STATE OF ARIZONA

Joint Legislative Budget Committee

STATE SENATE

RUSSELL K. PEARCE, CHAIRMAN 2010
PAULA ABOUD
AMANDA AGUIRRE
DAVID BRASWELL
CHUCK GRAY
JACK HARPER
STEVE PIERCE
REBECCA RIOS

1716 WEST ADAMS
PHOENIX, ARIZONA 85007

PHONE (602) 926-5491

FAX (602) 926-5416

http://www.azleg.gov/jlbc.htm

HOUSE OF REPRESENTATIVES

JOHN KAVANAGH, CHAIRMAN 2009
ANDY BIGGS
OLIVIA CAJERO BEDFORD
CLOVES C. CAMPBELL, JR.
MATT HEINZ
JOHN MCCOMISH
RICK MURPHY
VIC WILLIAMS

JOINT LEGISLATIVE BUDGET COMMITTEE
Wednesday, August 11, 2010
11:30 A.M.
Senate Appropriations, Room 109

MEETING NOTICE

- Call to Order
- Approval of Minutes of April 20, 2010.
- DIRECTOR'S REPORT (if necessary).
- EXECUTIVE SESSION - Arizona Department of Administration - Consideration of Proposed Settlements under Rule 14.

1. DEPARTMENT OF HEALTH SERVICES - Review of Behavioral Health Title XIX Capitation Rate Changes.
2. ATTORNEY GENERAL - Review of Allocation of Settlement Monies.

The Chairman reserves the right to set the order of the agenda.
8/3/10
lm

People with disabilities may request accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Requests for accommodations must be made with 72 hours prior notice. If you require accommodations, please contact the JLBC Office at (602) 926-5491.

STATE OF ARIZONA

Joint Legislative Budget Committee

STATE
SENATE

RUSSELL K. PEARCE
CHAIRMAN 2010
PAULA ABOUD
AMANDA AGUIRRE
CHUCK GRAY
JACK HARPER
STEVE PIERCE
REBECCA RIOS

1716 WEST ADAMS
PHOENIX, ARIZONA 85007

PHONE (602) 926-5491

FAX (602) 926-5416

http://www.azleg.gov/jlbc.htm

HOUSE OF
REPRESENTATIVES

JOHN KAVANAGH
CHAIRMAN 2009
ANDY BIGGS
OLIVIA CAJERO BEDFORD
CLOVES C. CAMPBELL, JR.
MATT HEINZ
JOHN MCCOMISH
RICK MURPHY
VIC WILLIAMS

MINUTES OF THE MEETING

JOINT LEGISLATIVE BUDGET COMMITTEE

April 20, 2010

The Chairman called the meeting to order at 8:12 a.m., Tuesday, April 20, 2010, in Senate Appropriations Room 109. The following were present:

Members:	Senator Pearce, Chairman	Representative Kavanagh, Vice-Chairman
	Senator Aboud	Representative Biggs
	Senator Gray	Representative Cajero Bedford
	Senator Harper	Representative Campbell
	Senator Pierce	Representative Heinz
	Senator Rios	Representative McComish
		Representative Murphy
		Representative Williams

Absent:	Senator Aguirre

APPROVAL OF MINUTES

Hearing no objections from the members of the Committee to the minutes of February 2, 2010, Chairman Russell Pearce stated that the minutes would stand approved.

ARIZONA STATE PARKS BOARD, ARIZONA CRIMINAL JUSTICE COMMISSION, AND DEPARTMENT OF HOUSING - Review of Requested Exchange of Fund Transfers.

Mr. Stefan Shepherd, JLBC Staff, stated that the FY 2011 General Appropriation Act (Laws 2010, 7th Special Session, Chapter 1, Section 114) and Laws 2009, 5th Special Session, Chapter 1, Section 3 requires that the Joint Legislative Budget Committee review agency requests to transfer monies between their own funds in order to comply with transfers required by these acts. The requested exchange of transfers consist of:

Arizona State Parks Board - A cash transfer of $1,915,800 from the Heritage Fund to the State Lake Improvement Fund (SLIF), and a cash transfer of $2,302,100 from the Heritage Fund to the State Parks Enhancement Fund (SPEF).

(Continued)

Arizona Criminal Justice Commission

Drug and Gang Enforcement Account
A cash transfer of $187,300 from the Driving Under the Influence Abatement Fund and $344,000 from the Drug and Gang Prevention Resource Center Fund to the Drug and Gang Enforcement Account.

Victims Compensation and Assistance Fund
A cash transfer of $378,000 from the Driving Under the Influence Abatement Fund to the Victims Compensation and Assistance Fund.

State Aid to County Attorneys Fund
A cash transfer $40,700 from the Driving Under the Influence Abatement Fund to the State Aid to County Attorneys Fund.

Arizona Department of Housing - A cash transfer of $700,000 from the Housing Trust Fund to the Housing Program Fund.

The JLBC Staff presented options to the Committee.

Representative Kavanagh moved that the Committee give a favorable review to the Arizona State Parks Board's, Arizona Criminal Justice Commission's, and the Arizona Department of Housing's proposed exchange of fund transfers. The motion carried.

DEPARTMENT OF HEALTH SERVICES - Review of Children's Rehabilitative Services and Behavioral Health Title XIX Capitation Rate Changes.

Mr. Art Smith, JLBC Staff, stated that this item is a review of the Department of Health Services' Children's Rehabilitative Service (CRS) and Behavioral Health Services (BHS) Title XIX Capitation Rate Changes. DHS states that the current budget, including the 7th Special Session supplemental, provides sufficient funding for the proposed capitation rate adjustments. The JLBC Staff presented options to the Committee.

