

Members

Sen. James Smith, Chairperson
Sen. Travis Holdman
Sen. Greg Taylor
Sen. Vi Simpson
Rep. Matthew Lehman, Vice-Chairperson
Rep. Robert Heaton
Rep. Charlie Brown
Rep. Phil GiaQuinta



INTERIM STUDY COMMITTEE ON INSURANCE

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MEETING MINUTES¹

Meeting Date: August 2, 2011
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. James Smith, Chairperson; Sen. Travis Holdman; Sen. Greg Taylor; Rep. Matthew Lehman, Vice-Chairperson; Rep. Robert Heaton; Rep. Charlie Brown.

Members Absent: Sen. Vi Simpson; Rep. Phil GiaQuinta.

Sen. Smith called the meeting to order at 10:05 a.m. and asked the members to introduce themselves.

Determinations Concerning Patient Referrals for Health Care Services

Sen. Smith explained that this topic resulted from HB 1582-2011 and requested that Dr. Keith Wexler, Advanced Medical Imaging, present his testimony.

Dr. Wexler stated that physicians are increasingly becoming hospital employees rather than operating independent practices. He expressed his concern that those hospital employed physicians are encouraged by the hospitals to make health care service referrals within the hospital system, rather than to independent referral providers. He noted that hospital systems are sometimes the most expensive referral service providers, and that health care costs would be reduced significantly if patients went to less expensive, independent referral providers.

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

Dr. Wexler provided a copy of a document containing revisions to HB 1582-2011 (Attachment 1) and explained that the revision would require a referring physician to provide a referral prescription to the patient and the patient would decide where to go for the referral services, rather than the referring physician making an appointment for the patient with a referral provider chosen by the referring physician.

In response to questions from Rep. Brown, Rep. Lehman, and Sen. Smith, Dr. Wexler stated that:

- (1) patients may request a referral to an independent provider rather than a provider within the hospital system;
- (2) there is a nationwide trend of hospital employed physicians which limits competition and subjects referrals by those physicians to "marching orders" given by the hospitals;
- (3) independent providers are "across the board" less expensive than hospital providers, and quality is not indicated by price;
- (4) quality information is not readily available to patients to allow them to take cost and quality into account when making a decision about a referral provider;
- (5) as measured by Dr. Wexler's personal experience, at least 99% of patients do not think that they have a choice of referral provider;
- (6) the referrals of patients to more expensive referral providers across the country causes increased health care costs and increased premiums for insurance; and
- (7) an Anthem pilot project concerning referrals has not been implemented in Howard County (where Dr. Wexler's practice is located), but he believes that:
 - (a) approximately 20% of patients are going to referral providers suggested to them by Anthem; and
 - (b) the pilot project only applies to referral services that require preauthorization.

Meredith Edwards, Indiana Academy of Family Physicians, noted that the majority of primary care in Indiana is provided by family physicians, who are paid at a lower rate than other physicians and are not paid for making referrals. She stated that the requirements contained in the introduced version of HB 1582-2011 would have been extremely burdensome for family physicians.

In response to questions from Rep. Brown and Sen. Holdman, Ms. Edwards stated that:

- (1) referral procedures are very different among physicians;
- (2) federal law prohibits hospitals from requiring a physician to refer to a certain provider; and
- (3) increased regulation, complexity of billing, and use of electronic medical records are among the reasons that primary care practitioners sell their practices to hospitals which then assume responsibility for those processes and regulatory compliance.

Tim Kennedy, Indiana Hospital Association, noted potential liability issues associated with a hospital requiring physicians to refer within the hospital system. He questioned the fairness or appropriateness of government regulating business competition among providers and noted that in recent years hospitals have been increasingly competitive among themselves in providing increased information to patients.

