New Mexico Patient's Compensation Fund Advisory Board

Continued Hearing on Patient's Compensation Fund Surcharge Rates

Moderated by William Ritchie, M.D.

Thursday, September 22, 2022

2:33 p.m.

Remote Proceeding

Santa Fe, New Mexico 87501

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Reported by: Brett Torrence

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A P P E A R A N C E S

List of Attendees:

Barry J. Berenberg, Esq., New Mexico Patient's Compensation Fund (by videoconference)

Troy Clark, Member, New Mexico Patient's Compensation Fund Advisory Board (by videoconference)

Mike Dekleva, Member New Mexico Patient's Compensation Fund Advisory Board (by videoconference)

Anna Krylova, Chief Actuary, New Mexico Office of Superintendent of Insurance (by videoconference)

Kathleen "Kathy" J. Love, Esq., Vice Chair, New Mexico Patient's Compensation Fund Advisory Board (by videoconference)

Debbie Luera, Director of Operations, Integrion Group, Inc. (by videoconference)

Sylvia Lyon, Executive Director, Greater Albuquerque Medical Association (by videoconference)

Alfonso "Alben" Martinez, MSN, FNP-BC, Representative, New Mexico Nurse Practitioner Council (by videoconference)

William L. Ritchie, MD, Chair, New Mexico Patient's Compensation Fund Advisory Board (by videoconference)

Ezra Spitzer, Member, New Mexico Patient's Compensation Fund Advisory Board (by videoconference)

Ellen Stevens (by videoconference)

A P P E A R A N C E S (Cont'd)

List of Attendees (Cont'd):

Ray M. Vargas, II, Member, New Mexico Patient's Compensation Fund Advisory Board (by videoconference)

R. Alfred Walker, Esq., New Mexico Office of Superintendent of Insurance (by videoconference)

Vincent J. Ward, Esq., Member, New Mexico Patient's Compensation Fund Advisory Board (by videoconference)

P R O C E E D I N G S

DR. RITCHIE: We don't want to go late. So let me call the meeting to order. And can we please call the roll? I know we're going to be short a few people. So let's find out who exactly is on.

MS. LUERA: Sure. Dr. Ritchie. Chairman Ritchie is here.

DR. RITCHIE: Here.

MS. LUERA: Vice chair Love?

MS. LOVE: I'm here.

MS. LUERA: Mr. Vargas?

MR. VARGAS: I'm here.

MS. LUERA: Mr. Clark? Mr. Dekleva? Dr. Carson we know was unable to join. Ms. Stevens?

MS. STEVENS: I'm here.

MS. LUERA: Mr. Spitzer?

MR. SPITZER: Yeah, present. Thank you.

MS. LUERA: And Mr. Martinez.

DR. RITCHIE: Okay. And I think Mr. Clark said he might be a few minutes late as I recall.

So then let's get started. This is a continuation because of the open meetings requirements, etc. Then really we're working just off

of a continuation of the agenda from our last meeting, with this more or less being a continuation of the discussion and set up the means to arrive at exactly what recommendations we're going to be sending to the superintendent of insurance. And so we're going to be discussing what's been presented to us so far.

Unfortunately we don't have the minutes from the last meeting. I haven't gotten any of the exhibits yet, Vince.

MR. WARD: I sent them. And I apologize. I guess in my mind I thought they were circulated. And that's probably on me. I think Barry sent to me to circulate to you all.

So I just send those just now. So you should be getting them.

DR. RITCHIE: Okay.

MR. WARD: But just so you know, we had the report previously.

DR. RITCHIE: Yeah. Here they are.

MR. WARD: Yep.

DR. RITCHIE: So that includes just the PCF report, right? The final --

MR. WARD: Yeah.

DR. RITCHIE: And the rate hearing.

MR. WARD: Yep.

DR. RITCHIE: Okay. That's fine.

MR. VARGAS: This is Ray Vargas. I'm wondering if anybody has the status on the transcript from the hearing.

DR. RITCHIE: That's what we --

MS. LUERA: Sure.

DR. RITCHIE: That's what we were just discussing. We don't.

MR. VARGAS: Okay. Oh --

MS. LUERA: We asked for a rush on it, Mr. Vargas. And it's been radio silence from the court reporting company.

MR. VARGAS: Oh.

MS. LUERA: Our court reporter who's on today said there was a discussion this morning about still trying to get it out to us, but as of now I have not received anything.

MR. VARGAS: Okay. Thank you. I just sort of feel like we kind of need the transcript before we can start talking about what we heard last week.

DR. RITCHIE: Well I think we could definitely discuss in general. If we start getting at the exact -- some of the fine numbers, we're going to have to depend on people's memories and the OSI's

actuary, etc. I think.

MR. BERENBERG: This is Barry.

DR. RITCHIE: Yes.

MR. BERENBERG: If it helps I could send to Vince my outline of questions. And I don't think we went much outside of that.

DR. RITCHIE: Okay. Thank you, Barry. That's a good starting point to jog everyone's memory for what was asked. That was a good slate of questions so ...

MR. BERENBERG: Yeah; I'll send that to Vince right now. Just to let you know, I have to pick up my kids from school. I'm going to stay on on Zoom, but once I leave, I won't be able to e-mail anything.

DR. RITCHIE: Okay. No; that's terrific.

And so while we wait to get that list of questions, then I'm going to open the floor really to people to start asking questions. Mr. Berenberg had his list of questions which he got a chance to ask.

And I want to give the committee a chance to ask questions and then we'll also give the participants from the OSI their opportunity to ask questions as well to make sure we're as complete as we

can be.

And so I'll start with Ms. Love. If you have any questions to ask at this point.

MS. LOVE: Are you suggesting that we ask questions of Mr. Berenberg? Or that we have a conversation and discuss what our thoughts are about what we should recommend?