Representative Kavanagh moved that the Committee give a favorable review to the Department of Health Services' CRS and BHS Title XIX Capitation Rate Changes. The motion carried.

GOVERNMENT INFORMATION TECHNOLOGY AGENCY - Quarterly Review of the Arizona Public Safety Communication Advisory Commission.

Mr. Ted Nelson, JLBC Staff, stated this item is a review of the Government Information Technology Agency's Public Safety Communication Advisory Commission (PSCC). PSCC is responsible for developing a statewide, standard-based interoperability system that allows public safety personnel from one agency to communicate, via mobile radio, with personnel from other agencies. The JLBC Staff recommended a favorable review with the provision listed below.

Representative Kavanagh moved that the Committee give a favorable review to GITA's FY 2010 second quarter report of expenditures and progress for the statewide interoperability design project with the provision that the next project review would occur after the fourth quarter, at which time GITA would provide its plan on the use of anti-racketeering monies. The motion carried.

(Continued)

EXECUTIVE SESSION

Representative Kavanagh moved that the Committee go into Executive Session. The motion carried.

At 8:19 a.m. the Joint Legislative Budget Committee went into Executive Session.

Representative Kavanagh moved that the Committee reconvene into open session. The motion carried.

At 9:11 a.m. the Committee reconvened into open session.

A. Arizona Department of Administration - Risk Management Services - Consideration of Proposed Settlements under Rule 14.

Representative Kavanagh moved that the Committee approve the recommended settlement proposal by the Attorney General's Office in the case of Tilousi, et al. v. Arizona Board of Regents, et al. The motion carried.

Without objection, the meeting adjourned at 9:12 a.m.

Respectfully submitted:

Sandy Schumacher, Secretary

Richard Stavneak, Director

Senator Russell Pearce, Chairman

NOTE: A full audio recording of this meeting is available at the JLBC Staff Office, 1716 W. Adams. A full video recording of this meeting is available at http://www.azleg.gov/jlbc/meeting.htm.

STATE OF ARIZONA

Joint Legislative Budget Committee

STATE
SENATE

RUSSELL K. PEARCE
CHAIRMAN 2010
PAULA ABOUD
AMANDA AGUIRRE
DAVID BRASWELL
CHUCK GRAY
JACK HARPER
STEVE PIERCE
REBECCA RIOS

1716 WEST ADAMS
PHOENIX, ARIZONA 85007

PHONE (602) 926-5491

FAX (602) 926-5416

http://www.azleg.gov/jlbc.htm

HOUSE OF
REPRESENTATIVES

JOHN KAVANAGH
CHAIRMAN 2009
ANDY BIGGS
OLIVIA CAJERO BEDFORD
CLOVES C. CAMPBELL, JR.
MATT HEINZ
JOHN MCCOMISH
RICK MURPHY
VIC WILLIAMS

DATE: August 4, 2010

TO: Senator Russell Pearce, Chairman
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Art Smith, Senior Fiscal Analyst

SUBJECT: Department of Health Services - Review of Behavioral Health Title XIX Capitation Rate Changes

Request

Pursuant to a General Appropriation Act footnote, the Department of Health Services (DHS) must present its plan to the Committee for review prior to implementing any change in capitation rates for the Title XIX Behavioral Health program. Capitation rates are the flat monthly payments made to managed-care health plans for each Title XIX recipient.

At the budgeted caseload level, the proposed rates would cause a $15 million shortfall in DHS' General Fund budget. The Title XIX caseload growth, however, has begun to slow. At its current level, caseload savings would offset approximately 50% of the capitation rate shortfall. If this slowing trend continues throughout the year, the entire shortfall could be offset by caseload savings.

Recommendation

The Committee has at least the following options:

1. A favorable review.

2. An unfavorable review.

Analysis

The proposed rates are based upon an actuarial study. A.R.S. § 36-2901.06 limits capitation rate adjustments to utilization and inflation unless those changes are approved by the Legislature or are specifically required by federal law or court mandate.

Table 1 shows the FY 2011 budgeted and proposed capitation rates for each program. A capitation rate specifies the cost of care per member per month in a Title XIX program.

(Continued)

Table 1

Monthly Capitation Rate

Category	**FY 2011 Budgeted**	**FY 2011 Proposed**
Children	$67.66	$59.36
SMI	$57.04	$74.17
General Mental Health	$40.28	$40.57

There are 3 main factors in the capitation adjustments:

1. Utilization Rate - The utilization rate is the actual number of individuals receiving services as a percentage of the total eligible population for that program. While the total caseload is slowing, the number of individuals actually receiving behavioral health services has not slowed as much as predicted. As a result, the capitation rate reflects this revised utilization rate. This revision would result in a General Fund cost of $7.8 million.

2. Shift of Interpreter Services - The proposed FY 2011 capitation rates also include an adjustment for interpretive services administration for all Title XIX Behavioral Health Services. Interpretive services are for foreign language and sign language translation. The department states that these services were previously funded under Non-Title XIX Behavioral Health Services; however, these costs will be covered using Title XIX monies. This shift would add $1.4 million to the Title XIX budget, but would be offset by savings in the non-Title XIX budget.

3. Litigation Requirements - The proposed rates include 2 adjustments made during FY 2010 to address stipulations in the *JK v. Gerard* litigation, which alleged that the state failed to provide medically necessary behavioral health services accessible to children. One adjustment increased the ratio of case managers for high-risk children to 1:15. The other adjustment increased support and rehabilitative services in a child's home or another community setting for high-risk children. The litigation requirements would add $4.3 million to the cost of the budget prior to any caseload savings.

