

Steve Sisolak  
Governor

Richard Whitley, MS  
Director



DEPARTMENT OF  
HEALTH AND HUMAN SERVICES  
PATIENT PROTECTION COMMISSION

*Helping people. It's who we are and what we do.*



Malinda Southard,  
DC, CPM

Dr. Ikram Khan  
Commission  
Chairman

## SUMMARY MINUTES

**June 15, 2022**

Pursuant to NRS 241.020(3)(a) as amended by Assembly Bill 253 of the 81st Legislative Session, this meeting will be convened using a remote technology system and there will be no physical location for this meeting. The meeting can be listened to via telephone or viewed live over the Internet.

### **Agenda Item I - Call to Order, Welcome and Roll Call**

Chairman Khan called the regular meeting to order at 9:00 a.m. Those in attendance and constituting a quorum were:

#### **Commission Members Present**

Bobbette Bond  
Sara Ralston  
Lilnetra Grady  
Flo Kahn  
Dr. Ikram Khan  
Yarleny Roa-Dugan  
Sandie Ruybalid  
Dr. Beth Slamowitz  
Dr. Tiffany Tyler-Garner  
Mason Van Houweling

#### **Commission Members Absent**

Leann McAllister, excused  
Tyler Winkler, excused

#### **Advisory Commission Members Present**

Georgina Castaneda, representing Silver State Health Insurance Exchange  
Laura Rich, Executive Officer, Public Employees Benefits Program (PEBP)  
Barbara Richardson, Insurance Commissioner Nevada Division of Insurance (DOI)  
Richard Whitley, Director Nevada Department of Health and Human Services (DHHS)

#### **Commission Staff Present**

Malinda Southard, Executive Director  
Suzanne Sliwa, Deputy Attorney General

## **Agenda Item II - Approval of May 18, 2022, Minutes**

Ikram Khan, Chairman

The Commission was presented with an email draft of the summary minutes of the May 18, 2022, meeting.

**MOTION** was made to approve minutes of the May 18, 2022, meeting as presented, by Commissioner Van Houweling. Seconded by Commissioner Tyler-Garner. Carried without dissent.

## **Agenda Item III - Public Comment**

Helen Foley, Foley Public Affairs, Representing Nevada Association of Health Plans

Her industry is concerned with the lack of representation on the PPC. She recommended the PPC consider a Bill Draft to add an individual representing the insurance industry and provided examples of where the industry perspective could be beneficial. This included during PPC Bill Draft Request deliberations, not limited to fiscal impact and premium tax implications, affordable housing initiatives and Employee Retirement Income Security Act (ERISA) preemption to name a few. She added only 17 percent of the fully insured product in Nevada is regulated by the Division of Insurance. The Nevada Association of Health Plans wants to be a good partner to the PPC. Dr. Khan noted that the makeup of the commission is not determined by the PPC, but by the Legislature and Governor's Office.

Patrick Kelly, CEO, Nevada Hospital Association

Highlighted the issue of severe nursing and physician shortages in Nevada. Nevada is near the bottom nationally with regard to number of licensed nurses and physicians per 100,000 population. Recommends PPC proceed cautiously with any measures that can possibly reduce physicians in Nevada. Quality healthcare and improved access requires having enough providers to deliver the care.

## **Agenda Item IV - Review and Discussion of Possible Bill Draft Request Topics**

Malinda Southard, Executive Director

BDR Topic 1-6 were presented for discussion during the 5-18-22 meeting. Today the discussion is opening to discussion topics 7-16. Executive Director Southard wants to ensure all commissioners have adequate time to discuss and understand each topic in order to make fully informed decisions or recommendations.

Topic #7 Expand Medicaid Benefits to All Children regardless of Immigration Status. On behalf of Commissioner Leann McAllister.

It was suggested that a 1332 waiver request be submitted, and Executive Director Southard read into the record a statement of why this may not be the appropriate tool for this proposed expansion. Other comments included this would be a major fiscal impact on the state, and it would be helpful to know what the specific impact might be before weighing the pros and cons. Another commissioner wanted to know approximately how many undocumented individuals in Nevada would be eligible under this proposal.

Commissioner Ralston wanted to clarify she wished to have an open discussion with the other commissioners before deciding on any topics to formally bring forward. She does not want to be duplicative and still intends to make a recommendation or support other commissioner's measures.

Topic #14 Ensure Pharmacy Rebates Are Passed on to Patients - This proposal would require pharmacy benefit managers and health plan insurers to pass along the rebates and discounts provided by drug manufacturers to patients at the pharmacy counter. Commissioner Flo Kahn.

Commissioner Kahn notes this would be a direct benefit for prescription drug costs to the consumer. Current discounts are provided to Pharmacy Benefit Managers (PBMs) to get placement on the formulary, but these rebates were always intended to go to the consumer. There could be a percentage of the rebates that are passed on and the patients would immediately see costs reduced for those products with rebates.