With respect to hospitals encouraging or requiring employed physicians to refer within the hospital system, Mr. Kennedy stated that he is unaware of such a situation, which would be questionable for ethical reasons in addition to potential compromise of patient care. He noted, however, that appropriately made referrals within hospital systems could provide for immediate availability of information, a consistent team of physicians for an episode of care, and direct and timely collaboration, which might improve quality and decrease cost.

Mr. Kennedy attributed the current trend of hospitals employing physicians to decreasing reimbursement and increasing administrative work, including human resources, billing, practice management, and malpractice insurance needs. He stated that a physician employed by a hospital is relieved of administrative work and can focus on practicing medicine.

Mr. Kennedy explained that independent imaging facilities provide only imaging services and therefore have little of the overhead that hospitals have, including costs related to licensure, education of future physicians, obstetric services, and emergency services. Mr. Kennedy expressed his belief that hospitals are important assets to communities and that the same cannot be said of independent facilities.

In response to questions from Rep. Brown and Sen. Taylor, Mr. Kennedy stated that:

- (1) review of a hospital's imaging services is part of the Indiana hospital licensure survey;
- (2) reimbursement for imaging may be greater for a hospital than for an independent facility, but the gain is relative because a hospital's overall costs are greater than the overall costs of a independent facility; and
- (3) there are different levels of imaging quality and the highest quality imaging services would likely be found in a hospital.

Mike Rinebold, Indiana State Medical Association (ISMA), explained that Dr. Wexler is a member of the ISMA, but that he does not speak on behalf of the ISMA. Mr. Rinebold stated that some members of the ISMA have concerns with Dr. Wexler's proposed legislation, and the ISMA membership will discuss those concerns at its September, 2011 meeting.

In response to questions from Rep. Lehman and Rep. Brown, Mr. Rinebold stated that:

- (1) he has not heard that ISMA members who are hospital employees feel pressure to refer patients within the hospital system;
- (2) there is a statutory obligation for a referring physician to disclose ownership by the referring physician in a referral facility, but he is not aware of a statutory obligation for a referring physician to disclose that the referring physician is employed by a referral hospital;
- (3) the ISMA does not favor the introduced version of HB 1582-2011, however the ISMA does favor patient awareness of costs; and
- (4) he questions whether information provided as required under the introduced version of HB 1582-2011 would be accurate and timely and he has related liability concerns.

John Willey, Anthem, described Anthem's imaging pilot program referred to by Dr. Wexler. He stated that through the pilot, which is currently implemented in Marion County and the surrounding counties, Anthem provides information to members concerning the cost of health care imaging services and availability of lower cost providers. Mr. Willey agreed to provide information to the Committee concerning the pilot and comparisons that are available on Anthem's Internet web site.

Sen. Smith allowed Dr. Wexler to respond to points raised during the testimony. Dr. Wexler stated that:

- (1) the strength of the magnet used in imaging equipment determines whether the imaging done with the equipment is "high field" imaging or "low field" imaging;
- (2) the quality of the equipment and the radiologist who reads the images is of importance;
- (3) there are no standards that require either "high field" or "low field" imaging;

- (4) hospitals do not always possess the highest quality imaging equipment; and
- (5) independent imaging facilities are not licensed by the state, but are accredited for quality.

Worker's Compensation Insurance

Ronald Hughes, testifying on his own behalf, provided a document summarizing his testimony (Attachment 2). Mr. Hughes described his upbringing, service in the Indiana National Guard, history of bipolar disorder, employment history, and diagnosis and treatment for injuries that he incurred at work, including difficulties in obtaining treatment and consent for treatment from his employer. He provided a history of his worker's compensation claim (including legal representation, delays, decisions, appeal, and dismissal), eventual coverage under Medicaid disability for the surgeries later performed to repair his injuries, eventual final resolution of his worker's compensation claim, and filing of a disciplinary complaint against his attorney.

In response to questions from Sen. Smith and Sen. Holdman, Mr. Hughes stated that: (1) he currently lives in Michigan, where he moved from LaGrange to live with his parents due to insufficient means to support himself; (2) after employment in several jobs, he now receives Social Security disability; and (3) he was told he should receive compensation of \$105,000 and he actually received approximately \$6,000.