DR. RITCHIE: Both. I'm sorry; I misspoke 'cause you're right. It would be questions to ask of Mr. Berenberg of what answers he got from his questions and of the OSI and their actuary Ms. Krylova.

And then also a discussion of where we think -- you know, where do we stand, points we want to bring up, questions we might have of the others in the group.

MS. LOVE: Okay. Well I don't have any questions of anyone else. And I would like to see the transcript in order to be able to sort of more-meaningfully discuss actual numbers.

But having heard the evidence from Mr. Berenberg and from the actuary, you know, I think I don't have any remaining questions I guess or doubts as to the actuarial report. I don't think there's any evidence to contradict his findings.

So I think, you know, as -- since it's our responsibility to try to, number one, shore up the fund as well as set surcharge rates based on evidence in the record, you know, I think that we are, frankly, a little bit bound to what the recommendations are.

And what we have to decide is at what confidence level we want to recommend the surcharge rates -- the rates to superintendent of insurance.

DR. RITCHIE: Okay. Thank you. I mean and I understand your points. We don't have those transcripts certainly to reflect on or question. And do you have any other comments on what was presented then, absent the actual transcript?

MS. LOVE: Well I mean I guess that it bears pointing out what, you know, we all know, which is that it seems as if there is some frustration among independent providers about the lack of data regarding the deficit and how the deficit should be apportioned.

But I also feel as if many members of this committee have asked for different data and information in many different ways and the Integrion as well as the Office of the Superintendent of Insurance have done everything that they can as far as I know to produce as much data as possible.

And I feel like at this point we are

now stuck with what we've got. And, you know, having invited other parties to intervene in the proceedings last year and also having many public conversations where we have invited people to bring additional suggestions for how to parse out that data, I think at this point I don't know what else we can do.

DR. RITCHIE: Okay.

Mr. Clark, do you have any comments? Thank you for joining us. And do you have any comments to put into the record, absent -- you know, realize we do not have the minutes.

We are going to get Mr. Berenger's questions, but that doesn't include the minutes with the answers. Berenberg; I'm apologize. So do you have any comments?

MR. CLARK: Just a couple brief ones. And I understand we don't have the minutes to reflect on. We'll have those in the future, but it's my recollection, Mr. Chair and Ms. Love, that the actuary was -- and that Mr. Rob was very clear in identifying whether we liked the answer or not, that they had the data that they needed to parse between independent and hospitals where there was some blurred line.

But in their opinion I believe he used the word that it was irrelevant or would be -- not

less than helpful was parsing between an employed physician and a hospital, since the two are interchangeable and mixed together.

That's my recollection from their testimony, what they said and they're rated together or they're subject to the same cap. I think I'm mostly in agreement with Ms. Love comments that, you know, there's not a whole lot to dispute with the actuaries.

It's our job to make a recommendation to the superintendent on what those values should be, but I would say that I think we -- I don't think that our hands are totally tied to just accept his recommended values.

I think we have one additional obligation as a board and that's taking into account the viability of the impacts of whatever decision that we recommend to the superintendent.

I.e., you know, be a little bit off the edge with this, but if we were to -- if the recommendation was a 200 percent increase and we know that that may cause use to lose a number of providers in the state, I think we as a advisory board -- although we don't make the decision, I think the recommendation we make has to take into account what

the impact is on access to healthcare and making sure that we still have healthcare available to the citizens of our state.

So I would just add to Ms. Love's comment. I think we have one additional fiduciary type of responsibility in our decision as a advisory board in our recommendation to the superintendent. Other than that, no further comments.

DR. RITCHIE: All right. Thank you very much.

Mr. Vargas?

MR. VARGAS: Thank you, Mr. Chair. I just want to follow up on that last comment by Mr. Clark.

I think I agree as an advisory board we need to be looking at all of those things, but when we're acting in our role as the factfinder in an evidentiary hearing, that's a different role than as the advisory board.

And that's the whole point to us inviting interveners to come and present other evidence to us. And unfortunately in this case nobody intervened. And so what we have is undisputed record that we have to examine and make recommendations based on that.

You know, again, it's kind of -- this is all unusual. I think if you recall last year we were all a little bit caught off guard that we were told we would be the factfinders.

So I think in this case we need to adhere to our role as the factfinder and leave it up to the policy folks to filter out those other things, but when we step out of our role as a factfinder and are just an advisory board then absolutely we can consider those types of things.

But that's not the role we're in today. And that's my only comment.

DR. RITCHIE: Okay.

Mr. Spitzer?

MR. SPITZER: Mm-hmm, yes. Thank you. I don't really have any further comments. I mean I found the evidence presented gave us some options and some choices to make in terms of what we recommend.

And I mean I don't have any reason to question what the actuary all said. So I feel ready to move forward with the recommendations.

DR. RITCHIE: Okay. Thank you, everyone, for their comments. Based on not much information at this point without having, you know, the minutes, etc., however --

MS. LOVE: There are a couple of people who haven't spoken yet, including --

DR. RITCHIE: Oh, I'm sorry. You're right.

MS. LOVE: -- and Ellen Stevens.

DR. RITCHIE: I apologize.

Ms. Stevens, certainly.

MS. STEVENS: Hi. You know, as kind of a layman here -- I'm very new to this board -- it would be nice for me to see some examples of what the surcharge means. Like, if we talk about a general surgeon employed at a hospital.

I'm just trying to wrap my head around this and what it would look like, what the impact would be, what they're currently paying an insurance, and what they'd be paying afterwards. If they have to -- my independent family practitioner that we go to.

Does that make sense to everyone? Just some examples so I can wrap my head around it better. I saw all kinds of charts and spreadsheets and, you know, millions of dollars. So just the individual impact would've been helpful for me.

