

State of Connecticut
GENERAL ASSEMBLY



MEDICAL INEFFICIENCY COMMITTEE
LEGISLATIVE OFFICE BLDG. SUITE 2000
STATE CAPITOL
HARTFORD, CONNECTICUT 06106
240-0490

MEETING MINUTES

Monday, February 8, 2010

1:00 PM in Room 2A of the LOB

The meeting was called to order at 1:13 PM by Chairman, Kevin Kinsella.

The following committee members were present:

Kinsella, K.; Woodsby, A.; Booss, J; DeFazio, A; Handelman, W; Koenigsberg, D; Mezzy, R; Toubman, S.

Absent were:

Committee members present introduced themselves.

Mr. Kinsella said the committee meeting would be followed by an informational forum presented by a panel of experts: Dr. Mary Alice Lee, Ms. Susan Raimondo, Dr. Brent Martin, Ms. Lisa Reynolds and Commissioner Kevin Lembo. A public hearing would be held after that.

Upon due motion and second, minutes of the Jan. 7, 2010 committee meeting were approved as printed.

Dr. Rob Zavoski, Medical Director, and Trish McCooey, Staff Attorney, from the Department of Social Services (DSS) introduced themselves.

At the request of Mr. Kinsella, Attorney Sheldon Toubman reviewed the response from Attorney General Richard Blumenthal to the letter that had been sent to him by Mr. Kinsella and Ms. Woodsby.

Mr. Blumenthal had written, “DSS does not have authority under Public Act (P.A.) 09-07 to amend the definition of ‘medical appropriateness,’ but does have the authority under Connecticut General Statute 17(b)-3(a)(2) to adopt regulations amending the definition of that term. . . . We conclude that in complying with the legislature’s mandate to amend the definition of ‘medically necessary,’ DSS has the statutory authority to define the terms ‘medically necessary’ and ‘medical appropriateness’ consistently, although it is not required by law to do so. . . . In P.A. 09-07, the General Assembly directed DSS to amend the definition of ‘medically necessary’ and went so far as to adopt policies and procedures utilizing the amended definition while in the process of adopting the definition in regulation form. . . . While the primary obligation of DSS under P.A. 09-07 is to adopt a definition of the term ‘medically necessary’ in accord with legislative direction set forth in the Act, DSS has the statutory authority to give the terms ‘medically necessary’ and ‘medical appropriateness’ consistent definitions by using the authority set forth in P.A. 09-07 and Conn. General Statute 17(b)-3(a)(2).”

Mr. Toubman said, “It seems to say pretty clearly that the statute we’re operating under, 09-07, does not give DSS any authority to amend the medical appropriateness definition vs. the medical necessity definition, because that statute refers to medical necessity only. However, the attorney general said that there is general authority for the state agency to modify its regulations, and that would include the medical appropriateness definition if it goes through the full regulatory process.”

He explained the process: “Basically it’s a notice of a procedure under the Administrative Procedures Act, the purpose of which is to make sure that there is full notice to the public for an opportunity for input and a hearing if necessary or desired. That process is one the department (DSS) is quite familiar with, as most of its regulations do have to go through that process. This particular statute we’re operating under, 09-07, includes a specific exemption from having to go through that process. But what the attorney general’s letter effectively says is that you cannot avoid going through that process to the extent that any changes in the medical necessity definition would effectively override or reverse the medical appropriateness definition. If we’re going to do that, then the department could change the definition of medical appropriateness as well, but it would have to go through that whole process.”

Mr. Kinsella asked Researcher Robin Cohen to comment on agenda item II: “Denials from commercial and other entities operating under the commercial definition of ‘equivalent.’”

Ms. Cohen said there was some information on her desk this morning, but she had not yet had time to analyze it. Her assistant has requested information from the Insurance Department, Health Care Advocate and Attorney General.

Ms. Cohen drew attention to the chart the Clerk had copied for committee members, prepared by the state Insurance Department Consumer Affairs Division, regarding decisions in the External Appeals Program and Medical Necessity Complaints in 2008 and 2009. She read an e-mail from the Insurance Department's Legislative Liaison that explained the chart: "I've attached a chart that shows complaint data regarding medical necessity. These data reflect complaints on medical necessity denials, not specifically on the 'definition of medical necessity.' Perhaps that's splitting hairs but need to make the distinction. Pre-authorization denials relate to utilization review (UR), which involves a medical necessity decision for services that require pre-authorizations. This would include prospective claims (services not yet rendered) or concurrent claims (for example a medical necessity determination on an extension of stay in a hospital). UR is defined in Sec. 38a-226. I don't believe there is a statutory definition of retrospective claims review, but we code any complaint filed on a medical necessity denial that is not UR as a retrospective claims denial. This allows us to separate out this category for tracking purposes and to designate those denials that are eligible for external appeals. Also included are data regarding our external appeals program. I've included a link to information regarding the external appeals process."

Ms. Cohen said the Attorney General's office reported receiving "around 8,000 health insurance complaints or cases over the past 10 years, of which an estimated 20 percent involved disputes over medical necessity." The Office of the Health Care Advocate said it had received "about 2,000 cases for each of the last five years."

Ms. Cohen said she tried to get information from Rhode Island, but was unable to do so. She did receive an e-mail from RI, however, that they "are in the process of reviewing our medical necessity definition, as it is quite broad." Ms. Cohen said this is the first she had learned of this review.

Ms. Woodsby said the request for information "was related to the Department's concern that by using the term 'therapeutically equivalent,' you would never be able to have a successful denial. So we were looking to see whether that was an issue under the commercial definition or under (the) Rhode Island definition."

Ms. Cohen said she did not know if the data from the state reflected successful denials because she had not specifically requested that information.

Mr. Kinsella suggested, "Maybe what we can do . . . is clarify some of these things for the next meeting."

He then drew committee members' attention to written information in their packets from the Connecticut Medical Society, the Connecticut Hospital Association and the Advocacy Association for Patients with Chronic Illness. He noted, "My understanding is that after today we probably will be getting some

more testimony, so we will make sure we all have that. Other people who would like copies of that should contact staff.”

Mr. Toubman said, “In response to Robin’s report, I want to suggest that Kevin Lembo is on our list.”

Ms. Woodsby said, “We need to schedule another subcommittee meeting as follow-up to this meeting. Kevin and I just discussed that the date we’d like to have the first report finalized would be February 19, 2010, so we would need to meet sometime early next week to follow up on what we hear today, testimony that we read and discussion that we have, and incorporate that into our final comments.”

Following discussion among the committee members regarding a time to meet, it was decided not to meet until the week of February 22, 2010 and to delay the date of the report.

Mr. Kinsella said that after the committee signs off on its report, “I think what we would like to do is introduce this as legislation.” The Clerk said she thought it would be possible to get a place holder in the Human Services Committee. Mr. Kinsella explained, “That would be a bill titled An Act Concerning Medical Necessity but with nothing in it. This is to let them know they’re going to get the report in a week or two and we can put the bill request in so we don’t miss the committee deadline.”

There being no further business before the committee, Mr. Kinsella adjourned the meeting at 1:27 PM.