issue. He conveyed his willingness to work with the Committee and introduced Eric Schmitz, Anthem, to provide further testimony.

Mr. Schmitz provided a handout<sup>2</sup> related to his testimony. He described federal law regulating coverage under group health plans and Medicare for treatment of end stage

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

<sup>2</sup>Attachment 1.

renal disease (ESRD). He noted that: most health plans pay more than Medicare's reimbursement rate for dialysis treatment; and Anthem has always paid the network reimbursement rate to an out of network dialysis facility if no network dialysis facility was located within 30 miles of an insured's home.

In response to questions from Mr. Stratton, Rep. Fry, Sen. Becker, and Rep. Herrell, Mr. Schmitz stated that:

- (1) there are 118 dialysis facilities in Indiana, 72% of those are in Anthem's network, the other 18% choose not to be part of the network;
- (2) there are areas of Indiana (i.e., Posey County, Knox County, and Davies County) in which there is no dialysis facility within 30 miles of an insured's home;
- (3) Anthem periodically looks at areas of Indiana where there are "holes" in provider coverage and attempts to negotiate with providers in those areas to enter the network at a fair reimbursement rate;
- (4) if Anthem pays a higher reimbursement rate in areas where there are "holes" the remainder of the network reimbursement rates are affected, so Anthem is reluctant to pay a higher reimbursement rate in those areas and uses local, national, and Medicare reimbursement rates to determine reasonableness and fairness;
- (5) Anthem negotiates for home hemodialysis on a case by case basis to cover the treatment and the equipment; and
- (6) Anthem negotiates both itemized and comprehensive rates for hemodialysis treatment.

Mr. Schmitz agreed to provide to the Committee the following:

- (1) A map reflecting the location of all dialysis facilities in Indiana by county, designating network dialysis facilities.
- (2) The cost, including out of pocket cost, of home hemodialysis.
- (3) The cost of drugs, equipment, etc. used in connection with dialysis.

In response to questions from Rep. Fry who emphasized that his concern is for the dialysis patient rather than the dialysis facility or insurer, Mr. Schmitz stated that:

- (1) dialysis facility contracts with Anthem provided for Anthem to reduce reimbursement rates, which was done as Anthem began to provide more national coverage and realized that reimbursement to Indiana dialysis facilities was much higher than reimbursement in other states;
- (2) Anthem's medical director looks at health risks related to dialysis patients being moved from one dialysis facility to another;
- (3) Mr. Schmitz is not aware of dialysis patients being essentially forced out of insurance into Medicare or Medicaid, and insurers cannot exclude a dialysis patient from coverage under a group health plan unless lifetime maximums are reached;
- (4) in negotiating reimbursement rates, it is necessary to reach a fair balance between affordability of reimbursement rates related to premium charged and sufficiency of reimbursement rates for provider sustainability; and
- (5) an out of network dialysis facility has no business relationship with Anthem - Anthem's relationship is with the insured who receives health services from the out of network dialysis facility - so Anthem directly pays the insured rather than the facility.

Sen. Becker questioned why Anthem was unaware that it was overpaying out of network Indiana dialysis facilities until approximately 18 months ago, which is when this issue seems to have arisen. She requested that Mr. Schmitz provide a comparison of Anthem reimbursement rates to in network and out of network dialysis facilities in each state. Rep. Herrell requested that Mr. Schmitz provide information reflecting the premiums charged in

relation to the reimbursement rate information requested by Sen. Becker.

In response to questions from Rep. Herrell, Mr. Stratton, and Rep. Fry, Mr. Schmitz stated that:

- (1) Anthem has never required an insured to change the dialysis facility at which the insured is treated;
- (2) Anthem's medical director works to ensure that evidence based medicine policies are developed and used and determines medical necessity in relation to treatment for ESRD;
- (3) dialysis patients clearly need dialysis treatment and Mr. Schmitz would want to know of any individual who has been adversely affected by an Anthem decision with respect to dialysis treatment;
- (4) Anthem will pay an insured's benefit and if a dialysis facility is not within 30 miles of an insured dialysis patient's home, Anthem will pay the network reimbursement rate to an out of network dialysis facility;
- (5) most of Anthem's Indiana business is self-funded business for which Anthem acts as a third party administrator and needs to answer to the customer concerning charges for coverage, customers look at what Anthem charges and pays in other states, and every company needs to have some profit margin;
- (6) Anthem's recent change in reimbursement rates for dialysis was predominantly through Anthem's out of network fee schedule which was implemented because some out of network dialysis facilities were being paid at a rate equal to 1,800% of the Medicare reimbursement rate;
- (7) the change in reimbursement specified in (6) was done without prior discussion with providers or insureds;
- (8) several new dialysis facilities have opened recently in Indiana, so the reimbursement changes don't seem to have had a detrimental effect on the facilities; and
- (9) Anthem's "customers" include both individuals and employers and Mr. Schmitz hopes that those customers are behind him when he negotiates a reasonable, fair reimbursement rate to keep premiums down.