MS. LOVE: I would suggest -- I can't remember the exhibit number. Is it 10?

MS. STEVENS: Yeah.

MS. LOVE: Barry, you may remember off the top of your head, but I can send her -- I'll look it up, but there's an exhibit attached that has -- all the different --

MR. BERENBERG: I --

MS. LOVE: Go ahead, Barry.

MR. BERENBERG: If I had to say I think it was Exhibits 18 through 20, which had the breakdown of the surcharges for providers and it was by type of provider.

MS. STEVENS: Okay. I think I remember that. We already talked about this, but we haven't been sent that though, have we?

DR. RITCHIE: Yes.

MS. STEVENS: We have.

MS. LOVE: It's attached to the actuary's reports. It's just the report is super-super-long and it's one of the attachments that has the teeny, tiny little print.

And it identifies by provider the current rate and then also with a certain percentage increase what the rate would be.

MR. BERENBERG: Yeah; that's Exhibit 19 to the final report.

MS. STEVENS: Who would've sent me that final report? 'Cause that could be what I'm missing here.

MR. WARD: I'm wondering if -- so I just sent an e-mail. Do you think since you're a new member -- I'm wondering if you're not on the --

MS. STEVENS: I -- yeah.

MR. WARD: Yeah; let me --

MS. STEVENS: 'Cause I don't see it. And I've been looking since the meeting last week just so I can --

MR. WARD: If you give me your e-mail I can send it to you right now.

MS. STEVENS: Yeah; it's Elena, E-L-E-N-A, Rita, R-I-T-A, 76 at Gmail.

DR. RITCHIE: Thank you, Vince; I think that may be what happened exactly.

MR. WARD: Yep. Yep. Okay. I'm sending it right now --

MS. STEVENS: That would be really helpful. Thank you.

MR. WARD: Mm-hmm.

DR. RITCHIE: And that is, for the nuts and bolts, when you look at that table, there's approximately nine different categories of provider

depending on their basically risk of the cost of their work -- of their malpractice, how much risk they have to the fund.

And the lowest is nonoperative -- particularly pediatrics, family practice. Then it goes on up to the highest is obstetrics and neurosurgery for instance.

MS. STEVENS: Okay. Thank you.

DR. RITCHIE: And so it is apportioned individually to them. And they have a different effect on the cost to the PCF because there's many more, say, family practitioners than there are neurosurgeons.

MS. STEVENS: Okay. I remember this. I need to look at it again.

DR. RITCHIE: Yeah.

MS. STEVENS: And I thank you for resending it. I just received it. Okay.

That's all I have now. Thanks.

DR. RITCHIE: Okay. Okay. Thank you.

Mr. Dekleva?

MR. DEKLEVA: Yes. Thank you, Chairman Ritchie.

I mean I could add a couple comments I guess. One is we do have kind of a dilemma on our

hands in the sense that I think this actuarial report and the testimony of the actuary is essentially undisputed evidence.

And I thought it was fairly compelling in the sense that I thought this particular witness did a very good job of explaining a lot of the reasons why there's a deficit and making recommendations on various surcharge levels.

And I recognize that we don't have the data in front of us today or the transcript to actually reduce it to numbers, but there's a couple issues that I think that we need to be thinking about and moving forward.

One would be whether we believe the legislature or the governor will release or pay or authorize payment of another $30,000.00 on behalf of the physicians toward the deficit. Because I do think that makes a difference in how we handle the physician surcharges.

And I also want to just out -- and this is fine detail that I'm probably getting into the weeds about that we don't need to really decide today, but in presenting his recommendations, there were recommendations where surcharges were recommending that would account for the deficit funding in addition

to the needed surcharge for the year to make the fund essentially solvent.

And then I think there were ways of looking at it where the surcharge and the deficit were handled in different ways.

And so I think we need to think about how we want to approach that subject in terms of deficit reduction versus surcharges for the upcoming year.

Other than that, I would say philosophically it's a difficult job that we have because, as we saw, the surcharge levels are quite high.

And his comment was, "well, you know, essentially if you don't follow some form of what I'm recommending, you're just going to compound the problem into the future."

But I also acknowledge that some of those surcharge percentage would create a disincentive for groups of insureds to participate in the act. So I think that's the dilemma that we're going to have to wrestle with.

As for that actuarial report, I'm not troubled by what we heard in terms of data. I think that he explained why he felt confident in his

actuarial report. He did use some industry data to shore up missing information that he felt that he didn't have.

And I think actuarial science by its very nature -- and this is really something I'm saying based on what I heard this year and last year -- is a little bit a function of dealing with some unknowns. And that's just part of the process that they are used to go through.

So and him testifying about the efficacy of his report and the validity of his report I felt like what he had to say made me feel anyway that it was his findings and his recommendations were valid.

Other than those comments, Mr. Chairman, I don't have anything else at this time.

DR. RITCHIE: Yeah. Thank you very much. Points well taken. Okay.

Does anyone else have anything real quick? I do some have comments and questions then that I want to throw out.

MR. BERENBERG: This is Barry.

MR. CLARK: -- and I've got an individual with their hands raised. Alben Martinez.

DR. RITCHIE: Yes. Go ahead. Just saw

you.

MR. MARTINEZ: Yes. Yeah, hi there. Alfonso Martinez here. I also kind of want to reverberate off of what was just said in kind of ensuring that there is going to be a solvent fund in the future, making sure that we don't, you know, make any too-sudden moves that scare people away few too-large of a hike.

I also agree that this actuarially made a report; it's much better than what we got from Millaman [ph]. And I really did appreciate the information coming from other patient compensation funds in other states.

I think what would be a wonderful idea is to reach out to those other patient compensation funds and see what they are doing and kind of look at some of their nuts and bolts as well.

And as far as trying to tackle the deficit that we have, you know, I think we do have to make a larger stray.

