Senate Committee on Health & Welfare

January 24, 2018

Roll Call:

Sen. Buford, Sen. Danny Carroll, Sen. Julian Carroll, Sen. Kerr, Sen. Meredith, Sen. Givens, Sen. Raque Adams, Sen. Wise, Sen. Alvarado, Sen. Harper Angel, Sen. Thomas

Agenda: **FOR DISCUSSION ONLY** on SB 5

SB 5: MEDICAID (WISE, G.): AN ACT relating to pharmacy benefits in the Medicaid program.

Notes from Testimony #1

Sen. Wise
I have participated in enough pharmacy hearings to somewhat know the predictable pattern seen with pharmacies and PBMs. The PBMs have made it harder for pharmacies to operate. With that being said, **I would like to ask 5 questions that I know I can answer:**

1. *Are community pharmacies going out of business due to PBM activities?*
    - The answer is yes. The bottom dropped out of reimbursement rates for Kentucky pharmacies around the late summer of last year. According to the Kentucky Board of Pharmacy, there are 13 fewer community pharmacies in Kentucky now than there were before those reimbursements dropped.

2. *Just how bad are pharmacy reimbursements after the drastic cuts over the last summer?*
    - A few years ago, Federal Medicaid recognized that pharmacies basically sell a drug for roughly what it costs them to buy it. As a result, Federal Medicaid set a recommended minimum amount that a pharmacy be paid per drug. That amount is the cost of the drug plus a reasonable dispensing fee somewhere between $9 and $12 dollars. The current recommended dispensing fee is $10.64 Dispensing fees typically cover the cost of operating a pharmacy including labor, insurance, building costs, etc. That $10.64 dispensing fee recommended by Federal Medicaid isn't meant to be generous, it is the recommended MININUM dispensing fee. In a recent meeting, Kentucky's Medicaid Commissioner informed me that Kentucky independent pharmacists **are paid an average 85 cent dispensing fee for the managed care population.** At those rates, many if not most Kentucky independent pharmacies will close within a year.

3. *What would be the administrative cost for Kentucky Medicaid to remove PBMs for the managed care population and administer pharmacy benefits themselves?*
    - Cabinet for Health and Family Services officials recently informed me in a meeting that it would take $11 million for them to administer the benefits themselves and through an existing contract they have with Magellan who currently administers fee for service pharmacy benefits.

4. *How many prescriptions are filled annually for Kentucky's Medicaid managed care population?*
    - Medicaid Commissioner Miller informs me that number is roughly 25 million prescriptions a year.

5. *What is the total amount of Kentucky Medicaid managed care pharmacy spend?*
    - Medicaid Commissioner Miller has told me that Kentucky spends roughly $1.68 billion on pharmacy costs for the Medicaid Managed Care population.

Critical questions that I currently cannot answer:

1. Of the $1.68 billion that Kentucky Medicaid says we are spending on pharmacy for our managed care population, how much of that total goes to Kentucky pharmacies and how much is going to PBMs and MCOs?
    - I have yet to receive an answer from Medicaid Commissioner Miller on this.
    - If KY Medicaid is spending $1.68 billion for 25 million prescriptions, that averages $67.20 per prescription. I asked independent pharmacy representatives to get me an average of the total amount they are paid per prescription. The numbers ranged anywhere from $36 dollars total per prescription to $42 dollars total per prescription.
    - I have an expectation that CHFS will be fully transparent with me and work with me to develop policies that will keep our independent pharmacies open.

2. The last question I can't answer and one I hope this committee can get answers to today from the Cabinet or from PBMs is **why?**
    - Why do PBMs, mainly CVS Caremark, believe that an adequate dispensing fee paid to Kentucky independent pharmacies for managed care is **less than 10% of the federal recommended minimum?** Why it is ok to pay our pharmacists less than 10% of the federally recommended minimum rate for fee for service Medicaid?

3. My second **why** is directed to our Medicaid Department. Why are you allowing your MCOs and PBMs to reimburse pharmacies at less than 10% of the federally recommended minimum?
    - A couple of Cabinet officials told me they didn't want to be in charge of decision-making for Kentucky Medicaid when independent pharmacies go out of business. At the current reimbursement rates they are going to be, because our community pharmacies will close if we don't act.