Sen. Holdman apologized to Mr. Hughes for any disrespect shown to him by the State during the course of his worker's compensation claim. Sen. Smith thanked Mr. Hughes for his testimony and conveyed to Mr. Hughes his regret that the Committee is unable to resolve his particular claim.

Medical Provider Reimbursement by Worker's Compensation Insurance Carriers

Rep. Lehman explained the history of HB 1485-2011, portions of which were inserted into SEA 576-2011. He noted that reimbursement benchmarking is an issue for worker's compensation carriers and medical providers.

Linda Hamilton, Worker's Compensation Board of Indiana, provided a copy of Indiana's worker's compensation laws and rules to Sen. Smith. She explained that:

- (1) the Board has spent a significant amount of time working on provider reimbursement during five of the six years during which she has been the chairperson of the Board;
- (2) all funds expended on worker's compensation claims belong to employers or insurers - no state funds are involved;
- (3) all questions concerning the appropriateness of worker's compensation reimbursement amounts must be submitted to the Board;
- (4) thousands of claims were dismissed prior to her tenure as chairperson due to lack of comparable claim data on which to base a determination of reimbursement appropriateness;
- (5) providers should be reimbursed at the 80th percentile and data is needed to determine that amount;
- (6) there are various methods of determining a reimbursement rate, such as: (a) a Medicare based rate (though Medicare covers a different population than worker's compensation covers); (b) a commercial insurance based rate; (c) or a database certified as fair and accurate by the Board on which to base an 80th percentile rate; and
- (7) though physician data is available, hospitals do not share reimbursement related data, so hospital bills are the focus of most of the Board's reimbursement work.

In response to questions from Rep. Lehman and Sen. Smith, Ms. Hamilton stated that:

- (1) there is no legal reason that the Board could not certify a database, however, if such certification occurred there is no mandate that carriers or providers use the database to determine reimbursement;
- (2) worker's compensation claims range from twelve dollars to hundreds of thousands of dollars and hospitals bill for so many individual services in various ways (bundled, individual service billings, etc.) that it is difficult to provide an average amount for a hospital bill;
- (3) because of the lack of data, she does not know if current reimbursement amounts are fair;
- (4) Fair Health (a repricer) currently provides data for pricing reimbursement; and
- (5) currently, providers simply compare their billed rate to the amount paid and are not able to determine whether the amount paid is fair, so they appeal the amount to the Board.

Marty Wood, Insurance Institute of Indiana (Institute), stated that everyone involved in this issue will agree that "the system is broken, it needs to be fixed", but there is disagreement about the method by which to "fix the system". He explained that the Institute prefers that: (1) worker's compensation reimbursement be close to commercial reimbursement amounts because the same service is being provided, regardless of the source of the illness or injury; and (2) a rate based on Medicare is preferred because the information is readily available.

Mr. Wood described the current "geozip" system by which reimbursement is based on 80% of the usual and customary amount in the "geozip" area. He stated that the amount determined under this system is rarely lowered because the amount is based on amounts charged by other providers in the area. He explained that:

- (1) commercial reimbursement rates in Indiana are currently about 200% of Medicare reimbursement rates;
- (2) the Institute has additional commercial rate information; and
- (3) the Institute would suggest beginning with the commercial information and expanding from there.

In response to questions from Rep. Lehman, Mr. Wood stated that the acceptability to the Institute of the use of a database to determine reimbursement rates would be dependent on the reliability of the database information. He explained that if database information is based on charges, rather than actual cost of services, the problems with the current system would remain.