Rep. Herrell pointed out that because Anthem's reimbursement rates are not known, the actual impact of reimbursement at a rate that was 1,800% of the Medicare reimbursement rate cannot be known; Anthem may be reimbursing network dialysis facilities at 1,000% of Medicare's reimbursement rate, in which case the impact would not be as great as it may appear. Mr. Schmitz acknowledged this and stated that Anthem's reimbursement rates cannot be compared with other insurers as the information is proprietary. Rep. Fry pointed out that the reimbursement that was 1,800% of the Medicare reimbursement rate could be related to patients with greater severity of illness, rather than generally applicable reimbursement.

Mr. Stratton expressed his gratitude for Mr. Schmitz's candor and willingness to share the information requested by the members throughout the meeting, and stated that he realizes that Anthem is being held to a high standard before the Committee.

Angela Hoover, United Healthcare, discussed United Healthcare's geographic gap exclusion and clinical gap exclusion which result in out of network dialysis facilities receiving network rates for reimbursement. She acknowledged that balance billing may occur in those circumstances. She noted that 44 of 104 dialysis facilities in Indiana are in United Healthcare's network and that 46 of the 60 out of network dialysis facilities are owned by the same person. (Ms. Hoover stated that her count of 104 dialysis facilities may be outdated as it is different from Anthem's count.) In response to a question from Rep. Fry, Ms. Hoover stated that United Healthcare is pursuing negotiations concerning

contract terms with the 60 out of network dialysis facilities.

Anne Doran, America's Health Insurance Plans, emphasized the antitrust considerations that must be made by insurance representatives during their testimony and that those considerations limit the amount of information that may be disclosed by insurers. Ms. Doran addressed:

- (1) the 30 mile access standard specified in HEA 1284-2008;
- (2) the federal law enacted in 1972 which prevents "patient dumping" into Medicare of dialysis patients by insurers;
- (3) the contentious nature of assignment of benefits regulation and the obligation of the insurer to the insured which results in reimbursement for out of network services being sent to the insured;
- (4) unsubstantiated claims that have been made against insurers and potentially frighten dialysis patients into anticipating bad results which do not, in fact, occur;
- (5) the health and safety requirements for home hemodialysis, which may not be met by many dialysis patients;
- (6) that profit is made by for profit dialysis facilities through private payers, as established by the representatives of for profit dialysis facilities who testified during the August 6 meeting of the Committee;
- (7) Indiana's any willing provider statute which requires inclusion in networks of providers willing to meet the terms and conditions of the network contract and the need for robust networks;
- (8) an approximately 20 year decline in commercial insurance coverage in Indiana from approximately 80% of the population to approximately 33% today, with self funded health plans becoming more prevalent;
- (9) that information concerning costs related to dialysis, rates of reimbursement, charges, etc. are all proprietary which, along with antitrust concerns of insurers, will inhibit the work of the Committee; and
- (10) Ms. Doran's personal commitment to ensure that insureds receive their rights to benefits under insurance contracts.

In response to questions from Mr. Stratton, Rep. Fry, and Rep. Herrell, Ms. Doran stated that:

- (1) the issue of reimbursement to dialysis facilities is unique only because of the unique nature of dialysis treatment and benefits, and the issue is becoming more of a national issue as insurers provide coverage throughout the country rather than in one state or region;
- (2) to resolve reimbursement issues, all parties would need to sign waivers and negotiate a resolution outside of a public forum;
- (3) she believes that the majority of the recent reimbursement rate changes were to reimbursement to out of network dialysis facilities, which had no contract with insurers; and
- (4) there are regional differences in network reimbursement rates for a service.

Francine Haddad, American Diabetes Association, provided a handout<sup>3</sup> of her testimony. Ms. Haddad provided various statistics related to diabetes and its relationship to kidney disease. She predicted a future need for increased dialysis services in Indiana.

Rafael Lao, M.D., Davita, expressed his belief that there will be a future increased need for dialysis facilities in Indiana. He described his work with ESRD patients, including the long term relationships that these patients establish with their physicians and other health care

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<sup>3</sup>Attachment 2.

providers. Dr. Lao noted that a disruption of those relationships may cause unknown detrimental results for patients.

Mr. Stratton adjourned the meeting at 12:30 p.m. noting that the third meeting of the Committee will occur on Wednesday, September 3, 2008, at 10:30 a.m. in Room 233 of the State House.