Commonwealth of Virginia
Department of Health Professions
Pharmacy Benefit Manager Workgroup

Friday, November 13, 2015
Perimeter Center, 2nd Floor Conference Center, Board Room 4
Henrico, Virginia

MEETING MINUTES - APPROVED

Members Present:

David E. Brown, D.C., Director, Department of Health Professions
John Beckner, Senior Director, Strategic Initiatives, National Community Pharmacists Association
Geoffrey S. Ferguson, RPh, Pharmacist Lead, Anthem Blue Cross and Blue Shield
Douglas Gray, Executive Director, Virginia Association of Health Plans
William L. Harp, MD, Executive Director, Virginia Board of Medicine
Diana Jordan, Director, Division of Disease Prevention, Virginia Department of Health
Caroline D. Juran, Executive Director, Virginia Board of Pharmacy
Michael Jurgensen, Senior Vice President, Health Policy & Planning, Medical Society of Virginia
Jessica S. Mazer, Esq., Assistant Vice President, State Affairs, Pharmaceutical Care Management Association
Timothy S. Musselman, Pharm.D., Executive Director, Virginia Pharmacists Association
Donna Proffitt, Pharmacy Manager, Virginia Department of Medical Assistance Services
Ellen B. Shinaberry, RPH PharmD, Member, Virginia Board of Pharmacy
John Sisto, Senior Director of Regulatory Affairs, Express-Scripts
Van Tompkins, Insurance Policy Advisor to the Commissioner, Virginia Bureau of Insurance
Kenneth J. Walker, MD, Member and President, Virginia Board of Medicine
Sara Wilson, Director, Virginia Department of Human Resource Management

Alternates Participating:

Bill Cropper, Virginia Association of Chain Drug Stores
T.C. Jones, IV, Supervisor, COPN, MCHIP & PRA Programs, Office of Licensure and Certification, Virginia Department of Health

Members Absent:

Rusty Maney, President, Virginia Association of Chain Drug Stores
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions

Staff Present:

Laura Z. Rothrock, Executive Assistant & Operations Manager, Director's Office, Department of Health Professions

Opening Remarks

Dr. Brown called the meeting to order at 9:10am. He welcomed the Workgroup members and the public and gave a brief overview of the purpose of the meeting. The Workgroup members and staff introduced themselves. Additional handouts were provided to the Workgroup. These include excerpts of Virginia Laws/Regulations Regarding Complaints/Appeals and Other Relevant Information, Letter to the Workgroup from Mr. John Frye, AHIP Issue Brief on Specialty Drugs, IMS Health White Paper: Succeeding in the Rapidly Changing U.S. Specialty Market, and Employee Benefit Research Institute Fast Facts on Health Plan Differences: Fully-Insured vs. Self-Insured.

Approval of Agenda

Dr. Brown asked if there were any comments concerning the agenda. There being none, the agenda was approved.

Approval of Minutes

Ms. Shinaberry made note of a correction to page two of the minutes on page four of the agenda package – in Mr. Lubkowski's remarks, the references to Sentara should be replaced with "his facility" as he was not speaking on Sentara's behalf. A motion was made by Ms. Wilson to approve the minutes with the noted change, seconded by Mr. Beckner, and the minutes were approved unanimously.

Public Comment

Seven individuals addressed the Workgroup: David Creecy – pharmacist/owner, Poquoson Pharmacy; John Lubkowski, Pharmacy Manager, Sentara; Javier Menendez, Pharmacy Director, Virginia Premier; David Balto – antitrust attorney in Washington, DC and represents the Coalition to Protect Patient Choice; John Seymour, pharmacist/owner, Orange Pharmacy and Elkton Family Pharmacy; Matt DiLoreto, Senior Director, State Government Affairs, NCPA; and Otto Wachsmann – pharmacist/owner, Stoney Creek Pharmacy. Workgroup members were given the opportunity to ask questions of the individuals.

Mr. Creecy discussed prior authorization (PA) issues facing his patients. Examples he cited include delays in receiving medications, up to 7-10 days, due to the back and forth between the prescriber, pharmacist and insurance company. He stated generic Lidoderm was not covered for one of his patients. The branded drug was covered, but cost the patient $100 more per box. Another example involved a patient who responded well to the branded drug, patient informed it required PA, and then informed it must be obtained from a specialty pharmacy. Patient did not receive drug for 8 days, and according to Mr. Creecy, patient suffered in the interim. Mr. Creecy would like to know where they are to refer patients for assistance in these matters and who can be mediator. He feels because PBMs are not regulated, there is no place to turn and complain.

Mr. Lubkowski also cited delays of approximately 7 days in treatment of patients due to delays in PA and dealing with specialty pharmacies. He stated there were times when he had the drug in stock, but could not dispense it since the patient was required to obtain the drug from a specialty pharmacy. He also provided an example of when a drug from a specialty pharmacy arrived at his pharmacy without his facility knowing in advance of the shipment.

Mr. Menendez indicated that PA is a good tool for payers for utilization management and discussed that cost of drugs is high and that something needs to be done. He also stated the PA process allows the pharmacist to catch prescribing errors prior to dispensing.

Mr. Balto indicated that Pharmacy Benefit Managers (PBMs) are the least regulated part of the healthcare market and force patients into wasteful mail order process. Pharmacists in rural areas of Virginia are having a hard time staying in business and are willing to dispense below cost to help their patients. He stated what the Workgroup is considering is very basic in oversight. He also briefly discussed ERISA and pointed out that Iowa passed a law that is more comprehensive than what the Workgroup is considering and that the federal judge indicated that the Iowa law does not violate ERISA. He is also providing testimony in the House Judiciary Committee meeting in November.