Some of the comments regarding this topic included but were not limited to, this topic does nothing to change the high price of drugs themselves and nothing to ensure that insurance companies do not pay higher prices, which leads to higher premiums. It is an artificial solution and superficial fix pushed by the industry. PhRMA lowering their prices is a much better solution. Commissioner Kahn pointed out there are perverse incentives built into the system. If the costs of the drugs are lower, the drug does not get placed on the formulary. Getting rid of rebates must happen at the federal level. This proposal will get cost savings to the consumer quicker. Commissioner Slamowitz mentioned the biggest problem is that there is no transparency in the commercial market. This proposal does not get to the core of the issue or address the price of drugs. It does not change the back end of the cost to health plans. It is not effective for the larger issue of costs. Commissioner Kahn added that West Virginia has just passed a similar law so we will have good data to show how a similar proposal might work and if it would benefit consumers. Another commissioner opined costs start at the manufacturing level and are astronomical. This needs to be examined from all levels.

#15 Reduce Pharmacy Costs for Patients with Chronic Conditions - Eliminates the pharmacy deductible for patients who have a chronic condition. Commissioner Flo Kahn.

If the pharmacy deductible is eliminated, patients would have coverage on day one. Initially costs go up because utilization goes up. Some comments included but were not limited to this is proposed in the absence of pharmaceutical manufacturers coming to the table to reduce costs, which deductibles are in place to do. It still makes more sense to reduce the cost of drug. Another agrees and adds even if the deductibles are eliminated, the cost of drugs have not changed, and the manufacturers will still find a way to pass it on the consumer with higher premiums. Is better to simply lower price of the drugs. PEBP Executive Officer Rich pointed out that for high deductible health plans, there are IRS requirements that you cannot necessarily carve out deductibles. Commissioner Kahn added IRS indicated that for certain chronic conditions, you cannot have a pharmaceutical deductible because they do acknowledge those patients have a need for that medication and thus have eliminated the requirement for a deductible.

#16 Increase Access to Naloxone - Classify Naloxone as an over-the-counter (OTC) drug to increase access through harm reduction programs. Commissioner Beth Slamowitz.

This would allow community-based programs to obtain Naloxone from any board-licensed wholesaler, which in turn, would increase Naloxone access in vulnerable and underserved communities and help to combat the opioid and overdose crisis in Nevada. Nevada has passed laws to simplify access and distribution, but there is still more that can be done. Access to Naloxone has not reached a saturation point across the nation and there continues to be an opioid epidemic. There are legal and regulatory barriers. Nevada does not have a statewide standing order in place, and availability is variable. Because we cannot address supply chain and federal restrictions, the state can increase access through where and how we purchase to get Naloxone to harm reduction providers. One commissioner asked if this has been part of the discussion of the Attorney General's (AG's) Substance Use Response Working Group. Commissioner Slamowitz has not tracked those discussions and would be interested to know that as well.

#### #9 Create Prescription Drug and Health Plan Review Boards. On behalf of Commissioner Tyler Winkler.

Presented by Executive Director Southard in Commissioner Winkler's absence, this measure would give the state the ability to bring parties together and establish an upper payment limit arrangement. This directly addresses accessibility and affordability. Prescription drugs are one of the main drivers of cost growth. These boards could function as part of or in conjunction with the PPC so would be minimal costs to the state or absorbed by state agencies. One commissioner shared what she has seen in other states about the proposed affordability boards: They are very labor intensive and also require an adequate avenue of data to in order to support the costs to implement, therefore she disagrees in terms of the fiscal impact. Additionally, she believes there will need to be fiscal support due to the labor intensiveness of the proposed boards. Prescription Drug Affordability Boards have been brought up in the past in Nevada and have failed for these stated reasons, so this is a concern for her. Another commissioner commented she recognizes these boards cannot be operated without resources. She also feels compelled by the information that will be coming out of the benchmarking program. Added, in other states similar proposed boards also failed because of lawsuits filed by the pharmaceutical industry and believes we should also acknowledge that. The self-insured market uses the big commercial plans, Aetna, United, etc., so their numbers were not included in that 17% mentioned by Ms. Foley in public comment. She wants to ensure the PPC does not only see things through that lens and that the PPC understands that.

#### #8 Expand Access to the Private Insurance Marketplace (Silver State Health Exchange) regardless of immigration status. On behalf of Commissioner Tyler Winkler.

Presented by Executive Director Southard in Commissioner Winkler's absence, this measure would permit access to Nevada's private insurance marketplace regardless of immigration status. Some of these comments were also mentioned during discussion of Slide #5: Medicaid expansion. One commissioner noted they would like to request additional follow-up context for what this proposal looks like and the legal parameters; why not all, regardless of immigration status, may access this now.