The proposed capitation rates also include an administrative cost shift from AHCCCS to DHS for the coverage of inpatient care. Both agencies have stated that this shift will be neutral to the General Fund.

Current FY 2011 caseloads are (2.7)% below the budgeted amount. If caseloads drop to (4.7)% below the budgeted projection, the proposed rates will not have a General Fund impact.

RS/AS:sls

Arizona Department of Health Services

Office of the Director

150 N. 18th Avenue, Suite 500
Phoenix, Arizona 85007-3247
(602) 542-1025
(602) 542-1062 FAX
Internet: www.azdhs.gov

JANICE K. BREWER, GOVERNOR
WILL HUMBLE, DIRECTOR

June 30, 2010

The Honorable Russell K. Pearce
Chairman
Joint Legislative Budget Committee
1700 West Washington Street, Suite H
Phoenix, Arizona 85007

Dear Chairman Pearce:

Pursuant to a footnote in the General Appropriation Act, the Arizona Department of Health Services (ADHS) respectfully requests to be placed on the Joint Legislative Budget Committee's (JLBC) agenda for its next scheduled meeting to review the proposed changes to the Behavioral Health Services Title XIX capitation rates for fiscal year 2011.

The fiscal year 2011 rates are 0.9% lower than weighted rates as displayed in the attachment, 2.9% less than the 1/1/2010 budgeted rates reviewed by the JLBC, and 6.7% less than the 7/1/2009 rates. ADHS is very aware of the current fiscal constraints in the state and has not included any service utilization increases for the upcoming fiscal year.

All changes that took place in FY 11, as well as FY 10 changes that affected base data (High Needs Children and Transition Age Youth adjustments related to expectations in the Jason K. settlement agreement), are explained in more detail in the attachments. Significant drivers in the FY 2011 rates are as follows:

First 72 Hours Coverage: Payment responsibility for some inpatient behavioral health stays will be moved from AHCCCS to ADHS. This results in a $779,995 total funds increase to the behavioral health rates but is budget neutral as an equivalent amount will be reduced from the AHCCCS rates.

Acuity Adjustment: Over the last year, membership has grown significantly faster than the utilization of services; as a result rates have been reduced by $70,991,740 total funds to more accurately reflect expected utilization. This change is reflected in the FY 2011 Appropriations Report Title XIX Caseload and Inflation Overview.

Enclosed please find the Title XIX behavioral health services capitation rate reports for Children, Seriously Mentally Ill, and General Mental Health/Substance Abuse populations for the year July 1, 2010 to June 30, 2011 (FY11).

In accordance with the Centers for Medicare & Medicaid Services and the Balanced Budget Act of 1997, the rates were developed using actuarially sound methodologies by Mercer Government Human Services Consulting. The Arizona Health Care Cost Containment System (AHCCCS) has reviewed and approved the proposed capitation rates.

If you have any questions please feel free to call David Reese, Chief Financial Officer for Behavioral Health Services, at (602) 364-4699.

Sincerely,

Will Humble
Director

Enclosure

c: Representative John Kavanagh, House Appropriations Chairman
Richard Stavneak, Director, Joint Legislative Budget Committee
Arthur Smith, Fiscal Analyst, Joint Legislative Budget Committee
Eileen Klein, Chief of Staff, Governor's Office
John Arnold, Budget Director, Office of Strategic Planning and Budgeting
Chris Hall, Budget Analyst, Governor's Office of Strategic Planning and Budgeting
Beth Kohler Lazare, Policy Advisor for Health, Governor's Office
Laura Nelson, MD, Deputy Director, ADHS/DBHS
Janet Mullen, Deputy Director, ADHS/DBHS
Jim Humble, Assistant Director/CFO, ADHS
Kathy Rodham, Financial Manager, AHCCCS, Division of Health Care Management

Note: This section uses SFY11 Projected Member Months applied to both 1/1/2010 and SFY11 Rates.

	Statewide Rates 1/1/2010	Statewide Rates SFY11 Final Estimate	SFY11 Projected MMs	Total Projected Expenditures SFY10	Total Projected Expenditures SFY11 Final Estimate	Percent Change Final Estimate
TXIX						
Children	$ 61.69	$ 59.36	7,338,117	$ 452,687,515	$ 435,568,914	-3.8%
SMI	$ 73.51	$ 74.17	7,939,459	$ 583,634,548	$ 588,861,675	0.9%
GMH/SA	$ 40.59	$ 40.57	7,939,459	$ 322,296,554	$ 322,096,385	-0.1%
Total				$ 1,358,618,616	$ 1,346,526,974	-0.9%

	Statewide Rates 1/1/2010	Statewide Rates SFY11 Final Estimate	SFY11 Projected MMs	Total Projected Expenditures SFY10	Total Projected Expenditures SFY11 Final Estimate	Percent Change Final Estimate
TXIX Children						
Non-CMDP Children	$ 43.66	$ 43.73	7,223,692	$ 315,396,660	$ 315,903,886	0.2%
CMDP Children	$ 1,199.83	$ 1,045.79	114,425	$ 137,290,855	$ 119,665,028	-12.8%
Total	$ 61.69	$ 59.36	7,338,117	$ 452,687,515	$ 435,568,914	-3.8%

Note: This section uses SFY10 Actual/Projected Member Months applied to 1/1/2010 Rates, and SFY11 Projected Member Months applied to SFY11 Rates.

