APPROVED

MINUTES

SENATE AND HOUSE COMMITTEES ON INSURANCE AND COMMERCE
MEETING JOINTLY

Wednesday, December 16, 2020
3:00 p.m.
MAC, Room A
Little Rock, Arkansas

Committee members present: Senators Jason Rapert, Chair; Cecile Bledsoe, Vice Chair; Linda Chesterfield, Joyce Elliott, Jane English, Mark Johnson, and Larry Teague; Representatives Mark Lowery, Chair; Robin Lundstrum, Vice Chair; Joe Cloud, Bruce Coleman, Denise Ennett, Deborah Ferguson, Roger Lynch, John Maddox, Reginald Murdock, Mark Perry, Aaron Pilkington, and DeAnn Vaught

Other members present: Senators Kim Hammer, and Greg Leding; Representatives Cameron Cooper, Cindy Crawford, Vivian Flowers, Steve Hollowell, Jack Ladyman, and Danny Watson; Representative-Elect Howard Beaty

Senator Rapert called the meeting to order.

Consideration to Approve September 28, 2020, Meeting Minutes [Exhibit C]
Representative Lundstrum made a motion to approve the September 28, 2020, meeting minutes with a second by Senator Elliott, the motion carried.

Discussion of Interim Study Proposal (ISP) 2019-143-Study the Causes and Effects of the Rising Costs of Prescription Drugs and the State Specific Dynamic Involved in Those Rising Costs. [Exhibits D1-D2]Melodie Shrader, Vice President, State Affairs, Pharmaceutical Care Management Association (PCMA) discussed the rising cost of drugs. She explained that PCMA advocates at the federal level for several things that impact the cost of drugs:

- the elimination of the anti-competitive pay for delay agreements
- the end of orphan drug exclusivity
- using innovator biologic data exclusivity-for seven years
- the FDA being allowed to accelerate the approval of a me-too brand
- promoting the uptake of biosimilars and interchangeables
- the elimination of the tax deductibility of direct to consumer prescription drug advertising
- promote wider adoption of electronic prescribing
- eliminate the cap on the inflationary penalty in the Medicaid Drug Rebate Program

She explained PCMA uses savings tools such as formularies set to encourage the use of generic drugs when possible. The average cost of generics is $6.18 compared to their brand counterpart at $30.59, and the average cost of specialty drugs can be in the thousands. Most of a rebate is passed back to the employer or health plans and they decide how to use rebates, but drug manufacturers set the price of a drug and nearly 70% of prescription drug dollars go to the manufacturer. The average profit margin of a Pharmacy Benefit Manager (PBM) is 2.9%, which is lower than the pharmacies at 4% and lower than the wholesalers and the manufactures.

Ms. Shrader discussed transparency and noted based on law passed in 2019, the Arkansas Insurance Department (AID) will be collecting data from PBMs and that it will be held confidential.

John Vinson, CEO, Arkansas Pharmacists Association, discussed:

- legislation that lowered drug prices
- transparency
- care-managers versus pharmacists
- current legislation that saves Arkansas over $52 million per year
- health insurance companies, manufacturers, and PBMs
- regulatory oversight
- comprehensive plan designs for pharmacy drug pricing
- spread pricing
- lower cost of specialty drugs
- vertically integrated companies such as PBM owned pharmacies
- how rebates create a conflict of interest and drive up drug prices of brand name drugs placed on formulary and covered while generic drugs are denied

Scott Pace, Partner, Impact Management Group, noted his group represents the Pharmacy Services Administrative Organization (PSAO) Coalition. For a flat fee, PSAOs conduct back office functions exclusively for independent pharmacies and small chain pharmacies that help deal with the complexities of executing contracts with PBMs. The pharmacies grant limited power of attorney to PSAOs to execute contracts on their behalf with PBMs. PSAO services allow pharmacies to be in a network such as a Medicare Part D Plan that would otherwise not be allowed by PBMs. This gives pharmacies leverage with the PBMs and makes PBMs accountable. PSAOs do not: process claims, decide which drugs are covered, negotiate rebates, or do anything that PBMs do to drive up prices.

PBMs are hired by the insurance companies or employers. Programs that are administered exclusively by PBMs have taken away the doctor's ability to decide what to prescribe, taken away the pharmacist's ability to decide what to dispense, and have done it for a profit focused motive. Mr. Pace wants incentives for healthcare to be realigned toward patient care and to eliminate the middle man.

He discussed PSAOs and federal anti-trust laws that prevent negotiating leverage. There is no interaction between PSAOs and manufacturers. The largest PSAOs are owned by pharmaceutical wholesalers, but are separate legal entities and used as a value added service for wholesale customers. Epic Pharmacy Network, an independent standing PSAO, operates in Arkansas and has the largest number of independent pharmacies.

Jodie Cartwright, Senior Director of Pharmacy Merchandizing, Walmart, noted the low cost generic prescription program began in 2006 and strives to keep its costs low and pass the savings on to its customers. It has experienced increases in the cost of purchasing many brand name prescription drugs and during the same time period it has seen a significant increase in the cost and utilization of specialty medication contributing to customers' final costs.

Discussion of Arkansas State Employee Insurance Program and Overall Program Status of Retiree Prescription Drug Program and Planning [Exhibit E]

Amy Fecher, Secretary, Department of Transformation and Shared Services (TSS), noted the TSS Board met earlier today where information has just been revealed. She introduced Mr. White to present an update of the new information concerning Employee Benefits Division (EBD) and health and pharmacy plans.

Courtney R. White, Principal, Consulting Actuary, Milliman, noted the update is for Arkansas state employees (ASE) and public school employees (PSE) with a similar format as the last meeting:

- financials projected for calendar year 2020 and 2021

- five budget items used to manage the plans: state and school district funds, employee and retiree contribution funds, plan design, initiatives to reduce costs, and reserves
- update on ASE and PSE health plans

He reported that the board set aside $25.1 million from prior years' surpluses to help with funding. After applying this amount to the year's expenses, there is an estimated surplus of around $500,000. Unallocated assets are $8.9 million. Similar to 2020, the board earmarked $14.5 million in assets that can be used to fund 2021. In 2020, we are showing a deficit of $4.8 million.

ASE brought in $292 million in 2020 and spent $317.5 million; ASE lost $24.6 million. It broke even by bringing in the funding amount. He suggested offsetting trends in 2021 by an increase in funding or a decrease in costs to cover a $5 million loss.

Discussion of PBM Audit with AID

Roger Norman, Director, Arkansas Legislative Audit, noted Legislative Audit discussed at its Executive Committee meeting the PBM Report in May and June, 2019 and was directed to investigate four areas of PBM operations in Arkansas regarding public funds: Medicaid fee-for-service, Arkansas Works, Provider-Led Arkansas Shared Savings Entity (PASSE), and EBD.

Mr. Norman worked with AID and waited for AID consultants to complete their report, released in September 2020. At that time, Legislative Audit picked up on the PBM Report and began its work with data. He projected the report to be finished in 2021. The draft report is prepared and has general information, but the data, spread pricing, and other issues discussed in committee will be complete in spring 2021.

With no further business, the meeting adjourned at 5:15 p.m.