Tim Kennedy, Indiana Hospital Association (IHA), informed the Committee of the three main concerns of the IHA related to the current worker's compensation reimbursement system:

- (1) Providers are entitled to reasonable compensation for services and Medicaid does not cover the cost of care. Medicare provides better reimbursement, but still does not cover the cost of care. The IHA believes reimbursement should cover the cost of care, but not provide a windfall, so the IHA would prefer the use of commercial rates.
- (2) The method of calculation of a reimbursement rate should be readily available and easy to navigate, unlike the current use of commercial rates and repricers, which are not prohibited from making a commission on their repricing work.
- (3) Prevention of overburdening the Board is very important. The recently enacted filing fee for appeals under SEA 576-2011 should assist with this.

In response to questions from Rep. Brown, Sen. Taylor, and Sen. Smith, Mr. Kennedy stated

that:

- (1) any comparisons of reimbursement rates should be apples to apples;
- (2) the IHA decided to seek reimbursement based on commercial rates:
 - (a) for political reasons; and
 - (b) because lower reimbursement under commercial rates might be offset by less work and fewer appeals;
- (3) the IHA knows that payers and the Board have reimbursement concerns, so the IHA decided to address the issue rather than waiting for others to act; and
- (4) a lack of worker's compensation regulation makes worker's compensation claims more difficult to work through (paperwork, repeated requests for documentation, delays, arbitrary decisions, etc.) than commercial insurance claims.

Ed Roberts, Indiana Manufacturers Association, provided a brief history of the law concerning worker's compensation in Indiana since 1929. He noted that in 1995 the General Assembly enacted the current requirement that worker's compensation claims be paid at the 80th percentile of usual and customary reimbursement for the service in a "geozip" area. He noted that the main problem with the current requirement is that there is insufficient data for use with hospitals. He noted the significant increase in worker's compensation medical costs over the past 35 years and emphasized the difference between health care costs and health insurance costs.

Trevor Davis, Fair Pay Solutions (Fair), explained that Fair is a Texas based repricing company which provides advice concerning fair medical reimbursement, primarily in hospitals and ambulatory surgery centers. Mr. Davis enumerated elements of a successful worker's compensation system:

- (1) Protection of injured workers.
- (2) Reasonable reimbursement that assists in maintaining access to care for employment related injuries.
- (3) Encouragement of dialogue between payers and providers, independent of state action, to resolve issues.
- (4) A market based dynamic of negotiation between providers and payers, rather than unilateral decision making.

Mr. Davis expressed his belief that there is sufficient data in Indiana to make recommendations on worker's compensation reimbursement amounts, noting that if this were not the case Fair would be unable to provide repricing services in Indiana. He recommended that the Committee look at Wisconsin and Missouri as examples of possible solutions, explaining that Wisconsin has statutory provisions concerning certification of data, including standards of certification, and Missouri has a statutory payment system with no fee schedule, which forces the parties to negotiate individual bills before any state level review.

In response to questions from Sen. Taylor, Rep. Brown, and Sen. Smith, Mr. Davis stated that:

- (1) Fair's clients are payers, which pay to Fair a percentage of savings when the amount paid to a provider is less than the amount billed, based on Fair's recommendation;
- (2) Fair testifies at appeals of Fair's recommendations;
- (3) Fair uses many sources to obtain comparison information, including independent databases, hospital reports available under federal and state law, etc.;
- (4) nationally, Fair's recommendations are accepted by providers 76% of the time; and
- (5) Wisconsin uses a private database (cost or payment information) that is certified by the state through Wisconsin's statutory certification process, and Missouri does not use a database.

Charlie Burhan, Liberty Mutual Insurance, provided information concerning trends in worker's compensation. He stated that:

- (1) fewer employee injuries have occurred in recent years, but the severity of the injuries has increased;
- (2) the national average of worker's compensation expenditures for medical cost is 53%, but Indiana's average is 66%;
- (3) use of commercial insurance rates as a basis for worker's compensation reimbursement would be difficult as commercial rates vary widely, averaging Medicare plus approximately 170% nationally, and Medicare plus approximately 212% in Indiana;
- (4) use of Medicare rates is not a bad concept as they are readily available and based on quality of outcomes;
- (5) he does not advocate:
 - (a) Indiana creating its own reimbursement comparison system;
 - (b) use of more than one fee schedule or database; or
 - (c) use of repricing; and
- (6) he recommends using Medicare as a basis and allowing any database used to be easily amendable.