We know our recommendation last year was not followed and we can't be guaranteed $30 million worth of help from the state every so often.

So I think if we are going to get money from the state that it will be a good thing obviously,

but I don't think we can plan on that. I think if we do get that money it'll just be kind of like the icing on the cake, if you will.

And also, with me representing nurse practitioners, one thing that I have found -- I am actually a regional member for the Nurse Practitioner Council for New Mexico. And the people that I represent are mainly in Bernalillo, but I do get into the, you know, outer areas.

And the feedback I'm getting from them is that it's almost impossible for them to get involved in the patient compensation fund and it's not due to the surcharges. It's actually due to the under-coverage, the below-$250,000.00 coverage there.

That there are no underwriters. There are only two underwriters that will take it. And with those underwriters, their charges, their premiums they're actually more expensive than if they were to take a full policy that covers two to four million dollars.

And so that's kind of something we might have to look forward at once the hospitals are no longer involved in the patient compensation fund. Because that's going to have to be a source of revenue I'm thinking for the fund itself.

I myself work in the hospital. And the hospital does cover all of my surcharges and all my insurances. So, you know, in the future that might be something that I need to look at -- whether or not I need to get myself involved in the patient compensation hospital once the hospitals aren't involved anymore.

So I know that's a little off topic, but that's something that is going to be one of my concerns here kind of going forward.

As far the study I think we can't dispute it. I think our suggestion should be a little bit more than minimal, but definitely if we do the maximum we are going to definitely scare people away. So thank you.

DR. RITCHIE: Thank you very much, Mr. Martinez. And I apologize for not calling on you directly.

Mr. Berenberg?

MR. BERENBERG: And this is a issue for probably Vince to address, but I've a few comments about how much weight to Mr. Walling's report.

And he testified as an expert. And if the rules of evidence are being followed the factfinder is allowed to give what weight it deems

appropriate to expert testimony.

But, Vince, you'll probably whether that criteria applies in a hearing of this type.

MR. WARD: Yeah; I think that's a fair point that Barry makes. I think the advice that I give you is threefold.

I think you need to have an evidentiary basis for your decision. Number two, I think that as the board, you retain discretion to weigh the evidence as you all see fit.

And then third, you have an expert witness, as Barry has described, who has provided you with his informed opinions. You accepted him as an expert with respect to the characterizations of that evidence.

So I think the point here is that you have the power to exercise your discretion, but you need to do avoid doing so in sort of an arbitrary way.

DR. RITCHIE: Very good. Thank you. Very well taken. All right.

I have a series of questions primarily and I'd like to direct them -- at least this first one -- to our OSI representatives Mr. Walker and Ms. Krylova or whoever, you know, might be able to start answering some of these.

Number one, you know, with the batch claims and reinsurance. You know, it's a little unclear whether that's -- you know, we talked about that going away in the past, but obviously it was accounted for in the current information from Mr. Wallenberg [sic].

And so my question is though do we really need that? Or do we really need insurance specifically for potential future batch claims if we're really going to stick to the regulations and individual practitioners only have three occurrences and then hospitals have unlimited, but that should be accounted for within their rate setting?

So, Ms. Krylova, Mr. Walker, can you address that?

MS. KRYLOVA: This is Anna Krylova with the OSI.

With the reinsurance last year, we talked about it going away because we essentially got nonrenewed. And we had trouble finding replacement coverage for several months.

We eventually did find coverage that became effective February 1st I believe. It's a slightly different coverage. Frankly, it's less coverage for the same amount of money, but it's

something. So that policy is effective until February of next year.

At that point it's anybody's guess, you know, if we're going to get nonrenewed again and if we'd be able to find different coverage. You know, we just don't know at this point.

With respect to your other question, if we need the coverage. If we get rid of this coverage, if we -- we would still have to essentially set aside some money to cover any potential batch claims that might happen in the future.

And as you mentioned, the statute does allow only for three occurrences, but that's per year. So what we've seen with the last batch of claims is that they had claims coming from about five years' worth of practice.

So one of those doctors was doing his procedures for five years. So technically that would still leave the PCF on the hook for 15 claims.

So depending on how long the doctor employs the practice at question, we might be on the hook for three claims. It might be six claims, nine claims, you know? It depends.

DR. RITCHIE: All right. Thank you. As just a quick follow-up, do you feel like what was

presented by the actuary in the responses to the questions, do you feel like that has been accounted for and the costs of that have been accounted for in the expert's testimony?

MS. KRYLOVA: You mean the cost of reinsurance?

DR. RITCHIE: Correct.

MS. KRYLOVA: Yeah; I believe there was a provision for cost of reinsurance.

DR. RITCHIE: Yeah, there was, but with an increase of 5.5 percent I believe for next year.

MS. KRYLOVA: You know, I really can't recall off the top of my head. That's something that you might consider following up with Mr. Walling about, just to make sure how that was accounted for exactly.

DR. RITCHIE: Okay. All right. Thank you.

Next question. Again, probably to Mr. Walker, maybe Ms. Krylova. What about any residual left over when hospitals leave -- you know, after the five years -- or now four years there still are claims that are going to trickle in.

And is there any mechanism set up already for if those claims follow the hospitals out

to pay for them? Or do they stay in the PCF and independent physicians are going to be responsible for them?

MR. WALKER: And Anna might be able to answer this better, but the way I read the statute and I understand the PCF, what is being collected now is intended to pay for those claims after the hospitals leave the fund.

In other words, any occurrences this year will be paid for the surcharges that have been assessed this year. Any occurrences from next year will be paid during that year or based on the surcharges that year and so forth.

There is a provision in the MMA for what happens when there's not enough money in the fund. I suppose if at some future time if there's not -- if there are claims against hospitals that were not planned for during these years perhaps there's a way to say, "well we don't have the money. And so we're going to prorate the recoveries."