    - All in all, if our independent pharmacies go out of business, the patients and citizens of KY lose. Patients who may find they have to drive a county over from where they live to find an independent pharmacy or potentially any pharmacy for that matter. Chain drug stores and PBM mail order pharmacies don't make personal connections and are not willing to go out of their way for their customers.

Trevor Ray (Independent Pharmacist)

Starting in September of 2016, my reimbursements from Medicaid Managed Care Organizations, specifically those contracted with CVS/Caremark as their pharmacy benefits manager dropped. What is

extremely disturbing to me is that 50 percent of my reimbursements are below what it costs me to buy the drug from my wholesaler. Yes, I am filing appeals on these under reimbursements, but this is unsustainable for my business and for many other pharmacies across the state.

The Federal Center for Medicaid Services (CMS) recently required all Medicaid fee for services programs to include a pharmacy reimbursement model where the pharmacy is reimbursed close to acquisition cost for the drug and paid a professional fee that includes the dispensing fee of between $9-13. CMS did not prohibit states from adopting MAC or other reimbursement models, but acknowledge that if you are going to pay acquisition cost, then you need to pay a reasonable professional fee to the pharmacy, so that they can sustain their pharmacy business. A study of cost of dispensing in KY resulted in Medicaid paying near acquisition cost plus $10.63 professional fee.

Based on my experience the numbers that Commissioner Miller has provided leads me to believe that there is money spent in the name of providing patient pharmacy care that is not going directly to reimburse pharmacies for the services they provide.

We have heard Medicaid officials state that the contracts with MCOs requires a 90 percent medical loss ratio, or MLR, meaning that 90 percent of the money received from the state must be paid out in direct patient care. But when we asked the Commissioner directly if the PBM must comply with the 90 percent MLR, he said it is not a contract requirement between the MCO and the PBM. We believe this demonstrates one of our major concerns.

- The Medicaid Department does not know how much money is going directly to the PBMs.

I have heard the PBMs argue that they have no reason to put pharmacies out of business, because they need pharmacies to be part of their networks. But today, I want to share with you a letter received from CVS Caremark by pharmacies from across the state that says "ever wonder what your pharmacy is worth, if so let's talk." It goes on to say: *"I know what independent pharmacies are experiencing right now: declining reimbursements, increasing costs, a more complex regulatory environment."*

- **This is a clear demonstration of the motives of the PBMs to put small pharmacies out of business.**

Questions/Answers:

Sen. Raque Adams: The under reimbursements and dispensing fees seem to be the burden. Are the dispensing fees contracted?

Trevor: Yes, and no; We are presented with contracts and are unable to negotiate with those. The dispensing fees on those are based on the premise that we would be reimbursed based on that specific contract's formula. The under reimbursement issue is a transparency issue.

Sen. Raque Adams: If they change the dispensing fee without prior notification. What can we do?

Trevor: It is a DOI issue and we have filed our claims and issues there.

Sen. Wise: The lack of transparency is the issue. We have to narrow it down to reimbursements and keep the independent pharmacies' doors open.

Sen. Buford: The wholesale price that PBMs are selling the drugs for is made for large pharmacies, but not for the small, independent ones. When we talk about rebates, the PBMs take a part of that and we want to know how much they are retaining. However, we know PBMS will not give us that which leads to another transparency issue. I think we need legislation to open up the records that the Cabinet has not yet given to Sen. Wise.

Sen. Meredith: A question for you Trevor, if reimbursement is so poor why not drop the Medicaid?

Trevor: 35% of our business is Medicaid, if we drop it off, then the chains will deal with that burden. However, if you're in a town with no chain, then the customers are negatively affected. Also, if the chains get the burden, then they may also drop Medicaid. This leads to a negative down-fall/snowball effect.

Sen Meredith: Don't you think that if we could reduce the 1.6 billion to 1 billion we could use that remaining money to fund other important things…like Pediatric cancer research funding?

Notes From Testimony #2:

Steve Miller, Medicaid Commissioner for KY
Within the state, we have 1.4 million Kentuckians on Medicaid. We contract with the MCOs and then the MCOs contract with CVS Caremark. The numbers that Sen. Wise brought up are consistent with what we said when we met.

