SUMMARY MINUTES

July 20, 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 Cholhagian Ralston
Dr. Ikram Khan
Leann McAllister
Yarleny Roa-Dugan
Sandie Ruybalid
Dr. Tiffany Tyler-Garner
Mason Van Houweling
Tyler Winkler

Commission Members Absent

Lilnetra Grady, excused

Advisory Commission Members Present

Ryan High, Executive Director, Silver State Health Insurance Exchange
Laura Rich, Executive Officer, Public Employees Benefits Program (PEBP)
Richard Whitley, Director Nevada Department of Health and Human Services (DHHS)

Advisory Commission Members Absent

Barbara Richardson, Insurance Commissioner Nevada Division of Insurance (DOI), excused

Commission Staff Present

Malinda Southard, Executive Director
Suzanne Sliwa, Deputy Attorney General

Agenda Item II – Approval of June 15, 2022, Minutes
Ikram Khan, Chairman

The Commission was presented with an email draft of the summary minutes of the June 15, 2022, meeting.

The Chair asked if there were any additions or subtractions to the minutes. None were suggested and approval of the minutes were carried without dissent by those present.

Agenda Item III – Public Comment

Patrick Kelly, CEO, Nevada Hospital Association

Mr. Kelly addressed the severe physician shortage in Nevada. Nevada already has issues with retention and recruitment of physicians. The state is ranked at the bottom in many national statistics for active physicians, primary care physicians, and general surgeons. Nevada is below the national average in 34 of 39 physician specialty areas, which restricts access to care. The Nevada Hospital Association is very concerned with a proposed Bill Draft Request (BDR) the PPC is considering which would impact existing physician shortages. New doctors have opportunities to practice most everywhere in the United States, need a stable and predictable income, and quality of life. Nevada needs to be able to recruit them and to provide options that meet their needs such as joining established medical practices, or hospitals. The logistics of physicians practicing at multiple hospitals eats away at valuable time that could be spent with patients. Other points to consider in this proposed BDR would be what happens to current doctors employed by hospitals? Would their contracts be terminated, and would that drive them to leave the state? These are questions the PPC should carefully contemplate. The physician shortage in our state is real and the PPC should not do anything to make it worse. Please allow doctors to choose how they wish to practice in our state.

Agenda Item IV – Reappointment of Stakeholder Advisory Subcommittee of the Peterson- Milbank Program for Sustainable Health Care Costs and Suggested Members
Malinda Southard, Executive Director

Chair Khan asked if everyone received the list of possible members and polled all members present. The list of suggested members was approved by Chair Khan, Commissioners McAllister, Van Houweling, Tyler-Garner, and Ruybalid. Commissioner Winkler asked if those on the list were willing to serve and Executive Director Southard responded that she has verified with all but two of those listed. Commissioner Winkler was satisfied and approved the list of names. Commissioner Ralston wanted to be sure that former actively participating members had the opportunity to continue, and Executive Director Southard confirmed they did. Commissioner Ralston had no objection to the list. Commissioners Bond and Roa-Dugan did not opine, and Commissioner Grady was absent, excused. A final decision will be made at the August meeting.

Agenda Item V – Review and Discussion of Possible Bill Draft Request Subjects and Topics
Malinda Southard, Executive Director

Executive Director Southard reviewed the format for this agenda item and added information provided in the Overview BDR Document and Detailed BDR Document. She gave the commissioners who provided clarified or additional information the opportunity to present their topic revisions. State Subject Matter Experts (SMEs)

present at this meeting were Dr. Antonina Capurro, State Medicaid Non-Clinical Services and Dr. Beth Slamowitz, in charge of State Pharmacy Strategies, along with PPC Ex-Officio Members, Ryan High, Laura Rich, and Richard Whitley, all of whom are SMEs for their agencies.