#### #10 Address Health Care Market Consolidation to address the rising costs created by health care market consolidation by prohibiting hospitals and possibly some other facilities, such as freestanding ERs, from hiring physicians and revise the exemptions now in law to ensure only community hospitals and academic institutions are exempted. Commissioner Bobbette Bond.

Commissioner Bond notes there is supposed to be a requirement that physicians cannot be hired directly by hospitals. Nevada has this law in place, and it has gotten muddled. She would like this BDR to clarify existing law as this confusion is increasing in the face of now severe physician shortages. If a physician is hired directly by a hospital, other hospitals do not have access to that physician. This limits access to care especially for some specialties where there may be only one or two specialists in a particular area or in the entire state. One commissioner believes this could be a double-edged sword and needs to be carefully reviewed to ensure that there are no unintended consequences. Another commented she is interested in this topic and further discussion to help rein in price for patients. She also mentioned that an early presentation to the PPC from Dr. Jaime King addressed what other states were doing and that it might be helpful to recirculate this to the current PPC members for reference. Another commented that he is also aware of the existing law and the possible need to revisit the Attorney General's (AG's) opinion with this administration. Need to investigate if this proposal and the interpretation of law creates issues in the community for unique services when there are only a handful of providers for millions of individuals. When a provider comes "off the market", this limits access and puts a strain on the market overall. Need to review the existing laws to ensure they are being complied with appropriately. Need to encourage new providers to come to our state and compete in a free market. Another noted that for physicians who move to rural areas, this has been an issue forever and a huge challenge for access. Commissioner Bond explained the intent of this BDR is not to impact where the physician chooses to practice. More so, it is proposing clarification that a hospital cannot require the

physician to only practice at that hospital and is therefore tied by contract to only that facility. Additionally, public hospitals that are required to take care of everybody need all resources available. She appreciates all the comments, but current law is inconsistent in how it's applied, and clarification is needed through legislation.

#### #11 Require Transparency of Health Care Cost Data. Commissioner Yarleny Roa-Dugan.

The public needs more transparency regarding what hospitals and insurance companies charge. California has a look-up tool for certain procedures so the patient can compare health care procedures in an "apples-to-apples" comparison. Suggestion is to do this for not just certain procedures but for all health care expenses. She would like to introduce a measure to require DHHS, or the appropriate government body to create a freely accessible database of the cost to patients for a comprehensive list of medical procedures/treatments in situations where patients are paying out-of-pocket. As well as when using the different medical insurances available in the state and at various medical facilities in Nevada. The database should facilitate patients price shopping and making apples-to-apples comparisons, similar to the Procedure Price Lookup tool required by Congress in the 21<sup>st</sup> Century Cures Act. One commissioner pointed out that it is a complex and complicated scenario to come up with the cost of a procedure, as there are multiple variables. Also, there are different rates because insurers negotiate contracts with separate entities. It is difficult to come up with a comprehensive list price, especially if a complication arises. Another commissioner opined that a hospital provides more services than a freestanding Emergency Room (ER). The PPC should work on this proposal by utilizing the All-Payer Claims Database (APCD), benchmarks, and Federal work. This commissioner would like to hear from DHHS on what is already available and can be provided. Commissioner Roa-Dugan explained this tool could at minimum, give patients a starting price on procedures as an option instead of waiting until they must go to the ER. Price transparency mandated for all health plans. DHHS Director Whitley mentioned they have infrastructure out of the 2021 legislative session from the work on balance billing between health plans and the Office of Consumer Health. DHHS has a synergy there and can go into more detail on what the costs would be to add to transparency, and they do have a capacity already existing.

#### #12 Prohibit Certain Provider Billing Practices. Commissioner Bobbette Bond.

This is a request received from the health services coalition, representing 25 different health plans. Would like to propose ways to reduce the price of care when not providing care so as to not reduce services. Some costs are being charged that have nothing to do with patient care. For example, if a physician practices in a medical office, they can charge for care; if that same physician moves to a hospital campus to provide care, they can add a facility fee to that charge which is an increase in costs, but not an additional service. A second example is charging patients to fill out forms even though no services are provided. A third example is trauma fees for patients when they do not need trauma services. Need to stop the practice of billing patients when no care is provided. One commissioner feels this is of interest, especially for level 1 trauma centers. If a facility is not a designated trauma center, there should not be charged trauma center fees. A lot is involved in the presentation of a true trauma patient. The activation process is a significant undertaking. Need to carefully look at this before we get into charges for trauma.

#### #13 Review Insurance Benefit Design and Cost-Sharing. Unclaimed.

No comments or discussion.