I'm not really sure, but that's the best I can give you from my understanding of how the PCF works and how the MMA works.

And if I've completely misstated it, Anna, please let me know.

MS. KRYLOVA: Sure; I'll follow up on that. I do believe you are correct, Alfred.

Dr. Ritchie, to the extent that the hospital claims may have been underestimated, which is always a possibility because the actual estimate is only the best estimate; it's not meant to be an exact amount. I mean obviously nobody has a crystal ball.

So to the extent that prior claims have been underestimated, the fund would be left with the remainder of the deficit once the hospitals leave.

And as Alfred mentioned -- or rather other than the option that Alfred mentioned, I don't believe that there is any provision currently that would allow the PCF to go after the hospitals for the additional amounts after they leave the fund.

DR. RITCHIE: So they would remain in the fund after the hospitals leave? Those deficits.

MS. KRYLOVA: Correct.

DR. RITCHIE: Those obligations I guess.

MS. KRYLOVA: Correct.

DR. RITCHIE: Okay.

MR. CLARK: Mr. Chair, this is Troy. If I could just a follow-up.

I believe corresponding to that is if

the estimate of the deficit is overstated at the departure for the hospitals -- meaning they leave and the actual payouts are less -- there's also no mechanism by which to renumerate that back to the hospitals.

MS. KRYLOVA: Correct; to the extent that the claims could also have been overestimated, it is possible that the deficit was overestimated.

And in that case there will be something left over that would need to potentially be refunded or just phased with the PCF for, you know, the benefit of the remaining members.

DR. RITCHIE: Okay. So there might actually be a possibility that be refunded to the hospitals?

MR. WALKER: I don't see a way to do that. I don't think that would happen, but we can have that fight with the hospitals in a few years down the road. After I retire.

MS. LOVE: I don't think there's any mechanism whereby anybody gets refunded their surcharges. It's not a dollar-for-dollar deal; it is a -- you know, you assess the risk. You pay for your coverage. And then everybody's stuck with the result.

MR. CLARK: I would concur. I don't

believe there's a mechanism back. And it's more a comment I think from our side as we look at how the estimate is calculated as we near that fifth year, when the hospitals depart.

One of the items I questioned in testimony had to do with the way they estimated the most-current years, which, philosophically, in the big picture over time makes absolute sense.

But when you have a cutoff time and you estimate the most-current years, the more you pay, the greater you calculate the deficit is when you're trying to pay it off. So it exacerbates the problem.

So in the final two years of this there will be a greater questioning I think by the hospitals of saying is, "we pay extra to pay down the deficit."

The two measures that they used to estimate the most two current years is all based on a percentage gross of what your additional -- or your total surcharges are.

So if you pay more to pay down a deficit, you're inherently saying the most two current years that your deficit's growing when over time that makes sense, but with a cutoff, date that would be an implication.

DR. RITCHIE: Yeah --

MR. CLARK: Not an issue that we have to fight with this year. Just have to be aware of it.

MS. KRYLOVA: No.

DR. RITCHIE: And hopefully the actuarial estimates become more accurate with more data and more time. Yeah. Okay.

Then I guess the other main one is this is a comment on -- and really for Mr. Walling, who's not here, but you alluded to it, Mr. Clark, that lumping the employed MDs together with the hospital, he stated that it really wouldn't make any difference; that it came out in the wash, came from the same pot of money, etc.

However, I don't think that's entirely true because, as the conversation just a little while ago on there's different ratings for each speciality. And so if you're lumping all the money together in aggregate then you're potentially skewing the specialty losses.

They're not accounting for the differential losses per specialty. So that is a question I think we may want to ask of our experts.

And, Ms. Krylova, you might have an opinion on that, but if we lump the employed physicians just all together as one together with the

hospitals then how do you go about assessing different costs, different experiences per specialty?

MS. KRYLOVA: I think it would be a better idea to check with Mr. Walling on that because I'm -- you know, I wasn't a participant in their working discussions on how that was developed.

But to the extent that the new statute does define employed providers as falling in the hospital bucket, for all, you know, practical purposes, a hospital-employed provider is essentially a hospital.

Yeah; that's the answer I'll give for now, but I would prefer that you checked with Mr. Walling.

DR. RITCHIE: Okay. Yeah; I think that's a question -- I don't know if anyone has a comment on that, but that's just something that occurred to me, that it's going to skew the way rate-setting is performed, particularly for different specialties.

I think everyone spoke -- or several people mentioned the cost, the increase. You know, dependent on what confidence level you choose, but, you know, 19 percent was kind of an average increase. And that's just for the PCF portion of a physician's,

you know, cost to medical malpractice.

And so that certainly is something that, in our discussions, will need to be something that -- you know, Mr. Toal certainly last year took that into account when he set his rates and made comment of it.

And so that is on the table for us, not that we would I think set an exact amount or opine on exactly how much is too much or too little.

It is just bearing in mind what that will do to the number of people that participate in the PCF and their ability to sustain the cost of the PCF and the cost of any deficit, going forward.

So I think that that is something that when we discuss -- get into our discussions or when we write our opinion -- our recommendations, it will be something to keep in mind.

Also brought up a little while ago was if we did receive another amount of money -- $30 million -- from the legislature, what happens to that money? Does it go to pay down all of the PCF deficit? Does it go to pay down the physician portion of the deficit and the batch claims that were assigned to physicians and the underpricing of surcharges to physicians for so many years?

You know, I don't know that we will opine on that or not in our recommendation. However, we may want to go on record as to how the committee feels about that.

And in my opinion that is all well and good and throwing out some number like $30 million again or even the entire deficit of approximately 103 million and start over from scratch.