Subject 3, Topic 1 Additional Information or Revisions

Commissioner Van Houweling began by stating how much he appreciates the way this process has been organized and presented. He reiterated that this BDR goal is to encourage exchange of health information between systems. Chair Khan inquired if anyone was opposed or felt this topic should be eliminated. Chair Khan asked what work had been done to avoid Health Insurance Portability and Accountability Act (HIPAA) conflicts. Commissioner Van Houweling said patients already have electronic limited access to their records. This bill would give patients more direct access to transition from provider to provider. Another commissioner noted the purpose of this topic is attempting to connect Electronic Health Records (EHR) to EHR, so the patient has access to all clinical and diagnostic records; while continuing to follow all Centers for Medicare and Medicaid Services (CMS) and Federal regulations. Another Commissioner shared these are Federally mandated requirements and they do have standardized ways to protect health information. All HIPAA protections would still be in place. This is about improved patient access to the records. The other BDR topic that had clarifying changes will be skipped over until Commissioner Bond arrives to present her changes.

Executive Director Southard shared the overall BDR topics poll results, indicating how many responses each BDR received. Two BDRs had 5 responses; three BDRs had 4 responses; one BDR had 3 responses; and the rest had 0-2 responses. Mr. Bailit clarified there were a top five in BDR topics. One commissioner asked if among the top 5 topics, is there any natural alignment that could allow for combining. The PPC began discussing the top BDR topics receiving 5 and 4 responses via the poll.

Subject 2, Topic 1- Codify the Nevada Health Care Cost Growth Benchmark Program as set forth in EO 2021-29 and include a requirement to measure and report on primary care spending (5 responses):

One commissioner feels this BDR specifically "report on primary care spending", has some similarities with his BDR suggestion that would establish prescription drug and health plan affordability review boards because they are all related to affordability. Another commissioner agreed. There were no other comments.

Subject 3, Topic 1- Mandating that all providers of health care and custodians of healthcare records implement an interoperable electronic health care records system. Expand immunity for provider compliance with providing and receiving electronic medical records. Revision of Nevada Revised Statutes (NRS) 439.584 with relation to Health Information Exchange (HIE) and other areas identified, with PPC supported funding options (5 responses):

One commissioner questioned since there was a federal mandate to support this policy if this was already being implemented or under consideration of any other committees or legislators. Another answered that they do not know yet. The Chair noted the Federal Mandate is still in limbo. Deadlines have come and gone so we do not know yet who will enforce/implement the requirements. A commissioner added the need to ensure that the recommendation is compliant with current state and federal laws. Another wishes to see the specific revisions to the NRS and ensure DHHS has an opportunity to weigh in since Legislators will ask questions about logistics and funding. Also, she recommended if this moves forward there must be clear and concise language and correct intent on patient access. The Chair noted legal and other experts will address those questions and it can be added to the August meeting based on the intent of the commissioners. Another commissioner reported currently with Nevada's WebIZ system if a provider is not a Vaccines for Children (VFC) provider, they are not mandated to input the inoculation information into WebIZ. She inquired because there is a lot of missing information in the electronic health record (HER) systems we have now, will this proposed BDR topic additionally mandate providers to input all information into WebIZ?

The Chair thinks this is a good point. SMEs will have to investigate this and the fiscal impact, to be discussed at the next meeting.

Subject 1, Topic 1- Explore opportunities to provide basic health coverage to infants, children, and young adults up to age 26 who are ineligible for full Medicaid coverage under federal law due to their current residency or immigration status (4 responses):