	Statewide Rates 1/1/2010	Statewide Rates SFY11 Final Estimate	SFY10 Actual/ Projected MMs	Total Projected Expenditures SFY10	Total Projected Expenditures SFY11 Final Estimate	Percent Change Final Estimate
TXIX						
Children	$ 62.40	$ 59.36	6,990,042	$ 436,189,373	$ 435,568,914	-0.1%
SMI	$ 73.51	$ 74.17	7,040,578	$ 517,557,249	$ 588,861,675	13.8%
GMH/SA	$ 40.59	$ 40.57	7,040,578	$ 285,807,134	$ 322,096,385	12.7%
Total				$ 1,239,553,756	$ 1,346,526,974	8.6%

SFY11 Projected MMs
7,338,117
7,939,459
7,939,459

	Statewide Rates 1/1/2010	Statewide Rates SFY11 Final Estimate	SFY10 Actual/ Projected MMs	Total Projected Expenditures SFY10	Total Projected Expenditures SFY11 Final Estimate	Percent Change Final Estimate
TXIX Children						
Non-CMDP Children	$ 43.66	$ 43.73	6,876,742	$ 300,248,329	$ 315,903,886	5.2%
CMDP Children	$ 1,199.83	$ 1,045.79	113,300	$ 135,941,043	$ 119,665,028	-12.0%
Total	$ 62.40	$ 59.36	6,990,042	$ 436,189,373	$ 435,568,914	-0.1%

SFY11 Projected MMs
7,223,692
114,425
7,338,117

Mike Nordstrom

MERCER

MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

3131 East Camelback Road, Suite 300
Phoenix, AZ 85016
602 522 6510 Fax 602 957 9573
mike.nordstrom@mercer.com
www.mercer.com

June 3, 2010

Mr. David Reese
Chief Financial Officer
Arizona Department of Health Services
Division of Behavioral Health Services
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007

Final

Subject: Behavioral Health Services State Fiscal Year 2011 Capitation Rates for the Title XIX Program

Dear Mr. Reese:

I. Introduction/Background

The State of Arizona Department of Health Services (ADHS), Division of Behavioral Health Services (BHS) contracted with Mercer Government Human Services Consulting (Mercer), part of Mercer Health & Benefits LLC, to develop actuarially sound capitation rates for each of its Regional Behavioral Health Authorities (RBHAs) for State Fiscal Year 2011 (SFY11). Rates were developed for the Title XIX program.

There are four RBHAs for which actuarially sound capitation rates were developed, covering six geographic service areas. They include:

RBHA	Areas Served
Community Partnership of Southern Arizona (CPSA 5)	Pima County
Cenpatico Behavioral Health of Arizona (Cenpatico 2 and Cenpatico 4)	Yuma, LaPaz, Pinal and Gila Counties
Northern Arizona Regional Behavioral Health Authority (NARBHA)	Mohave, Coconino, Apache, Navajo and Yavapai Counties
Magellan Health Services (MHS)	Maricopa County

RBHA	Areas Served
GSA 3 (TBD)	Graham, Greenlee, Santa Cruz, and Cochise, Counties

II. Overview of Rate-Setting Methodology

Mercer assisted BHS with the development of a risk-based capitation rate methodology for RBHAs that complies with the Centers for Medicare & Medicaid Services (CMS) requirements and the regulations under the Balanced Budget Act of 1997 (BBA). As it relates to the rate-setting methodology checklist and Medicaid managed care regulations (42 CFR 438.6) effective August 13, 2002, CMS requires that capitation rates be "actuarially sound." CMS defines actuarially sound rates as meeting the following criteria.

- Have been developed in accordance with generally accepted actuarial principles and practices
- Are appropriate for the populations to be covered and the services to be furnished under the contract
- Have been certified by actuaries who meet qualification standards established by the American Academy of Actuaries and the Actuarial Standards Board

Actuarially sound capitation rates were developed for the contract period July 1, 2010, through June 30, 2011, covering SFY11. Mercer has utilized actuarially sound principles and practices in the development of these capitation rates.

The goal of capitation rate development is to take experience that is available during the base period and convert that experience, using actuarial principles, into appropriate baseline data for the contract period. Once the baseline data is determined, adjustments including trend, any unusual service utilization changes and provisions for administration and underwriting profit/risk/contingency are applied in order to determine actuarially sound capitation rates. The capitation rate development process was divided into the following steps.

1. Calculate base data
   - Collect, analyze, and adjust SFY09 RBHA financial statements as well as SFY09 RBHA-submitted encounter data
   - Utilize actual member months from SFY09 and the adjusted SFY09 total claim costs to calculate adjusted SFY09 per-member-per-month (PMPM) values

- Apply budget neutral relational modeling factors (see Section IV)

2. Calculate SFY11 actuarially sound rates
   - Apply trend factors to bring Base SFY09 claim costs forward to SFY11
   - Adjust for any unusual service utilization changes occurring between the base period and prior to the contract period (such as High Needs Children, Transition Age Youth), as well as those during the contract period (First 72 Hours Inpatient Coverage)
   - Apply acuity adjustment (if necessary) to account for changes in Behavioral Health penetration rates
   - Certify actuarial equivalence of the populations
   - Add provisions for administration and underwriting profit/risk/contingency

The end result of this capitation rate development process, completed jointly by BHS and Mercer, is actuarially sound capitation rates for SFY11.

Actuarially sound capitation rates were developed for each of the following population and RBHA combinations, shown in the table below.

Population	GSA 3	CPSA 5	Cenpatico 2	NARBHA	Cenpatico 4	MHS	Statewide
Children — Non-CMDP	$36.49	$45.81	$42.49	$35.25	$67.02	$30.44	$35.63
Children — CMDP	$1,600.54	$1,219.29	$1,084.11	$1,479.11	$811.53	$810.03	$991.82
SMI	$42.21	$67.34	$32.84	$40.53	$47.74	$89.28	$69.27
GMH/SA	$27.53	$49.96	$49.62	$28.50	$72.29	$36.13	$39.05

The rate development schedules are shown in Attachment A.