However, the changes in the law, in the regulations, in the act that added the inflationary increases that are compounded I think will definitely affect the ability going forward being able to not get in the same situation in which the fund faces itself now.

And so if we're trying to pay off and set rates that continue to keep the PCF out of the deficit position then we're really going to have to take into account the cost of that unknown or changeable inflation amount.

And so yeah; I think that that is something that we need to get a handle on now going forward because it is compounded. So any other comments?

Ms. Love, I think you're muted.

MS. LOVE: Yeah; the only comment I had

was that I think that Mr. Walling's recommendation was that the 2 $30 million legislative infusions be attributed to the independent provider side of the deficit.

And I don't know if the committee wants to have a conversation about whether that's appropriate. I certainly don't have any objection to it.

DR. RITCHIE: Mr. Clark?

MR. CLARK: I would just respond and say we had objection to the first $30 million being attributed that way. It's not dictated out, but we absolutely would want to have further discussion about allocation of future funds as -- even if we're attributing it to physicians, over half of the physicians are employed by hospitals.

So attributing to physicians, we would absolutely seek for that public assistance I guess you would call it to be attributed equally across all physicians. So we would have that discussion if that happens in the future.

But there's no effort on our part nor argument or attempts to try and go change the allocation of the first 30 million. We accepted that that went to the physicians and are accepting of that.

DR. RITCHIE: Well and we're speaking like that there might be another 30 million. And I'm not aware of any realistic talk of that. Is anyone aware of anything concrete --

MS. LOVE: Yes.

DR. RITCHIE: -- that might suggest it might happen again?

MS. LOVE: Yes; I think it's very likely.

MR. CLARK: I think there have been a number of asks. Obviously we got a legislative session to get through, yeah.

MS. LOVE: And an election, but my understanding is that it's definitely on the table. It's been discussed with legislative finance as early as when they first asked for the first 30 million and warned that they were going to come back and ask for a second 30 million.

In fact I think it was legislative finance that said instead of asking for 60 million at once, parse it out over 2 different sessions.

DR. RITCHIE: Okay. I don't believe there's been any budget recommendations submitted yet though. So we haven't really seen anything -- okay?

Does anyone know if the OSI has

requested anything yet? Mr. Walker?

MR. WALKER: So I don't know of any formal requests. I think there have been some contacting of those who make those kinds of decisions, but I don't know the status of those conversations.

DR. RITCHIE: Okay. Thank you. Got it. Our recommendations will have to be based maybe yes, maybe no I guess.

MR. WALKER: Yeah.

DR. RITCHIE: Okay. Thank you. And that was where I thought we stood. So I appreciate.

Any other comments or questions to put on the record from any of the rest of the committee? Okay.

Seeing none, now, Mr. Ward, I know we spoke about not wanting to make any decisions, but I think we do have a quorum now. I believe. And so we need to decide how we're going to publish or write a preliminary recommendation -- write a recommendation and then edit and vote on that.

MR. WARD: Right. Well I would recommend that you consider the process that you used last year. Last year you picked a small group -- I think there were three members; I don't recall exactly.

And those three members were the working group that put together the draft written recommendation. And then that draft written recommendation was presented at the next board meeting.

And my advice with respect to that issue is that because of the issue of the rolling quorums, it's important that the drafting committee, you know, do its job, put together a written recommendation.

But those folks can't meet with each of the individual board members to discuss what the content of that is in a way that would suggest that this was pre-decisional.

And so last year when we did this, the draft recommendation was presented at the full board. And then when discussed at the board meeting I think there were edits that were made.

DR. RITCHIE: Mm-hmm.

MR. WARD: And then after the inclusion of those edits, where it was discussed that the Board with a proper quorum, that's when the report was finalized.

DR. RITCHIE: All right. So a subcommittee or a drafting committee will draft a

recommendation. And then the board will meet again to discuss and edit that draft. And then vote upon it.

MS. LOVE: Can I add one thing?

DR. RITCHIE: Yes, ma'am.

MS. LOVE: Last year what we did is -- all of that I think is correct except that last year what we did is we e-mailed around to all of the board the draft, with an understanding that no one would comment or discuss on e-mail, but so that everybody could have a --

DR. RITCHIE: Right.

MS. LOVE: -- it in advance of the meeting because it's too much to wordsmith, as everybody's reading it for the first time.

MR. WARD: Good point.

DR. RITCHIE: And yes; that's what I remember.

And that's okay, Mr. Ward?

MR. WARD: I'm fine with that. I think that the big point here is we just don't want to violate the rolling quorum requirements.

MR. CLARK: Mr. Chair?

DR. RITCHIE: Yes, sir?

MR. CLARK: I would ask Mr. Vargas and Ms. Love to concur because it's been more than 12

hours. So my memory may not be correct.

But as I recall when the three of us got together as the subcommittee we actually left with already having a discussion from this group of what the bullet point overall objective was.

We didn't go create a recommendation and bring it back for a review. We tried to put into words what the consensus of this group was. So I think as a body we owe that to whoever will be on that subcommittee to charge them with, "here's what we're thinking. You go put it into words."

Am I correct on that, Mr. Vargas and Ms. Love?

MR. VARGAS: I think that's right. I don't remember if we had the transcript last time, but given all the information we got last week I'd sure whoever is on the committee would like to have that before we have that discussion.

MR. WARD: I did just want to point out though that, remember, this is a continuation of the hearing. So this isn't the meeting where you're making a decision as to what the recommendation would be.

MR. VARGAS: Understood.

MR. WARD: So I just know it's more

than semantics, although it may seem like semantics, that the input that is going to the drafting committee is still subject to final review and decision at a later time.

MS. LOVE: Right.

MR. CLARK: Are you suggesting, Mr. Ward, that we have a separate meeting for the advisory board to give the direction to the subcommittee of what our consensus is?

