

**Florida Health Insurance Advisory Board
Board of Directors Meeting Minutes
Friday, October 18, 2019, 1:30 PM
Via Teleconference
Tallahassee, FL**

Board Members Present:

David Altmaier, Chair
Brad Bentley
William "Bill" Herrle
Christina Lake

Molly McKinstry
Louisa McQueeney
Robert Muszynski

Seth Phelps
Ken Stevenson
Richard Weiss

Others Present:

Michelle Robleto, Executive Director, Florida Health Insurance Advisory Board
Craig Wright, Deputy Commissioner – Life & Health, Office of Insurance Regulation (OIR)
Anoush Brangaccio, General Counsel, OIR

I. Call to Order

Commissioner and Chair David Altmaier called the meeting to order at 1:30 PM indicating that the meeting was properly noticed to the public in accordance with Florida Law.

II. Roll Call

Executive Director, Michelle Robleto, conducted a roll call, noting the presence of a quorum.

III. Antitrust Statement

Anoush Brangaccio was recognized and reviewed the antitrust statement.

IV. Chair's Opening Remarks

The Chair thanked the members for their attendance and for bringing their perspectives to the important discussion of legislative proposals addressing health insurance market issues in Florida.

V. Approval of Minutes – September 11, 2019

The Chair presented the minutes from the September 11, 2019, meeting for adoption, noting that members had been provided with advance copies. Bill Herrle moved to adopt the minutes as written, with a second by Louisa McQueeney, and the minutes were adopted without objection.

VI. Executive Director's Report

The Executive Director reported that the 2018 taxes for both the Individual Health Reinsurance Program and the Small Employer Health Reinsurance Program were finalized with Purvis Gray & Company and filed and paid by the October 15, 2019, due date. A tax bill of \$8.00 was paid for the Small Employer Health Reinsurance Program.

Also presented were the 2016 Audited Financials for both the Individual Health Reinsurance Program and the Small Employer Health Reinsurance Program, as provided by Purvis Gray & Company. The audits found no deficiencies, but reiterated several administrative process recommendations. The Chair

called for a vote to approve the 2016 Audited Financial reports, noting that members had been provided with advance copies. Seth Phelps moved to adopt the reports as written, with a second by Richard Weiss, and the reports were adopted without objection

Finally, the Executive Director presented the details of an Audit Engagement Letter from Purvis Gray & Company for the 2017 and 2018 calendar year audits for both the Individual Health Reinsurance Program and the Small Employer Health Reinsurance Program. The proposed fees are the same as for the 2016 audit and, per Purvis Gray, the completion date for both audits is December 2019. The Chair called for a vote to approve the engagement letter, noting that members had been provided with advance copies. Brad Bentley moved to adopt the engagement letter as written, with a second by Robert Muszynski, and the letter was adopted without objection.

VII. Discussion of Legislative Proposals for 2020

The Chair noted that the purpose of today's call was to discuss legislative proposals for 2020 and reminded members that only those proposals with the unanimous consent of the Board would ultimately be submitted to the 2020 Legislature on behalf of the Florida Health Insurance Advisory Board. He added that if any member objected to a proposal, it would not move forward, although this would not preclude members from advancing proposals in their personal capacity.

The Chair noted that nine proposals had been received from Louisa McQueeney and three from Ken Stevenson on behalf of the Florida Association of Health Underwriters. To allow each proposal full consideration, each proposal would be reviewed separately, with time for discussion and questions between each one. The Chair stated that voting would be deferred to the next meeting to allow members time to consider the discussions about each proposal. However, if a Board member recognized that they could not support a proposal regardless of any additional time for review, they should state so today and the proposal would be removed.

The Chair then asked Louisa McQueeney to review her proposals, noting that four of the proposals for 2020 were included in a recommendation forwarded to the legislature last year from the Florida Health Insurance Advisory Board.

Recommendation #1: Provide a clear legislative directive whereby small group employers be specifically allowed the option to offer "employee/dependent(s)" coverage in the open market, where dependent(s) are dependent children only.

Ms. McQueeney reviewed her proposal, *Employee/Dependent Option Coverage in Small Group Plans*, as submitted and noted that this was proposed last year and forwarded to the legislature from the Board. She proposes it again for 2020 because there was no resulting legislation and there is now a new legislature.