Mr. Seymour stated that the Workgroup's purpose is to make recommendations regarding the need for additional oversight of PBMs; however, he is not sure there is any oversight. At the last meeting, no one denied that the health of patients is being affected. Also, PA is not a bad thing, but the process needs to be different with consideration given to the patient's needs. When a generic drug is not covered, but a branded drug is, the patient usually pays more for the drug which pushes Medicare Part D recipients into the donut hole faster. With respect to the argument that employers ultimately determine coverage-related issues, he stated he is a small group administrator and has never had a PBM ask his opinions on establishing formularies or mail order pharmacy options.

Mr. DiLoreto stated that there is a national move on this issue and that most states are taking reasonable reforms action. Licensure and registration is not oversight. He indicated that the Board of Pharmacy has a legitimate case to protect the public and cited that the Mississippi state board requires licensure. Oversight should include proper enforcement penalties.

Mr. Wachsmann indicated that four independent pharmacies have closed in the past few years in his area. He addressed PA issues, delays in patients receiving medications, and that some patients have plans that won't allow their prescriptions to be filled in his pharmacy. If his pharmacy were to close, it would be a hardship for patients to receive their medications as the next nearest pharmacy to his is a 40-mile roundtrip. He referenced the National Association of Boards of Pharmacy (NABP) Task Force report which made recommendations for the states to consider in reference to PBMs.

Workgroup Comments

Mr. Beckner stated that PAs are cost-effective and provide appropriate care; however, the process is cumbersome, affects patient care and cuts across all practice settings, not just independent pharmacies.

White-bagging and brown-bagging are a concern for Ms. Shinaberry due to delays in patients receiving medications in a timely manner. Mr. Gray indicated that consistency around "white bagging" and "brown-bagging" is a problem and that the Board of Pharmacy should probably review it.

Questions for the Workgroup

Dr. Brown brought up questions for the Workgroup to consider:

1. When a patient has a concern about how long it is taking to get a medication or why a more expensive drug is being covered when a generic is available, where can the patient go with a complaint?

   Mr. Gray indicated the patient may go to the administrator of the health plan. If it is a fully-insured plan, the patient may go to the managed care ombudsman. He referenced pages 56, 65, and 79 of the Laws/Regulations handout distributed at this meeting.

   Patient education is important. Ms. Tompkins indicated that the Virginia Bureau of Insurance (BOI) will help direct consumers to the best of BOI's ability. The Workgroup further discussed the complaint process, and Mr. Musselman suggested that BOI's phone number be included on insurance cards for the patient to call when there is a problem.

2. Is there any data as to how frequently patients have a delay?

   Ms. Wilson, speaking from a self-insured standpoint, indicated that an internal ombudsman is required by Code, and an annual report is published. Ms. Shinaberry referenced page 7 of the National Scorecard (page 38 in the Agenda Package) which shows that 40% of PA requests are abandoned. The Workgroup discussed the many reasons why this occurs.

   Mr. Sisto indicated that the PA process is not well understood, and that as a result, manual processing has resulted in some problems. He suggested a technical work group be created to educate providers on how the process, including electronic prior authorization (ePA), works and to create a consensus on how to streamline the process. The implementation of ePAs requires an increased use of e-prescribing. The idea was discussed by the Workgroup, and it was decided that such a group would be created. Topics for the group to consider include e-prescribing, inter-operability, transparency, and educating the public on the process.

   Ms. Juran questioned whether drug formularies are available on the internet. They are required by Virginia Code to be in electronic format and can be found on the health plan's website. Mr. Gray referenced item 8 on page 21 of the agenda package and recommended that a demonstration on how the process of PA works, including e-prescribing and ePA.

3. Would regulation create problems or would it help?

   Some on the Workgroup, specifically those representing pharmacists and pharmacies, appeared to agree that oversight would be good in improving patient safety, access to care, and assisting patients in navigating the system. Those Workgroup members representing PBMs and health plans did not feel additional oversight is needed as they are confident the health plans are adequately overseeing the PBMs that are contracted with the plans. PBMs and health plans felt that many items were already addressed in Virginia law.

   Terry Talbot of CVS Caremark was asked to address the Workgroup on CVS Caremark's credentialing process. Although unable to specifically discuss the concerns expressed by Mr. Frye in his correspondence with Senator Mark Warner, Ms. Talbot provided an overview and answered questions from the Workgroup. She indicated that floor plans are required of everyone, including chain pharmacies, as is providing Social Security Numbers of employees, and that CVS Caremark is consistent in their credentialing process.

Oversight of PBMs by Virginia Department of Health Office of Licensure and Certification (VDH OLC)

Mr. Jones indicated that if the Workgroup recommended that VDH OLC would be the agency to provide oversight, they would be agreeable, but resources must come with it. Mr. Jones stated that the OLC does not have a position on whether oversight is necessary.

Mr. Musselman indicated that more than one agency may need to provide oversight. For example, defining "specialty drug" would be more appropriate under the Board of Pharmacy.

Next Meeting

Dr. Brown indicated that the next meeting will be on December 16 from 9am to Noon. Any comments may be sent to Dr. Brown's attention.

Topics to be discussed at the next meeting will include:

- White-bagging and Brown-bagging
- Waste involved in mail order

A draft report will be developed by DHP staff to be reviewed and discussed at the next meeting.

The meeting was adjourned at 2:10pm.

Prepared By: Laura Z. Rothrock