MR. WARD: No; I'm just making sure that we're acting consistent with the Open Meetings Act so that the meeting that occurs where you adopt your -- because, remember, this is a continuation of the hearing in your capacity as the hearing officer, okay?

The next meeting that you have is where you're meeting as the board to actually issue the recommendation.

So what I'm just making sure here is that the record is very clear that the decision that you're making as the board is occurring at that meeting and that what you're providing right now is the input that the drafting committee's going to utilize to put together the draft report. Does that make sense?

MR. CLARK: Makes sense to --

DR. RITCHIE: And, Mr. Ward, then obviously all of us feel that we are a little bit hamstrung by not having the minutes of the questions and answers of the expert to really make decisions and make recommendations so --

MR. WARD: What are the options?

DR. RITCHIE: Yeah, exactly.

MR. WARD: Well I think you could continue this hearing to after, you know, when we receive the minutes.

So you would have another meeting and then do it so that's -- and I'm sure that it would help with respect to gaining some preliminary input to the drafting committee.

I know though that there was this intention of trying to act a little quicker than last year to give the superintendent more time.

So, you know, I think that you could either try to do your best without the minutes. Give the input that you give to the drafting committee and then let them do their work. Or we could try to get that report and then continue this hearing part until after you've been able to look at that.

I think the next hearing is October

4th. And I think the difficult is we don't really know exactly -- right? -- when we're getting the meeting minutes. I don't think we can say with certainty when those are going to be circulated. Is that right?

DR. RITCHIE: Is that right, Ms. Luera?

MR. WARD: I suppose you --

MS. LUERA: Sorry; I was just checking my e-mail one more time if they perhaps have come in. I will get on the phone and call them right now and get them to commit to a date and time.

So I'm going to off camera real quick to try to get to talk to somebody.

MR. WARD: Can I also just say, Debbie, just really quick I actually think it's okay, since you can look at a rough version of the transcript in my opinion for this purpose.

Because what you probably will do at some point is sort of adopt minutes from that hearing, which you've done in the past, after you've had a chance to look at them.

But for purposes of this exercise, one option would be to make clear that you're essentially looking at a rough version of the transcript so you could at least get started on this work.

DR. RITCHIE: And so we could do that strictly by e-mail is what you're saying.

MR. WARD: Yeah.

Kathy, were you going to chime in --

MS. LOVE: Well I think maybe it's worth having the foundational conversation of does anybody dispute the validity or soundness of evidence that was presented by Mr. Walling?

And if not then I guess what we're doing is we're working from the recommendations of Mr. Walling in regard to both the deficit and the future rate settings. And then the conversation that needs to happen is at what level we want to accept his recommendations.

Because if the answer to the first question is that anyone disputes that then we need to figure out, you know, how many of us or how many of you and what we do with that information.

But if that's not the case then it's a much-narrower question of, you know, within those bounds which of his recommendations are we adopting.

DR. RITCHIE: So you really think that we need to have a continuation of this hearing after we receive?

MS. LOVE: No; I think that I'd like to

know does anybody have any disputes or believe that the actuarial report or the evidence we received was unsound and should be rejected and we've got to come up with our solutions or are we working from the recommendations of Mr. Walling.

MR. DEKLEVA: I don't have a dispute, Kathy, in terms of what was presented, if it speeds the process along from my vantage point. I'm not going to be saying that his report and findings are invalid or arguing that.

MR. VARGAS: I don't dispute them either.

MR. CLARK: This is Troy. I would say in general I don't either. If there was something in the final transcript that may be a nuance, but in general I don't dispute those.

In fact my comments earlier about our job as a board, taking into consideration the effect, we're more within the parameters of that report of whether or not we went to a 75 percent confidence level, etc.

But from the report I think he's given us parameters that, yeah, the facts are there for us to base a decision upon.

DR. RITCHIE: Okay. Does anyone on the

board have an objection to the final report or dispute anything about Mr. Walling's report or not want to base that --

MR. WARD: Before that's answered can we just be clear? Dr. Ritchie, are we sure that -- so I'm not counting right now. Let's see. Did we definitely have a quorum of members at this point?

MS. LOVE: I think we have everybody except Dr. Carson.

MR. WARD: Okay.

DR. RITCHIE: I believe so. That's my understanding too I believe.

So then hearing no objections then I think that we can establish that committee, but get the minutes out as soon as possible, as a rough draft of the minutes contain the answers from the expert on which to base everyone's initial draft and edits to the draft.

MS. LOVE: And I think this year is a little easier because we don't have to make any decisions about, you know, processes or identifying the deficit or the distribution of the deficit.

This year really is just at what percentage are we going to increase the rates, if at all, right?

MR. CLARK: I would concur.

MS. LUERA: Yeah.

DR. RITCHIE: Well I mean I think that there are some comments or some things we leave open mentioned for the superintendent as far as, you know, commenting on the reinsurance -- anyway.

I believe we do have -- there's a few things. You're right. It is primarily looking at the numbers and deciding what confidence and what numbers to accept there, but there are comments to be made on some of the things that I've brought up perhaps --

MR. CLARK: Mr. Chair, you got muted. You'll need to unmute.

DR. RITCHIE: There you go. Thank you. That's fine with me.

So as I said, you know, I think there are comments, but in general it will be that deciding the confidence levels and exactly what we would recommend to the superintendent, but with comments on some of the things that are brought up and that others brought up as well.

So then we need to establish that drafting committee. Last year it was Ms. Love, Mr. Ward -- or Mr. Clark and Mr. Vargas?

That was you, yeah. I thought so.

Do we know, Mr. Ward, how many could be on that committee without a rolling quorum?

MR. WARD: Well as long as we don't have a quorum of the group I think that that size seems pretty logical to me.

DR. RITCHIE: Okay. Well yeah; three. How about four? Could we do four?