Recommendation #2: Amend and expand statute 627.666 to include individual on- and off-exchange policy holders a Deductible Health Credit Transfer to a new policy equal to the deductible paid by the policy holder to the prior insurer. The Credit Transfer should be for the entire amount paid by the consumer without limitations such as a time frame of 90 days preceding the effective date of the succeeding insurer's plan or recognition of the expenses actually incurred under the terms of the succeeding insurer's plan and subject to a similar deductible provision.

Ms. McQueeney reviewed her proposal, *Deductible Health Credit Transfer*, as submitted and explained that this is similar to what was proposed last year and forwarded to the legislature from the Board. This version is updated to be more expansive and more specific on how the transfer of a credit should be applied. Molly McKinstry asked if there was any legislative feedback from the proposals that were submitted last year; members were not aware of any. Ms. McQueeney affirmed Seth Phelps' assumption that the expanded language applied to in-network only.

Recommendation #3: Provide consumer with one free copy of their medical record, to be provided to consumer by mail or electronic mail, at the time of payment request for services provided.

Ms. McQueeney reviewed her proposal, *Provide Health Care Consumers with One Free Copy of their Own Medical Records*, as submitted and noted this was proposed last year and forwarded to the legislature from the Board. Ms. McQueeney responded yes to Seth Phelps' question that this requirement applied only to the treating provider.

Recommendation #4: Prohibit insurance carriers from amending or removing a covered prescription drug during the policy year. This will not preclude the insurance carrier from expanding the formulary and lowering prices throughout the policy year. This would exclude the formulary for Florida Medicaid which is covered under section 409.91195, Florida Statutes.

Ms. McQueeney reviewed her proposal, *Protect Consumers from Prescription Drug Formulary Changes During a Policy Year*, as submitted and stated that the Office of Insurance Regulation should have a role in the process because they approve plans and could prohibit mid-plan year changes. Richard Weiss noted that mid-year formulary changes are done to control costs when drug manufacturers increase drug prices and the net impact of this type of proposal could be an increase in the rate of health insurance overall. Ms. McQueeney noted that an insurance contract is for a full year and formularies and drug pricing should follow the same, and insurance carriers should use their clout with the drug companies. Seth Phelps noted that policies in the Individual Market are typically for a calendar year. However, in the fully-insured Group Market, contract renewals happen all months throughout the year and prohibiting changes to an insurer's formulary mid-year would create the need for a large number of formularies to coincide with every effective date. Ken Stevenson questioned what would happen when mid-year formulary changes resulted in lower prices. Ms. McQueeney replied the insurers would be protected because the insurance contract was based on the higher prices and that her recommendation would allow insurers to pass along lower prices or to expand the formulary within the policy year. Robert Muszynski stated that through his work with a state university's pharmacy and health center he has seen the heavy financial impact to the center when drug companies raise prices. He understands the concerns but would not support this recommendation.

The Chair recalled the previously described process, and with one member's inability to support this recommendation, it will not go forward from the FHIAB. He reiterated that members are free to pursue this proposal independent of the FHIAB.

Recommendation #5: Codify into state law requirements that Florida health plans may not vary rates based on one or more pre-existing conditions. Rates can vary based solely on four factors: family composition, geographic area, age and tobacco use. Insurers are prohibited from charging an older adult in the oldest age band more than 3 times the rate of a younger person in the youngest age band and from charging tobacco users more than 1.5 times the rate of a non-tobacco-user's rate.

Ms. McQueeney reviewed her proposal, *Protect Consumers from Uncontrolled Health Insurance Premium Rates Based on Preexisting Conditions*, as submitted and noted this would be triggered dependent on changes to the Affordable Care Act (ACA). Under SB 322 (which was passed by the Florida Legislature in 2019), Florida would require insurers who issue comprehensive major medical policies or contracts in Florida to offer at least one comprehensive major medical policy or contract that does not exclude, limit, deny or delay coverage due to one or more preexisting medical conditions in the event the federal ACA is repealed or invalidated by the U.S. Supreme Court. However, it does not prohibit insurers from charging higher premium rates based on health status and insurance could become unaffordable to those with pre-existing conditions. Brad Bentley noted that following enactment of the ACA, a number of regulations have had unintended consequences and it might be better to address potential issues based on knowledge of "what is" rather than making changes based on "what if". Ms. McQueeney noted that if changes to the ACA happen quickly, it may be too late of offer price protection. Mr. Bentley expressed his concern with attempting to fix federal laws and regulations. Seth Phelps echoed Mr. Bentley's comments and noted that while everyone wants affordability, rate limitations could unintentionally shrink the market and there may be other ways to address affordability.