One of the commissioners asked the SMEs about implementation and how it might work logistically. How to validate when looking at income, estimates on whether/how it would impact the state budget, etc. Ten percent of the state's population is uninsured even though Nevada is an expansion state, how mush would this add to the Medicaid program? The Chair added it was much more complex than what we see in the brief language. Do not want to become a medical tourism location. Directory Whitley pointed out that Nevada is one of the first states to integrate eligibility. We already have mixed eligibility for families. This helps the state have a building block and can also help with entering lines for social services and other residents are not aware they may be eligible for. A commissioner asked Director Whitley what is foreseen happening on the emergency Medicaid side. Director Whitley responded he does not see any changes to the emergency Medicaid program, and it would in no way restrict access. If anything, that program could be a touch point for other services people may be eligible for. Another asked the Director about the impact of taking care of very sick patients and the physician not being reimbursed, but the hospital is. Director Whitley explained DHHS is currently fully maximizing CMS rules related to emergency Medicaid so any additional coverages would have to be paid from the state general fund. A commissioner asked if this proposal would expand coverage beyond the acute care episode and could mitigate the need for higher cost care if care given in the right setting. Director Whitley deferred to Dr. Capurro whether certain aspects are reimbursable. Chair Khan asked for a fiscal impact analysis at the next meeting. He feels health care is just as important as education and we must find ways to provide these resources in our state. Dr. Capurro added it would be a Medicaid benefit not federally funded, meaning it would require 100% state funding. There are a lot of questions, and some answers are needed first to create a fiscal impact summary. Chair Khan again reiterated a minimal analysis would be important to have if the PPC decides to move this topic forward. Dr. Capurro said she would take this request back to her team, but they may have to make some assumptions. A commissioner reminded the group that this proposal is to explore the opportunities for coverage for those ineligible for full Medicaid with a study. To have the state take time now for a fiscal analysis is not material to this proposal. The Chair is asking for a first phase of exploration seeking some groundwork on this topic.

Subject 2, Topic 3- 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. Revise the exemptions now in law to ensure only community hospitals and academic institutions are exempted (4 responses):

Commissioner Bond noted this request is to prohibit the corporate practice of medicine in Nevada. The corporate practice of medicine doctrine was established in Nevada and there have been at least 2-3 efforts to end that prohibition. This proposal is an attempt to clarify the statute to ensure interests are aligned around one law. Corporate practice of medicine is already prohibited, but this prohibition needs further clarification. Hospitals and facilities can hire physicians which is different than providing hospital privileges. If hospitals actually hire doctors, then they are taken out of the community to work at one hospital which can create access issues. If a physician works for a corporation, the interest of their patients may not be aligned. This BDR is an attempt to ensure doctors are available to all facilities and not continue the consolidation that restricts access to physicians. She mentioned the American Medical Association (AMA) has raised this as a concern for a long time. She also added that since she was late, she did not hear the NHA's public comment at the beginning of the meeting cautioning against this and will later review and listen to their stated concerns. Chair Khan asked what happens with managed care organizations (MCOs) that hire physicians, would they be affected? Commissioner Bond added that primary care doctors usually work for one facility, which is different than

hospital specialists. A commissioner asked her if a ban on non-compete clauses may have the same impact. Commissioner Bond was not certain if that meets the same goals but could look into it. A commissioner added as Mr. Kelly had shared, Nevada has a shortage of health care providers. This proposal would need to address income guarantees and how it would impact the health care provider shortage. We also need to follow the current laws. Commissioner Bond has some assignments to follow-up to help clarify the topic. She feels this is a simple BDR but a complicated issue.

Subject 2, Topic 6- Create a Prescription Drug Affordability Board. Expand on NRS 439B.630 and set "allowable rates" for certain high-cost drugs identified by the Board; Create a Health Plan Review Board, with similar function as above but for commercial health insurance plans (4 responses):

Commissioner Winkler noted this measure is straightforward and has some similarities with the benchmark codification and feels it could be combined under the topic of affordability review. Chair Khan is strongly in support of some pharmaceutical oversight. It will need teeth, though, not just to create more boards. Another commissioner noted there is good data on the books about prescription drug costs, but we do not have the tools to address them. Another commissioner agreed with the other commissioners and wants to see how this topic could be combined with the benchmark topic. Mr. Bailit added other states have prescription drug affordability review boards so we can get information on the financial/operational implications from other states. One question is how the health plan review board relates to the Division of Insurance (DOI) regulatory activities. Commissioner Winkler answered current DOI rate review does not apply to the fully insured large group plans. Nevada does have prior approval, but no affordability standards. This could be an expansion of the DOI work. Mr. Bailit clarified that in Rhode Island (RI), this work operates within the Office of the Health Insurance Commissioner, not as a separate board. Another asked if there were ways to get this work done without a BDR? Director Whitley mentioned the PPC could commission DHHS to do a cross-program analysis. Mr. Bailit opined he wasn't sure the prescription drug affordability review board could be done without legislative authorization. The commissioner clarified she was inquiring if this work could be done without a whole separate board such as through the PPC or DHHS, as she is more concerned about the work than the board itself. She suggests getting some legal assistance with this. SME Dr. Slamowitz added the drug affordability board would need access to drug pricing files, such as through Medispan, which are paid subscriptions. Other states that have these boards have fiscal notes attached. She also noted that a review board does not impact list prices, but it can help manage costs to insurers/patients if payment limits are established.