CMS could have gone through and mandated the MCO contract rate, but it was not a part of it. The Cabinet Medicaid is not a part of the contact between the MCOs and independent pharmacies. If we were to bring it "in house" like Senate Bill 5 wants, the state would end up having an additional cost of 36 million dollars. For every dollar we increase the dispensing fee, the state will incur an additional 6 million dollars in state funds. This is just not in the Medicaid budget.

What I have also done is gone back and looked at the annual report. In it you'll find where they break it down by product:

- Medicaid is always on the low end on the reimbursement to providers and because of budget constraints, I see that trend continuing.

Questions/Answers:

Sen. Alvarado: This is a relationship that is not working for the state of Kentucky and other states have just scrapped it. We need a system that is going to work properly. Two years ago when we had discussion bout SB 117, we were told that it would cost Medicaid/state 20 million dollars. What

happened to the 20 million dollars that SB 117 was going to cost? Are these numbers going to be accurate this time?

Steve Miller: Medicaid was exempt. We have seen that the overall trend in pharmacy has been flat. On the fee for service side, as far as SB 117, we were exempt on that.

Sen. Alvarado: Pharmacists are paying the dispensing fee right now. CVS has the margins to buy every independent pharmacy out right now. We are using tax payers' dollars to allow CVS to send out letters trying to get independent pharmacies to essentially give up. We pass laws in this state for wages and contracts. However, our pharmacists are getting changes in contracts and are not getting notified about it. That is bad business. At this point, there is a lack of transparency and trust with the MCOs. Also, I want to know where is the additional money going? That money would be great to have in our Medicaid budget, etc. We are having to pass laws to bring these guys under control, and it is an outrage. There is 25-dollar per transaction that is not being accounted for, and we deserve to know where that is going!

Sen. Meredith: So, that 1.68 billion is giving to the MCOs and then it essentially goes into a "black box" that none of us can ever see. The 90% ratio that is expected to that program does not necessarily translate itself to the pharmacy side of it. We don't know where all of this money is going, correct?

Sen. Meredith: Do you think community pharmacists are being paid fairly?

Steve Miller: It is a tough business there. Clearly they are being paid less. It appears based on some modeling that we did, that I have access to all but one county.

Sen. Meredith: I beg to differ, and what we are looking for from healthcare providers is to help subsidize the Medicaid program. The independent pharmacies are being treated unfairly.

Sen Wise: They're getting 90% less. I do appreciate the comments by my colleagues and I want to work with everyone on this. When you mention the other states that you've had communication with, how many of those other states are moving away from the PBM model because independent pharmacies are closing their doors?

Steve Miller: I have not had that said to me by my peers. But, I have seen news and threads online about the closing of independent pharmacies. Many of them are concerned about the access side of it.

Sen Wise: I think it is bogus when you take the SEC filing to boil that down to KY Medicaid.

Sen. Buford: What do you think the profit for the PBMs that are subcontracting with the MCOs? Since you do not currently know, don't you think that it would be nice to know this total?

Sen. Danny Carroll: The way this whole thing is set up is totally against how the public market works and what free enterprise is all about. The first step we need to take is to fully understand what these profits are.

Sen. Thomas: I want to go back to this MAC list, because that seems to be the source of the problem. I don't see why that has to be proprietary. The PBMS are using the MAC list to decide the proper

reimbursement fee. And since we are paying them tax-payers dollars, then we deserve to see the MAC list. It is unacceptable to call the MAC list proprietary.

Notes From Testimony #3:

Executive director of the KY association of health plans

When it comes down to it, there are two main concerns from the KHP prospective:

1. The lack of coordination of care that could occur form this legislation
    - SB 5 would take a backwards step. Who would be responsible for ensuring there would be a coordination of care after a pharmacy carve out?
2. The Cost
    - Savings form a carve out plan may seem beneficial at the surface, but it could lead to an increase in medical costs. It appears that those numbers are hinging on the 36 million mentioned by the Cabinet. But, that is only one side of it. You would also have to take into account the 10-dollar increase on every prescription.