Recommendation #6: In inadequate narrow networks where primary care, mental health and hospital services are not within 30 miles or 30 minutes of each enrollee's place of residence or work, treat out-of-network care as in-net-work care and apply the cost of the care to the annual accumulators, such as the deductible. Improve network adequacy.

Ms. McQueeney reviewed her proposal, *Direct the Florida Office of Insurance Regulation to Develop Better and More Inclusive Standards of Network Adequacy for All Group and Individual Health Plan*, as submitted. In response to a question from Richard Weiss, Ms. McQueeney affirmed that she hears a lot of complaints from consumers - especially those in rural areas or in plans with narrow networks - and this recommendation supplements currently applied network adequacy regulations. Molly McKinstry noted that network adequacy is overseen by many groups: HMO network adequacy is overseen by AHCA (Florida's Agency for Health Care Administration) on the commercial side; Medicaid network adequacy is overseen by AHCA's Medicaid Office; there are no review requirements for PPO plans; ACA plans are regulated by CMS (Centers for Medicare and Medicaid Services); and Medicare networks are initially approved by AHCA, then moved to CMS for adequacy review. For HMOs, PPOs and EPOs, AHCA has not seen complaints showing this to be an issue. When they do occasionally get a complaint, they typically work with the recipient and the plan for resolution. Ms. McKinstry added that for the Medicaid program, the issue is not just the availability of in-network providers, but also whether those providers are open to new patients. Ms. McKinstry stated that based on her review, it has been at least a year since AHCA has had complaints for the programs under their jurisdiction, although it is possible CMS has recorded some complaints. Ms. McQueeney replied that people may not know where to take their complaints and many in rural areas do not have computers to file complaints online. Ms. McKinstry responded that on any subject, most complaints received by AHCA are by phone and she would like to work with Ms. McQueeney to get AHCA's 800 number out more broadly. Ms. McKinstry also noted that OIR has a wealth of consumer notices and the three could work together on a joint outreach effort.

Ken Stevenson noted that the lack of behavioral health services in the Panhandle is at a near crisis level. There are so few providers and facilities - both in- and out- of network - that people are having to go to

South Florida for treatment. Ms. McKinstry noted that AHCA and Florida's First Lady are very aware of the dire situation and have focused attention on the Panhandle.

Recommendation #7: Apply the balance bill rules under HB221, signed into law by Governor Scott, to include emergency transportation.

Ms. McQueeney reviewed her proposal, *Prohibit Balance Billing for Emergency Medical Transportation*, as submitted and noted that this was proposed last year and forwarded to the legislature from the Board. She is currently watching a federal bill addressing this issue, but she would like expansion of HB221 to be a recommendation from the Board again this year. Seth Phelps noted that the Airline Deregulation Act is a shield for Air Ambulance companies against the regulation of prices and that attempts to regulate prices have been struck down by the courts in other states. His comments do not apply to ground transport, but this effort could be moot for air transport. The Chair supported keeping this recommendation fresh to encourage solutions. Bill Herrle stated he has heard of horrific abuses and it is important to shine a bright light on this issue; he looks forward to further consideration of this proposal.

Recommendation #8: Require a stronger consumer disclosure than is required by federal regulation. Ensure brokers and agents read the full disclosure to the consumer and require the consumer to sign a statement that they have read the disclosure. Institute an external appeal process where a third party will make final appeal determinations.

Ms. McQueeney reviewed her proposal, *Protect Consumers and Insurance Markets from Short Term Plans*, as submitted. She explained that consumers do not understand the coverage limitations and cost implications of short term plans, that these plans are not subject to ACA protections, and that they can now be in-force longer than they could in the past. Brad Bentley commented that he is okay with this recommendation except for the external review because it implies that, even after stronger notification and a signed statement by the consumer, a third party can step in and provide benefits for which someone has not paid. Ms. McQueeney replied that she understood that concern and would modify the recommendation to strike the last sentence and would send the revision to Michelle Robleto. Seth Phelps questioned if the external third-party review would be an ACA-type review on medical necessity, pre-existing conditions, etc., or would it be intended to override the "four corners of the insurance contract". Ms. McQueeney replied that it was intended to be an ACA-type review.