MR. WARD: Well how many total members do we have here? We just can't get to a point of having a decision here. Large enough to have a decision.

MR. CLARK: I believe the advisory board is nine members.

MR. WARD: Nine members? Yeah. So if you wanted to I think you could add one more. You don't have the majority of the board.

DR. RITCHIE: Right. We could do four or under if we have a nine-member board was my thought, correct?

MR. WARD: Correct.

DR. RITCHIE: Okay. So anyway. The people who were on it last year. Is everyone interested in serving on it again? Or are sick and tired?

MR. VARGAS: I'd be willing to serve

again.

MS. LOVE: Happy to help. I guess the answer is yes and yes.

DR. RITCHIE: Mr. Clark?

MR. CLARK: My calendar's getting a lot tighter than last year. If nobody else will I'll be willing to. It just makes things very tight. So if there's somebody else who is willing and interested I'd be gracious to allow them to step in. If not, if I'm needed I'll step in.

DR. RITCHIE: Understood. Well and not hearing a lot of volunteers, I will --

MR. DEKLEVA: I'll volunteer. I'll volunteer and take Troy's spot if it helps.

MR. CLARK: Thank you, Mike.

MR. DEKLEVA: Okay.

DR. RITCHIE: Yeah. Well and I'm trying to get representation from pretty much kind of the interested parties. And so then I'm going to go ahead and put my name on the committee as well to help out, okay?

And so that will be the people on the committee. And so the next meeting is 4 October, correct?

MR. WARD: Correct.

DR. RITCHIE: And so, Mr. Ward, we can circulate this rough draft of the committee's recommendations prior to that?

MR. WARD: Yes; again, I'm just going to keep saying this, as long as there isn't any deliberation or discussion that would give the impression that you all are making a decision about any of it.

So I would review it, make whatever comments you have for yourself, and then bring those comments and edits to the committee meeting on the 4th.

DR. RITCHIE: Okay. We'll try to stay in line. Then I will propose that we try to have a rough draft written by the end of next week so that people have the weekend of the 1st, 2nd, and then the 3rd to look over everything prior to the meeting on the 4th.

Does anyone wish to have more time than that to review the draft? And the members of the committee think we can get it done by then?

MS. LOVE: Yeah.

DR. RITCHIE: Okay. All right. Then I think that's the business of the meeting. Does anyone else have any comments or other business?

MS. LUERA: Dr. Ritchie, I just got off the phone with the court reporter. They have it in their system that the project due date is tomorrow. So it's a good thing I was on mute because I yelled at them and told them we were supposed to have it Tuesday.

They will give me a firm time that we will have it. So we'll have it tomorrow. I will know what time we'll have it tomorrow by the end of the day today.

DR. RITCHIE: Excellent. Excellent. Yes; we really should have it before the weekend so we can get started on it.

MS. LUERA: Absolutely.

DR. RITCHIE: Okay. Thank you very much. Thank you very much.

All right. Now, I don't believe we really have any housekeeping to do, but minus the time on the 4th. Is that the one we changed?

MR. WARD: I believe it's two o'clock.

DR. RITCHIE: Yeah; it's two o'clock is what I have down as well. So want to just make sure everyone's on the same page. Two o'clock on Tuesday, the 4th for our next meeting and to review the draft and then vote on the recommendations for the

superintendent. All right.

MR. CLARK: Mr. Chair, quick question then. So will the drafting committee be assembling the assumption for the board into the draft that they're going to bring back within the parameters of the report as issued?

Or did you want to have some discussion to help guide that committee on what the thoughts are within the parameters of the report of what the board's thoughts and feelings are?

And I just say that out of being on the committee last year, the three of us left, saying, "here's what we all collectively think. You go put it into words," and then I'm not having that comfort level.

And since I'm not on the committee having to -- I wouldn't want to have to try and assume what other people's positions were to bring it back into there, but I haven't heard any discussions within the parameters of the report of where people's thoughts are --

MR. VARGAS: I think what we could do is put the alternatives based on the testimony. And then the board, when we meet on the 4th, can say, "yeah; you know, we vote for that one and not that

one."

MR. CLARK: Okay.

MR. VARGAS: That might be the easiest way because I just don't feel like any of us are prepared to make those decisions today.

DR. RITCHIE: I agree and I don't think we have time for another continuance of this hearing. So we don't --

MR. CLARK: That makes sense. Yeah; I would want to see a final transcript as well. So that makes sense. I appreciate that recommendation, Ray.

DR. RITCHIE: So we'll go over the transcript and then basically write the report, but with options I guess as we see it. Is everyone comfortable with that?

MR. DEKLEVA: Sounds good to me. This is Mike Dekleva.

DR. RITCHIE: Thank you.

All right. Okay then. I think that's all the business. And anyone else have any other questions or comments on that plan?

Okay. Hearing none then we'll close this hearing finally with continuance after just not too much over an hour. So thank you very much for everyone being prompt, although I understand it's

partly because we don't have that transcript.

So, everyone, look for the transcript tomorrow. We'll get that out as soon as we possibly can. And then we'll get the committee together once we receive the transcript to decide when we start discussing it, all right?

Then well meeting is adjourned then. Thank you very much.

THE REPORTER: Off the record at 3:43 p.m.

(Whereupon, the meeting concluded at 3:43.)

CERTIFICATE OF DEPOSITION OFFICER

I, BRETT TORRENCE, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

BRETT TORRENCE
Notary Public in and for the
State of Missouri

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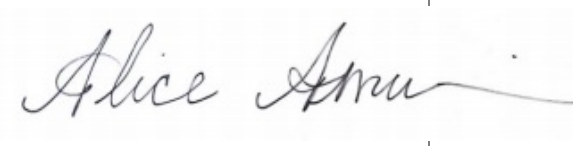

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