III. Base Data

The base data consisted of adjusted financial statements from all current RBHAs for the July 1, 2008, through June 30, 2009, time period. The financial statement expenses were reduced by the following factors for each RBHA and population. 0.5 percent of the reduction is for assumed RBHA increased efficiency and effectiveness in the management of service utilization. 5.0 percent of the reduction is for a provider fee schedule (rate) change implemented by BHS effective July 1, 2009 on their Fee For Service (FFS) claims for all providers and services with the exception of pharmacy services.

In addition, effective July 1, 2010, there will be slight adjustments to the zip codes included in each of the geographic service areas. This change will be made in order to achieve consistency with the geographic service areas in the AHCCCS program. The change resulted in movement of dollars and members between RBHAs in the base data for those members that will now be covered by a different RBHA. The overall net impact on the program is budget neutral.

The following table shows the base data adjustment for the zip code changes by RBHA and population:

Population	GSA 3	CPSA 5	Cenpatico 2	NARBHA	Cenpatico 4	MHS
Children — Non-CMDP	$0.35	$0.08	($0.08)	($0.32)	($13.03)	$0.92
Children — CMDP	($84.54)	$6.96	($28.82)	($62.44)	($104.30)	$19.48
SMI	$0.34	($0.22)	$0.09	($0.52)	($9.63)	$1.10
GMH/SA	$0.07	$0.12	$0.08	($0.02)	($11.75)	$1.01

An adjustment to the base data was made which incorporated the relative level of completeness of the encounter data submitted by the RBHAs. Two GSAs were found to have relatively low encounter data dollar amounts submitted. As a result, a 0.98 factor was applied to both of these GSA's adjusted base data. This adjustment was uniform across all four populations. No encounter data adjustments were made to the remaining four GSAs.

The following table shows the remaining base data adjustments by RBHA and population:

Population	GSA 3	CPSA 5	Cenpatico 2	NARBHA	Cenpatico 4	MHS
Children — Non-CMDP	($1.59)	($2.69)	($2.06)	($2.19)	($3.66)	($1.47)
Children — CMDP	($84.45)	($85.67)	($54.47)	($97.90)	($36.24)	($41.48)
SMI	($1.97)	($4.15)	($1.54)	($2.55)	($2.68)	($5.32)
GMH/SA	($1.19)	($3.15)	($2.32)	($1.71)	($3.51)	($1.79)

The base data adjustments resulted in a net total dollar impact of $(52,155,413) for the entire TXIX population.

BHS has periodically performed reviews of the RBHA-submitted data and has determined that the data does not include any non-covered services.

IV. Budget Neutral Relational Modeling

While in aggregate the population and adjusted financial data was fully credible in the base period, there were distortions between CMDP and non-CMDP children which required additional smoothing. Mercer applied budget neutral relational modeling to account for these variances. No dollars were gained or lost through this process.

V. Trend

Trend is an estimate of the change in the cost of providing a specific set of benefits over time, resulting from both unit cost (price) and utilization changes. Trend factors are used to estimate the cost of providing services in some future year (contract year) based on the cost incurred in a prior (base) year.

In order to determine actuarially sound capitation rates, Mercer projected the base data forward to reflect utilization and unit cost trend by population. Mercer calculated trends from the historical financial and encounter data. The historical data that was used as a basis for trend development did not appropriately reflect the costs related to the separate service utilization changes described below. Mercer also utilized its professional experience in working with numerous state Medicaid behavioral health and substance abuse programs. Although the trends were developed using several years of historical data, the trend factors were applied only to the SFY09 base data, bringing it forward 24 months to SFY11. The following trend estimates were used for the capitation rates.

Population	GSA 3	CPSA 5	Cenpatico 2	NARBHA	Cenpatico 4	MHS	Statewide
Children — Non-CMDP	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
Children — CMDP	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%
SMI	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%	3.9%

Population	GSA 3	CPSA 5	Cenpatico 2	NARBHA	Cenpatico 4	MHS	Statewide
GMH/SA	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%

VI. Service Utilization Changes

BHS and Mercer reviewed changes for SFY11 that would unusually affect service utilization. It was determined that due to expected changes in utilization of specific existing Covered Services, adjustments to the base data would need to be made to account for these changes. In addition, Mercer adjusted the SFY09 base data for any service utilization changes that occurred for SFY10.

SFY 11

The following adjustment will take place in the contract period of SFY11.

First 72 Hours Coverage

Effective October 1, 2010, the first 72 hours of inpatient coverage will become the financial responsibility of the contracted RBHAs. Historically, Arizona Medicaid (AHCCCS) acute care health plans have been financially responsible for the first 72 hours of inpatient coverage. This adjustment represents a shift of dollars in from the AHCCCS program contractors to the RBHAs. No material SFY09 Child dollars (Non-CMDP or CMDP) were found within the data, so no adjustment was made for those populations.

The PMPM increases applied to the SMI and GMH/SA populations for this utilization adjustment are as follows.

Population	GSA 3	CPSA 5	Cenpatico 2	NARBHA	Cenpatico 4	MHS	Statewide
SMI	$0.00	$0.05	$0.00	$0.00	$0.01	$0.04	$0.03
GMH/SA	$0.01	$0.14	$0.02	$0.01	$0.04	$0.08	$0.07

The statewide impact to the program for this adjustment is an increase of approximately $779,995. No further contract period SFY11 adjustments were added.