Recommendation #9: Establish clear, meaningful, and accessible procedures for prescribers to override the process by requesting an exemption; Prohibit insurers from requiring insured patients to fail a drug more than once.

Ms. McQueeney reviewed her proposal, *Establish Step Therapy Protocols*, as submitted. She confirmed Molly McKinstry's assumption that the intent of the last sentence would be interpreted to mean "same drug, same active ingredient".

The Chair then asked Ken Stevenson to review his proposals.

Recommendation #1: Amend current legislation for agents and brokers, §626.2815 Continuing Education Requirements, using the required 5-hour update course to educate Agents, Brokers and Navigators on state-specific programs, like the Share of Cost program, that are not covered in the Federal training programs for the Individual Marketplace.

Mr. Stevenson explained that when someone applies for ACA coverage and say they have Medicaid, they are automatically denied the ability to get a subsidy. What Brokers and Navigators often do not understand is that some Medicaid coverage, especially the state's Share of Cost program, is not minimum essential coverage and a person may, in fact, qualify for subsidies. This proposal is to better educate Agents, Brokers and Navigators with continuing education, perhaps similar to Senior Suitability training. Louisa McQueeney favors this recommendation because the process is complex.

Recommendation #2: Enact legislation to define what would be considered a qualified dental plan for the ACA's pediatric dental requirements and prevent consumers from being charged additional, unbundled premiums.

Mr. Stevenson noted that the ACA requires Small Group carriers to offer pediatric dental coverage. A few carriers, including Capital Health Plan (CHP) and AvMed in certain locations, have no dentists and cannot provide the required dental services directly, so they partner with a dental carrier to provide services. The pediatric dental coverage is billed separately and cannot be declined, which means employees who have purchased a group or individual dental plan are paying twice for dental coverage. He proposes that Florida copy a 2015 Virginia statute that allows employees to show proof of dental coverage and opt out of purchasing the dental portion of the small group plan when it is a separately billed coverage. Molly McKinstry questioned whether this is a legal or contracting issue.

Recommendation #3: Amend the current definitions of "small employer" used in FL Statutes, specifically §627.6699(3)(v)2., to address cost of insurance and access to insurance issues.

Mr. Stevenson explained that the recommendation is to go back to the pre-ACA definition of "small employer". Small employer groups who hover around the dividing line between small and large employer size, likely due to part-time and seasonal employees, face administrative challenges and can be thrown into the large group market, which is underwritten. Seth Phelps questioned how much flexibility the state has because the current definition was adopted in 2013 to align all new products with the ACA definition. He noted that even if the Florida definition changed, it could, for example, cause a problem with Medical Loss Ratios and rebate calculations that follow federal definitions. Mr. Phelps also noted that a change in the definition might help some employers but hurt others who are happy to be in the large group market.

In concluding this section of the agenda, the Chair noted that 11 of the 12 recommendations would be addressed at the next meeting and, in the meantime, any questions or additional comments should be sent to Michelle Robleto to then be distributed to the entire group.

VIII. Other Business

The Chair noted two governance items to address, each requiring a Board vote. For the election of the Vice Chair of the Board, the Chair reported that Ken Stevenson indicated his willingness to serve in the role. The Chair asked for a motion for the appointment or other nominations from the Board. The motion was made by Christina Lake, seconded by Molly McKinstry and adopted without objection.

The Chair also noted that changes to the Board resulted in an Audit Committee with only one member, Robert Muszynski, where optimally there should be three. Seth Phelps indicated his willingness to serve on the committee. Bill Herrle also volunteered at a request from the Chair for a third volunteer. The Chair asked for a motion to approve the three-member Audit Committee. The motion was made by Brad Bentley, seconded by Ken Stevenson and adopted without objection.

The Chair then thanked three Board members with terms set to expire on December 31, 2019, for agreeing to serve an additional term. The members are Louisa McQueeney, Christina Lake and Chris Coffey.

The Chair took a moment to thank Brad Bentley for his many years of service to the Board and extended the Board's best wishes to Mr. Bentley in his upcoming move.


The Chair asked if there was any other business to be brought before the Board. There being none, the Chair moved to the next agenda item.

IX. Public Comment


The Chair asked if there were any members of the public who would like to comment. There being none, the Chair moved to the next agenda item.

X. Adjourn

The Chair thanked everyone for participating. Having no further business, the meeting was adjourned at 2:50 pm.



David Altmaier, Chair



Date