In response to questions from Rep. Brown, Sen. Taylor, and Sen. Smith, Mr. Burhan stated that:

- (1) increased automation and fewer people in the workplace, jobs being transferred overseas, and increased production with fewer people are the likely causes of fewer accidents with greater severity of injuries;
- (2) Montana's reimbursement rates are based on its state employee plan reimbursement; and
- (3) a focus on loss prevention and patient return to work are integral to worker's compensation.

Sen. Smith informed those present that the next meeting date will be posted on the Internet web site soon.

With no further business to discuss, Sen. Smith adjourned the meeting at 1:05 p.m.

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

SOURCE: IC 25-22.5-13; (11)IN1582.1.1. --> SECTION 1. IC 25-22.5-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 13. Health Care Service Prices

Sec. 1. A physician shall provide to a patient the following with respect to outpatient health care service prescribed by the physician: -including radiology, laboratory and rehab services.

(1) A list, including telephone numbers, of the five (5) health care service providers that are:

(A) geographically nearest to the patient's residence; and

(B) certified by a nationally recognized organization that certifies providers of the health care service,

including the following:

(i) The American College of Radiology.

(ii) The Joint Commission on Accreditation of Health Care Organizations.

(iii) Another nationally recognized certifying organization.

At least one (1) of the five (5) health care service providers must be a person or facility that does not employ the physician and is not a person or facility in which the physician has an ownership interest.

(2) The prescription for the health care service.

(3) Notice that:

(A) prices for the health care service may vary significantly among the health care service providers on the list provided under subdivision (1);

(4) If the health care service is a radiology service, notice concerning whether a Board Certified radiologist is physically present at the location where the radiology service is performed.

Sec. 2. Insurance preauthorization shall be exam specific and not facility specific.

SOURCE: IC 27-1-25-17; (11)IN1582.1.2. --> SECTION 2. IC 27-1-25-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 17. An administrator shall maintain on the administrator's Internet web site, and update before the first day of each month, a list of the actual reimbursement amount that is available for a health care service under coverage administered by the administrator. For a radiology service, the actual reimbursement amount must include the total technical and professional components of the radiology service.**

SOURCE: IC 27-8-22.3; (11)IN1582.1.3. --> SECTION 3. IC 27-8-22.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 22.3. Health Care Service Costs

Sec. 1. As used in this chapter, "policy of accident and sickness insurance" has the meaning set forth in IC 27-8-5-1.

Sec. 2. An insurer that issues a policy of accident and sickness insurance shall maintain on the insurer's Internet web site, and update before the first day of each month, a list of the actual reimbursement amount that is available for a health care service under a policy of accident and sickness insurance. For a radiology service, the actual reimbursement amount must include the total technical and professional components of the radiology service.

SOURCE: IC 27-13-41.3; (11)IN1582.1.4. --> SECTION 4. IC 27-13-41.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 41.3. Health Care Service Costs

Sec. 1. A health maintenance organization shall maintain on the health maintenance organization's Internet web site, and update before the first day of each month, a list of the actual reimbursement amount that is available for a health care service under an individual contract or a group contract. For a radiology service, the actual reimbursement amount must include the total technical and professional components of the radiology service.

I was fired either because they heard I was injured and was going to claim it or because I was bipolar. They boss Jeff Stauffer asked me if I was bipolar one week before I was let go. I knew I was broken and needed fixed. I went back the next day, had a meeting with Bob Miller and a couple other bosses. I peeled my shirt off and Bob said " Holy shit Ron look at that knot you need to get that fixed. " I said thats why I am here. He sent me to the office to start to start the workers compensation process. I ended up going to OSMC in Elkhart and saw Dr. Peter Tang one of the surgeons there. I told him what had happened and how things progressed.