Commissioner Ralston requested a process to group the BDRs by subject and have a review by an attorney for the single subject rule.

Discussion of this agenda item was completed for this meeting.

## **Agenda Item V - Overview of Nevada Health Care Quality Performance Data and Discussion of Potential PPC Recommendations**

Michael Bailit, President, Bailit Health

Mr. Bailit began with a presentation on reviewing the health insurer and hospital performance data in NV. To evaluate the current state of health care quality in Nevada, Bailit Health carried out the following exercises: an assessment of Nevada's commercial and Medicaid performance on a targeted sample of national health insurer quality measures developed by the National Committee of Quality Assurance (NCQA); and comparing that performance to national benchmarks using NCQA's Quality Compass database. (Not publicly assessable, but they paid a fee to access.) Bailit Health's second analysis was an assessment of the overall Medicare Star Ratings and patient survey ratings for the largest hospitals in Las Vegas, Carson City, and Reno, using Medicare's Care Compare tool which is publicly accessible.

Points of interest included, absolute rates for quality measures declined nationally due to COVID and commercial rates are often, though not always, higher than Medicaid rates. A commissioner questioned why data was not submitted for certain payers? Mr. Bailit responded he did not know why they were not reported but suggested to take a step back and look overall at whether there is room for improvement. Mr. Bailit clarified this data was a relative comparison of how Nevada compares to other states. One commissioner stated for clarification that the Medicare patient survey is about perceptions of care and wanted to know what the overall rating included. Mr. Bailit asked Commissioner Van Houweling to explain. Commissioner Van Houweling pointed out the survey includes quality measures around hospital acquired conditions, outcomes, safety, mortality, etc. The Hospital Care Assurance Program (HCAP) scores are for patient safety and offers a comparison between like-sized hospitals across the country. This data being presented is for 2020. A commissioner commented to also keep in mind that larger hospitals have more difficulty keeping tabs on the benchmarks than smaller hospitals and patient satisfaction is subjective. Commissioner Van Houweling reminded the group that in 2020 Nevada hospitals were hit hard but added that is not an excuse, and still need to do better to improve ratings overall. A commissioner asked if Nevada's ratings were higher prior to the pandemic. Commissioner Van Houweling responded the HCAP rating is a cumbersome survey, and while not making excuses, Nevada was still well below the national average. We need to do better. A commissioner asked if Commissioner Van Houweling could bring back to the PPC strategies to improve these scores. She also wondered if there is a way to compare hospital systems to sister hospitals in other states with national systems feeling this could be helpful information for the PPC. Mr. Bailit responded they could do that, and Commissioner Van Houweling responded he will put this request on the Nevada Hospital Association's (NHA's) agenda and is glad there is visibility on this.

Use of Quality Benchmarks in Other States - One commissioner asked why certain measures were selected and others discontinued. Mr. Bailit responded the states looked at things such as where improvement was needed and could be achieved. They also developed principles and criteria for selection.

Discussion was had regarding pursuing quality improvement strategies in Nevada. A commissioner asked if this should be in conjunction with the PPC Bill Draft Requests. Mr. Bailit answered quality improvement is possible without legislation. Another commissioner asked if there were quality improvement initiatives in other states that involve hospitals which could be brought back to the PPC. Mr. Bailit answered that work also exists. Another commissioner was supportive of pursuing quality benchmark strategies in response to specific challenges we are seeing in Nevada. Nevada Division of Insurance Commissioner Richardson noted for the commissioners to also take into consideration that some entities cannot meet quality benchmarks. One PPC member wondered if Commissioner Van Houweling could take the PPC strategies presented to the NHA to ask if they might be supportive, instead of strategies simply being imposed on them. Commissioner Van Houweling let the PPC know the NHA annual meeting was coming up soon and he will raise it there. A

commissioner mentioned the PPC should focus on quality and finds it helpful when Mr. Bailit presents on what is happening elsewhere. Mr. Bailit reminded the commissioners they will have to consider how to pick priorities and criteria to identify because the opportunities are vast.

#### **Agenda Item VI - Public Comment**

No Public Comment

#### **Agenda Item VII - Wrap up and Adjournment**

Dr. Ikram Khan, Chairman

Meeting was adjourned at 11:25 a.m.

Respectfully submitted,

  
Lezlie Mayville  
Office of the Patient Protection Commission

APPROVED BY:

  
\_\_\_\_\_  
Dr. Ikram Khan, Chair

Date: August 1, 2022

#### **Meeting Materials**

<b>AGENDA ITEM</b>	<b>PRESENTER</b>	<b>DESCRIPTION</b>
IV.	Malinda Southard, Executive Director, PPC	BDR Compilation of PPC Polling
V.	Michael Bailit, President, Bailit Health	Bill Draft Requests Review and Quality of Nevada Health Care