SFY 10

Estimates were updated for the following two adjustments which took place in the contract period of SFY10.

High Needs Children

The High Needs Children service expansion adds additional case managers throughout the State to continue progress towards the goal of one case manager for every 15 high needs children. Of these case managers, the vast majority is behavioral health technicians and the remainder is behavioral health professionals. Adequate case management is required to coordinate the variety of necessary covered behavioral health services, especially for children with complex needs.

The PMPM increases applied to the Non-CMDP and CMDP children's populations for this utilization adjustment are as follows.

Population	GSA 3	CPSA 5	Cenpatico 2	NARBHA	Cenpatico 4	MHS	Statewide
Non-CMDP	$1.42	$1.44	$1.42	$1.14	$1.30	$0.94	$1.10
CMDP	$37.67	$38.13	$37.67	$30.18	$34.43	$24.89	$29.79

The statewide impact to the program for the High Needs Children adjustment is an increase of approximately $11,291,738. The PMPMs and dollars are down significantly from those incorporated within the SFY10 capitation rates.

Transition Age Youth

The Jason K. Settlement Agreement stipulates that class members shall have services though age 20. In Arizona, at the age of 18, young adults enrolled in the public behavioral health system are transferred from the children's system to the adult system. While enrolled in the children's behavioral health system, they have the benefit of a case manager to assist in service planning and coordination of services, and are able to utilize an array of covered services to support them and their family in learning to cope with their behavioral health issues. This funding allows for these services to be more fully utilized by the individual in the adult system, by providing case managers and generalist support services similar to those received in the Children's system.

The PMPM increases applied to the SMI and GMH/SA populations for this utilization adjustment are as follows.

Population	GSA 3	CPSA 5	Cenpatico 2	NARBHA	Cenpatico 4	MHS	Statewide
SMI	\$0.04	\$0.05	\$0.06	\$0.03	\$0.06	\$0.04	\$0.04
GMH/SA	\$0.77	\$1.04	\$1.20	\$0.57	\$1.24	\$0.68	\$0.78

The statewide impact to the program for the Transition Age Youth adjustment is an increase of approximately \$6,459,418. The PMPMs and dollars are a slight increase (trend) above those incorporated within the SFY10 capitation rates.

VII. Behavioral Health Penetration – Acuity Adjustment

A decrease in penetration in most populations of the behavioral health program has been observed and is projected in these populations. Smaller proportions of those eligible are accessing the behavioral health system. These decreases have contributed to the projected decrease in utilization for these populations and are reflected in overall claim costs. This change, as well as any projected increase in penetration, was applied as an acuity adjustment to the SFY11 PMPM claim costs and represents a difference due to decreased or increased penetration (those enrolled, compared to those eligible), and does not adjust for any normal unit cost or utilization trends, which are handled above.

The acuity factors that were applied are as follows.

Population	GSA 3	CPSA 5	Cenpatico 2	NARBHA	Cenpatico 4	MHS
Children – Non-CMDP	0.956	1.012	0.929	0.993	0.969	0.993
Children – CMDP	1.059	0.994	0.960	1.046	1.049	1.010
SMI	0.925	0.975	0.884	0.933	0.905	0.886
GMH/SA	0.915	0.960	0.942	0.971	0.979	0.930

The statewide impact to the program for the acuity adjustment is a decrease of approximately \$70,991,740.

VIII. Interpretive Services Administration

The actuarially sound capitation rates developed include provisions for RBHA interpretive services administration. Interpretive services are covered by TXIX and are provided by the RBHAs to TXIX members. The interpretive services administrative factors were determined based on each RBHAs SFY09 analyzed encounter dollars for interpretive services.

Population	GSA 3	CPSA 5	Cenpatico 2	NARBHA	Cenpatico 4	MHS
All TXIX	0.23%	0.52%	0.17%	0.02%	0.29%	0.94%

The statewide impact to the program for interpretive services is an increase of approximately $6,006,723.

IX. Administration and Underwriting Profit/Risk/Contingency

The actuarially sound capitation rates developed include provisions for RBHA administration. Mercer used its professional experience in working with numerous state Medicaid behavioral health and substance abuse programs in determining appropriate loads for administration and underwriting profit/risk/contingency. Mercer also reviewed current RBHA financial reports. The component for administration and underwriting profit/risk/contingency is calculated as a percentage of the final capitation rate. A 9 percent load was added across all populations, which is the same as was applied to the SFY10 rates.

X. Risk Corridors and Performance Incentive

BHS has in place a risk corridor arrangement with the RBHAs that provides motivation for the RBHAs to appropriately manage expenses, yet provides financial protection against unmanageable losses. The risk corridor provides impetus for the RBHAs to operate efficiently and generate net income, but also provides for the return of any excessive profit to the State.

The proposed SFY11 BHS risk corridor approach provides for gain/loss risk sharing symmetry around the service revenue portion of the capitation rates. This risk corridor model is designed to be cost neutral, with no net aggregate assumed impact across all payments. The RBHAs' contracts also provide for a potential one percent performance incentive. In Mercer's professional opinion, the risk corridor and performance incentive methodologies utilized by BHS are actuarially sound.