He started checking my shoulder out by rolling my arm around in a circle. And with his index finger he pushed down on my shoulder and I dropped to 1 knee. I almost passed out. He immediately gave me a cortisone shot and told me I was going to have to have surgery on it. It was set up for Sept 30,2003. He patted me on the back and told me not to worry, one of his co-workers would fix it and everything would be ok. One week before my surgery I got a call from some lady in personell from Jayco and I was told I was not getting my surgery because I was lying about my shoulder. I immediately went into a deeper, darker depression than what I was already in. I didn't know what to do so I hired Kevin Likes and for the first time in my life I filed for unemployment. When that drew out I had to go back to work... injured.

I ended up tearing up my right shoulder trying to protect my left shoulder. Kevin told me that we were going to have file another comp case, Which was mind blowing, Due to lack of progress

with the first one. All the while no help with any pain control what so ever. All the things that helped me to not think of a bad day at work I was unable to do anymore. After going through this for a couple of years, I was told to file for disability and medicaid. Now

I had gone through several jobs, Royal Cargo, Pace America, Holly Park Homes, and another corp

that I cannot remember. I had gone to Kevins office and told him I had medicaid and was

getting

my surgeries rescheduled finally. And if it was ok with everyone else, I was gonna finally get my medical attention...finally. He knew he couldn't say anything to stop me. After 5 years of being my attorney and all the delays so everyone could get their paperwork straightened out 1 month before the final hearing without me knowing until it was to late, He quit as my attorney. As you can imagine I was past the statute of limitations that I was not told about until it was to late, no attorney in the state would touch the case. I got back in touch with Kevin and he told me if I would get a PPI rating from my surgeon he would help me finish the case.

He was making me spin my tires so I would not get in touch with Donald Lundberg with the disciplinary board before that statute of limitations ran out on him,Which I had already done. Due to lack of action that also transpired. Once they knew I wasn't going to quit or give up, they got in touch with State trooper Jeff Boyd in Lagrange. Halfway through my investigation

he said "Man Ron thats really messed up. Somebody needs to do something about this." At the end

of my investigation he said "Man Ron its really a good thing that you don't have 2 or 3 kids to take care of huh?" I closed my eyes with disgust and shook my head and waved my hand he knew I was grateful for that fact. Once they knew their own police wouldn't arrest me, they got in touch with John Berkey from Northeastern Center. They had him check me and my mental

wiring out to see if he would commit me. The very first words he ever said to me wasnt hello it was "your going to have to write a book about this someday." I told him that I had to make an end for it first. I knew that he was my only contact... kind of, to the people I was really trying to reach.So I kept going back to see him so he could get the full true story. Right off the bat John knew he could not commit me because I already was. After a few sessions

I asked John what he thought. He said " if they keep playing these games with people there is going to be a Fort Hood situation down there." Now thats coming from the smart man that they got in touch with to check ME out. I have been released from his care because he knows that I don't need anyone over looking any of my actions. He knows that I care. Back in 2010 Trent Glass called me and told me to get my paperwork around and be in Indy the next day. I was getting all my stuff around and Sen Boots called me. He told me that I would be wasting my time if I came down the next morning. That yet once again it was not my day for closure. I had told him to mark it on his calendar that I was going to be down there the first day of session 2011. And I was. Once again I was blown off and ignored and told that nothing was going to happen this year. It was going to have to happen in 2012. The tax payers have been unknowingly forced into paying for something that my ex employers insurance company should have.

Now its stuff like this that I am sure would help get the deficit start to get straightened out.

Any questions what so ever I am more than willing to quickly answer truthfully. And produce documentation from professional businesses. God bless you and America.

Thank you very much,

Ronald D Hughes.

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