

GROUP INSURANCE COMMISSION MEETING

EXECUTIVE SESSION

Thursday, March 24, 2022

Meeting held remotely through online audio-video platform (ZOOM)

MINUTES OF THE MEETING

DATE: March 24, 2022

TIME: 10:15 a.m.

PLACE: The Meeting was held virtually

Commissioners Present:

VALERIE SULLIVAN (Chair, Public Member)

BOBBI KAPLAN (Vice Chair, NAGE)

MICHAEL HEFFERNAN (Secretary of ANF) Designee Cassandra Roeder

GARY ANDERSON (Commissioner of Insurance) Designee Rebecca Butler

ADAM CHAPDELAINE (Massachusetts Municipal Association)

EDWARD T. CHOATE (Public Member)

CHRISTINE HAYES CLINARD, ESQ. (Public Member)

TAMARA P. DAVIS (Public Member)

JANE EDMONDS (Retiree)

JOSEPH GENTILE (AFL-CIO, Public Safety Member)

GERZINO GUIRAND (Council 93, AFSCME, AFL-CIO)

PATRICIA JENNINGS (Public Member)

EILEEN P. MCANNENY (Public Member)

MELISSA MURPHY-RODRIGUES (Massachusetts Municipal Association)

TIMOTHY D. SULLIVAN (Massachusetts Teachers Association)

Commissioners Not Present:

ELIZABETH CHABOT (NAGE)

ANNA SINAIKO, Ph.D. (Health Economist)

Following the scheduled Public Meeting, which concluded at 10:10 a.m., and a duly executed motion and roll call vote to enter Executive Session, the Commission held an Executive Session to discuss a

contract dispute with Express Scripts (ESI). The General Counsel presented a summary of the dispute and the staff's recommendation to accept a pending settlement offer rather than proceeding to litigation.

The General Counsel presented the following summary of the dispute to the Commission:

The GIC's contract with ESI provides rebate guarantees in which GIC receives either 100% of the rebates ESI receives from pharmaceutical manufacturers, or a per brand claim guaranteed amount, whichever is larger. These guarantees increase every year of the contract (for example, it was \$154 in year 1 for a 30-day fill and \$334 in year 5). The guarantees are predicated on the GIC's participation in the National Preferred Formulary ("NPF") and meeting a minimum copayment structure. There are exclusions to the guarantees.

The GIC audits the PBM yearly. The first audit, in 2020 for the FY19 contract year, found two categories of claims that the GIC and its auditors felt ESI had inappropriately excluded from the guarantees. The GIC had extensive negotiations and discussions with ESI on this matter. Eventually, ESI capitulated on the first category. The remaining area of dispute is whether brand claims for drugs paid by the plan, but not on the NPF, are included in computing the guarantee. These are drugs that might not have rebates or have less financially advantageous terms, hence their exclusion from the GIC's formulary. Typically, the GIC covers these drugs through a member exception process. The GIC reads the contract to include these drugs in the guarantee calculation and ESI adamantly believes the contract excludes them.

ESI has offered a compromise to resolve this dispute, which must be concluded to close out the first audit and its impacts on all the pending audits as it resolves whether the non-NPF brand drug claims are included in the guarantee or not. At this time, the only alternatives to a compromise resolution are for the GIC to concede its claim or litigation.

After extensive negotiations, ESI has proposed to resolve the claims by paying 1/3 of the guarantee value for the non-NPF brand claims for the first three years of the contract and 100% of the value for the last two years. Due to agreements affecting the first 6 months of the contract allowing members an extended transition period, the first year only had 6 months of claims at issue, so the total amount at stake is relatively small. Because the guarantees increase every year, the impact for the final two years of the contract is the most significant and the settlement provides payment to the GIC for 100% of the impact for this period. For example, the guarantee impact through January of 2022 is already close to the full impact for the entire prior fiscal year. We estimate the value of this settlement to be approximately \$15-20 million with more than 2/3 of that value accruing in the final two years of the contract.

We believe this compromise settlement is in the best interest of the GIC and its members. It allows clarity for the audits, avoids protected litigation for an uncertain result, and allows both GIC and ESI to enter the next procurement cycle with all disputes resolved.

Following the General Counsel's presentation, he answered questions regarding the settlement structure. The Commission expressed satisfaction with proceeding with the settlement.

The Executive Session was adjourned at 10:40 a.m.