STATE OF ARIZONA

Joint Legislative Budget Committee

STATE SENATE

RUSSELL K. PEARCE
CHAIRMAN 2010
PAULA ABOUD
AMANDA AGUIRRE
DAVID BRASWELL
CHUCK GRAY
JACK HARPER
STEVE PIERCE
REBECCA RIOS

1716 WEST ADAMS
PHOENIX, ARIZONA 85007

PHONE (602) 926-5491

FAX (602) 926-5416

http://www.azleg.gov/jlbc.htm

HOUSE OF REPRESENTATIVES

JOHN KAVANAGH
CHAIRMAN 2009
ANDY BIGGS
OLIVIA CAJERO BEDFORD
CLOVES C. CAMPBELL, JR.
MATT HEINZ
JOHN MCCOMISH
RICK MURPHY
VIC WILLIAMS

DATE: August 4, 2010

TO: Representative Russell Pearce, Chairman
Members, Joint Legislative Budget Committee

THRU: Richard Stavneak, Director

FROM: Marge Zylla, Fiscal Analyst

SUBJECT: Attorney General - Review of Allocation of Settlement Monies

Request

The FY 2010 General Appropriation Act (Laws 2009, Chapter 11) contains a footnote that requires Joint Legislative Budget Committee (JLBC) review of the expenditure plan for settlement monies over $100,000 received by the Office of the Attorney General (AG) or any other person on behalf of the State of Arizona, prior to expenditure of the monies. Settlements that are deposited in the General Fund pursuant to statute do not require JLBC review.

This request is for review of the expenditure plan for a total of $350,000 from 2 settlements: 1) a $250,000 settlement resulting from mediation as part of ongoing Average Wholesale Price (AWP) litigation with pharmaceutical companies, of which $227,500 will be deposited into the Consumer Protection-Consumer Fraud Revolving Fund and $22,500 will go toward outside counsel compensation; and 2) a $100,000 allocation to the Consumer Protection-Consumer Fraud Fund from a consent judgment with Avondale Automotive.

Recommendation

The JLBC Staff recommends that the Committee give a favorable review of the allocation plans from the $250,000 AWP settlement agreement with Dey, Inc. and the $100,000 consent judgment with Avondale Automotive. The allocation plans are consistent with A.R.S. § 44-1531.01, which relates to the distribution of monies recovered as a result of enforcing consumer protection or consumer fraud statutes.

Analysis

<u>Average Wholesale Price (AWP) Litigation – Dey, Inc.</u>

The AWP of prescription drugs was a widely used benchmark for pricing prescription drugs, determining reimbursement levels for healthcare providers under Medicare and Medicaid programs, and establishing

(Continued)

payment amounts due from insurers and consumers under Medicare and private insurance. In December 2005, the AG filed suit against several pharmaceutical manufacturers alleging that the companies reported inaccurate prices to trade publications, which led to inflated reimbursement rates.

In its February 2010 and September 2009 meetings, the Committee favorably reviewed allocations resulting from AWP litigation. Of the total $1,830,000 in settlements from both past meetings, $1,655,400 is to be deposited into the Consumer Fraud Revolving Fund.

As a result of court-ordered mediation, the State of Arizona and Dey, Inc. have reached an agreement that requires the defendants to pay $250,000 to Arizona. Of the total, $22,500 will go toward outside counsel attorney fees, as the case is being addressed in Massachusetts. The remaining $227,500 will be deposited into the Consumer Protection-Consumer Fraud Revolving Fund to support consumer fraud investigations, consumer education, and enforcement of the Consumer Fraud Act. The settlement does not acknowledge any wrongdoing on the part of the pharmaceutical companies.

The lawsuit involving the remaining pharmaceutical companies is still ongoing, as are other AWP cases from different states and a nationwide class action suit that includes Arizona consumers. When the settlements receive final court approval, Arizona consumers will have the opportunity to submit claims for reimbursement.

Avondale Automotive

The Attorney General entered into a settlement with Avondale Automotive, an auto dealership, in April 2010. The settlement resolves a lawsuit alleging misrepresentations in auto sales and auto sales advertisements. The lawsuit included allegations that Avondale Automotive did not: 1) disclose that a vehicle sold as new had been previously owned; 2) did not sell vehicles at their advertised prices; and 3) used misleading language for comparison pricing and the urgency of auto sales.

The settlement does not acknowledge any wrongdoing on the part of Avondale Automotive. It requires Avondale Automotive Group to accurately advertise their promotional discounts, sell vehicles at the advertised price, and disclose if a vehicle has been previously owned. The settlement also requires Avondale Automotive to pay $100,000 to the AG to be deposited into the Consumer Protection-Consumer Fraud Revolving Fund for attorneys' fees, investigation costs, and to support consumer fraud investigations, consumer education, and enforcement of the Consumer Fraud Act. If Avondale Automotive fails to comply with the terms of the judgment, the settlement amount could increase up to $150,000, with any additional monies also to be deposited into the Consumer Protection-Consumer Fraud Revolving Fund.

RS/MZ:sls

Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

Dena Rosen Epstein
Consumer Protection &
Advocacy Section
Direct: (602) 542-7717
Dena.Epstein@azag.gov

May 14, 2010

The Honorable Robert L. Burns
President of the Senate
1700 West Washington Street
Phoenix, AZ 85007

The Honorable Kirk Adams
Speaker of the House
1700 West Washington Street
Phoenix, AZ 85007

The Honorable John Kavanagh
Chairman, Joint Legislative Budget Committee
1700 West Washington Street
Phoenix, AZ 85007

Re: *State ex rel Goddard v. Abbot Laboratories, et al.*, CV 2005-018711 (Ariz. Sup. Ct.), removed and transferred to *In re Pharmaceutical Industry Average Wholesale Price Litigatio*n, MDL No. 1456

Gentlemen:

The State of Arizona recently settled a case against Defendants Dey, Inc., Dey Pharma, L.P. (formerly known as Dey, L.P.), and Dey Limited Partner, Inc. (collectively referred to as "Dey) resolving claims asserted in the Average Wholesale Price Litigation described below.