The BDR discussion ended with a proposal by Executive Director Southard to set aside the BDR topics with 0-2 responses, as well as the one BDR with 3 responses.

Executive Director Southard reminded everyone the next meeting was August 17 and asked the group if they wanted to entertain the option of adding another meeting to fully vet these topics. Chair Khan feels they can use the maximum time allotted to the August 17th meeting for BDR decisions as there are no other pressing agenda items needing priority. He wants to allow enough time prior to the next meeting for legal and technical review. One commissioner reported she was ready to vote and did not need an additional meeting. Another wondered if there are parts of the 5 BDRs that the PPC can do on their own without legislation since they have broad powers. Another wondered if any of these measures can be combined and/or undertaken by another DHHS agency. Chair Khan feels they first need feedback from the appropriate departments, (Legal and DHHS) then final, deliberate language can be shared with the commissioners prior to and at the next meeting. BDR draft deadline to the Legislative Counsel Bureau is September 1, 2022.

Agenda Item VI – More Detailed Discussion regarding Cost Growth Mitigation Strategies and Potential PPC Recommendations

Michael Bailit, President, Bailit Health

Mr. Bailit gave a "deep dive" presentation on two cost growth mitigation strategies to address provider prices; provider price caps and provider price growth caps. The presentation is based on two implementation guides that Bailit Health is developing for states with support from the Commonwealth Fund.

Provider prices have been a key contributor to health care cost growth, as demonstrated by national and state data. A provider price growth cap is a regulatory limit on the percentage by which insurer payments to providers can grow annually. A provider price cap is a regulatory limit on the absolute level of provider prices.

Both strategies are limited to fully insured plans and can be enforced through insurance regulation and/or purchasing authority. The strategies may also be combined. Understanding where prices are growing the fastest is a precursor to this work, such as the type of services. Mr. Bailit presented design considerations for implementing each strategy. In summary, these types of caps are highly effective in slowing cost growth but will likely be faced by intensive provider opposition because it will reduce the ability of providers to grow their commercial revenue. Mr. Bailit asked the commissioners if Nevada should consider pursuing either or both strategies, rational for recommendations and if they require any additional information as they consider this policy option.

Mr. Bailit urges the importance of having a stakeholder group to suggest recommendations. Chair Khan suggested giving the PPC time to digest this information and come back with questions. A commissioner would like the opportunity for more time to discuss the stakeholder group noted in Mr. Bailit's presentation and opportunities to expand the membership. The Chair does not want any subcommittee to become too large to be manageable. Another commissioner asked what the charge of the stakeholder advisory subcommittee is, and the Chair is answered to give input to the PPC. Another commissioner clarified that this subcommittee advises the PPC specifically to the health care cost growth benchmark work.

Agenda Item VII – Public Comment

No public comment

Agenda Item VIII – Wrap up and Adjournment

Meeting was adjourned at 11:20 a.m.

Respectfully submitted,

Malinda Southard

Malinda Southard
Office of the Patient Protection Commission

APPROVED BY:

Dr. Ikram Khan, Chair

Date: _____

Meeting Materials

AGENDA ITEM	PRESENTER	DESCRIPTION
V.	Malinda Southard, Executive Director, PPC	List of PPC BDR Proposals for 2023 Session-Summary
V.	Malinda Southard, Executive Director, PPC	List of PPC BDR Proposals for 2023 Session-Summary-Ongoing Discussion
VI.	Michael Bailit, President, Bailit Health	Cost Growth Mitigation Strategies-Provider Price Caps and Provider Price Growth Caps