

**MARYLAND HEALTH CARE COMMISSION**4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215  
TELEPHONE: 410-764-3460 FAX: 410-358-1236**Friday, February 5, 2010****Minutes**

The public meeting was called to order, via teleconference, at 8:30 a.m.

Commissioners present: Chair Moon, and Commissioners Conway, Falcone, Fleig, Jefferson, Kan, Lyles, McLean, and Petty.

**Item 1.****SB 397 - Health Care Freedom Act of 2010 (crossfiled as HB603)**

Dr. Rex Cowdry explained that SB 397 would prohibit penalties enforcing personal responsibility (individual mandate) laws, prohibit requiring an individual to participate in any health care system (unclear what this term means in practice), and allow patients to pay and providers to accept direct payment for services, without a third party. Staff recommended opposing this bill. The Commissioners concurred in the staff recommendation, without opposition.

**Item 2.****HB585 – Health Insurance – Mandated Benefits – Dental Implants**

Dr. Cowdry explained that this bill would expand the existing coverage mandate for the diagnosis and surgical procedures related to face, neck, and head, to cover dental implant. This bill also applies the mandate to the small group market. He noted that this would be a serious departure from current practice and current law, which charges the Commission with determining the services to be covered in the small group market policies. Additionally, this bill has not been evaluated as part of the Commission's annual mandate review. Dr. Cowdry further explained that while the staff generally recommends a letter of concern regarding unevaluated mandates, in this instance where the mandate would apply to the small group market, staff recommends the Commission oppose this legislation. The Commissioners agreed with the staff recommendation, without opposition.

### **Item 3.**

#### **SB358- Health Care Malpractice – Expression of Regret or Apology – Inadmissibility**

Dr. Cowdry explained that current law does not allow the admission of a provider's expression of regret or apology in subsequent malpractice litigation. Before enactment of those laws, one of the spurs to litigation was the provider's silence or constraint in discussing a poor outcome (often on advice of counsel) out of fear that the apology would be admitted against the provider in a court of law. These laws were meant to allow more compassionate exchanges between providers and patients or grieving relatives, and to deter the filing of lawsuits that may have arisen in part from the perceived lack of compassion by the physician. Dr. Lyles stated that the current law reduces malpractice suits and protects the relationship between the physician and the patient. The Commissioners agreed with the staff recommendation to write a letter of concern.

### **Item 4.**

#### **HB622- Health Care Malpractice – Noneconomic Damages**

Dr. Cowdry explained that this bill appears to make relatively modest changes in the limits on non-economic damages in medical malpractice cases. Staff review suggests that it would increase the maximum award in a given future year by about \$45,000 (changing the date of annual adjustments from Jan 1 to Oct 1, for some obscure reason), would increase the multiple claimant aggregate limit in a wrongful death lawsuit from 125% to 150% of the maximum, and would change the language so that the multiple claimant limits apply on a per "direct victim of tortuous conduct" basis rather than a per medical injury basis. Dr. Lyles highlighted that this bill could pose a potential slippery slope for issues of multiple claimants trying to obtain noneconomic damages and in turn could lead to raising health care costs. The Commissioners recommended reviewing the current law in more detail to better understand the change this bill would impose and possibly send a letter of information provided their concerns that this bill may negatively affect health care system costs.

### **Item 5.**

#### **HB594- Health Insurance – Assignment of Benefits**

Dr. Cowdry explained that this bill is one of two requiring carriers to accept assignment of benefits that would be paid directly to non-participating providers. The other bill arose from the Joint Committee on Health Care Delivery and Financing and is more complex, allowing AOB for hospital based physicians, allowing non-participating on-call physicians the option of receiving direct payment at a specified amount in return for an agreement not to balance bill the patient, and otherwise allowing AOB if the patient is given a notice of non-par status and an estimate of likely amounts that would be balance billed. This bill simply requires carriers to accept AOB with nothing asked in return from the providers. If providers can be paid directly by the carrier for the allowed amounts, and can also balance bill the patient, there is little reason to remain in network.. Dr. Cowdry reminded the Commissioners that the Commission did not take a position on the Joint Committee's bill SB314/HB147. Dr. Lyles shared his belief that both HB594 and SB314/HB147 might be merged and could create the long-term affect of physicians obtaining assignment of benefits, but overbilling to ensure that they continue to make a steady income. Commissioners agreed that the Commission needs to be focused on protecting the consumer, but that this bill, which in principle attempts to protect the consumer, could have a negative impact on the health care system and its costs. The Commissioners agreed with the staff recommendation to oppose this bill and remain silent on SB314/HB147.

## **Item 6.**

### **HB478 – Health Insurance – Prescription Drugs – Cost-Sharing Obligations**

Dr. Cowdry explained that this bill relates the structure of pharmacy benefits. Increasingly, benefits are including more than three tiers, with higher tiers often being co-insurance tiers rather than fixed co-payment tiers, with coinsurance ranging as high as 50% in some plans. The Commissioners discussed the growing trend of drug companies to design more expensive drug therapies and the growing trend of carriers to create drug benefits that do not have out-of-pocket limits. The Commissioners agreed with the staff's recommendation that a letter of concern be written in response to this bill.

## **Item 7.**

### **SB524 – Health Insurance – Cancer Chemotherapy- Cost Sharing Equity**

Dr. Cowdry explained that this bill would create a health insurance mandate to restrict the cost-sharing on oral chemotherapy to that of injectable or intravenous chemotherapy. The issue with oral chemotherapy agents is particularly complicated, because adherence to the regimen is often poor. While some of the poor adherence may relate to high patient cost sharing, a substantial part is also inherent in the treatment, raising issues of cost-effectiveness of the approach. Dr. Cowdry further explained that equitable cost-sharing is complicated for these classes of medication primarily because intravenous and injectable chemotherapy are often classed as medical benefits while oral chemotherapy is classed as a pharmacy benefits. Commissioners felt more information and data was needed on the impact this new mandate could have on the health insurance market. Commissioners agreed with staff recommendation to write a letter of concern.

The meeting adjourned at 10:00 a.m.