In December 2005, our Office, through outside counsel, filed suit in Maricopa County Superior Court against several pharmaceutical manufacturers for manipulating the Average Wholesale Price ("AWP") of prescription drugs in connection with the marketing and sale of certain prescription drugs sold in Arizona. AWP has been a widely utilized benchmark for pricing prescription drugs and for reimbursing physicians and other healthcare providers for the administration of certain drugs under the Medicare and Medicaid programs. It has also been used to determine amounts paid by insurers and co-pays by consumers under the Medicare program or through private insurance.

The State's Complaint alleges that the defendants violated the Arizona Consumer Fraud Act (A.R.S. § 44-1521 et seq.) by, among other things, providing false information about their reported prices to trade publications, which in turn led to inflated reimbursement rates. The lawsuit seeks various forms of relief, including injunctive relief, civil penalties, restitution for Arizona consumers, costs, and attorneys' fees.[1]

After the lawsuit was filed, the defendant pharmaceutical manufacturers successfully removed the case to federal district court in Massachusetts. Several other AWP cases are also pending in Massachusetts district court, including a nationwide consumer class action that includes Arizona consumers. Settlements on behalf of the consumer class have been reached with many of the defendants. Arizona consumers will have the opportunity to submit claims for reimbursement once the settlements receive final court approval.

This case is the third recent settlement resulting from court ordered mediation in the Average Wholesale Price litigation. The Joint Legislative Budget Committee favorably reviewed the State's settlement with Abbot Laboratories and others at its September 22, 2009 meeting, and the settlement with Bristol Myers Squibb and others at its February 2, 2010 meeting. Litigation against the remaining defendants in the AWP case --Astra Zeneca, B. Braun, Johnson and Johnson and Schering-Plough Warrick Group – continues in federal court.

This settlement agreement requires Dey to pay $250,000 in exchange for a release of the claims asserted in the lawsuit. As provided in our agreement with outside counsel and as approved by the court, outside counsel received approximately $22,500 of the settlement amount for their attorneys' fees. Pursuant to A.R.S. § 44-1531.01(B), ninety percent, or $227,500, of the settlement funds were deposited into the Consumer Fraud Revolving Fund. In accordance with A.R.S. § 44-1531.01(C), these funds will be used for consumer fraud enforcement and education.

This settlement does not constitute an admission of liability.

Our notification of this settlement is made without prejudice to our Office's long-standing position that it is not under any legal obligation to provide notices of settlements to the Joint Legislative Budget Committee. We are providing this notification to you as a courtesy so that you will be aware of this important settlement.

If you have any questions, please feel free to contact me at (602) 542-7717 or by e-mail at dena.epstein@azag.gov.

Sincerely,

Dena Rosen Epstein
Section Chief Counsel
Consumer Protection and Advocacy Section

cc: The Honorable Russell K. Pearce
The Honorable Jorge Luis Garcia
The Honorable David Lujan

[1] The industry has moved away from its heavy reliance on AWP as a pricing benchmark in the years since Arizona filed this lawsuit.

Mr. Richard S. Stavneak
Ms. Marge Zylla (Settlement Agreement enclosed)
Mr. Joe Kanefield
Mr. Greg Stanton
Ms. Jennifer Boucek
Mr. John T. Stevens, Jr.

#829842

Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

Dena Rosen Epstein
Consumer Protection &
Advocacy Section
Direct: (602) 542-7717
Dena.Epstein@azag.gov

May 18, 2010

RECEIVED
MAY 19 2010
JOINT BUDGET
COMMITTEE

The Honorable Robert L. Burns
President of the Senate
1700 West Washington Street
Phoenix, AZ 85007

The Honorable Kirk Adams
Speaker of the House
1700 West Washington Street
Phoenix, AZ 85007

The Honorable John Kavanagh
Chairman, Joint Legislative Budget Committee
1700 West Washington Street
Phoenix, AZ 85007

Re: *State ex rel Goddard v. Avondale Automotive, Inc.*

Gentlemen:

The State of Arizona recently settled a case against Avondale Automotive, Inc. ("Avondale Automotive"), resolving allegations that the motor vehicle dealership engaged in deceptive advertising and business practices.

The settlement, in the form of a Consent Judgment, resolves the State's investigation of Avondale Automotives advertising and sales practices. According to the Complaint filed concurrently with the Consent Judgment, Avondale Automotive failed to sell motor vehicles at the advertised prices, failed to disclose the existence or price of dealer-installed options to consumers and did not disclose that a vehicle sold as "new" was previously sold to another person. Avondale Automotives advertisements also allegedly included vague offers of discounts, vouchers and special trade-in allowances to create the false impression that the consumer had an opportunity to take advantage of an exceptionally advantageous offer. The Complaint further alleged that Avondale Automotive misrepresented manufacturers' rebates as special discounts offered by the dealership and improperly used the Manufactured Suggested Retail Price (MSRP) as a reference to describe discounts offered on the price of used motor vehicles.

The Consent Judgment does not constitute an admission of wrongdoing by Avondale Automotive. Under this settlement, Avondale Automotive has agreed to comply with the Arizona Consumer Fraud Act and engage in truthful and non-misleading advertising. The Consent Judgment further prohibits Avondale Automotive from:

- selling specifically advertised vehicles for more than the advertised price;
- misrepresenting the availability of advertised vehicles;
- advertising vehicles that are not available for sale;
- failing to include the price of dealer installed options in an advertised price;
- falsely advertising that vehicles are available for sale at better than normal terms (e.g. price, interest rate, trade in value);
- using MSRP as a reference price for used vehicles;
- falsely representing that vehicles are part of a specially discounted allotment;
- advertising a false sense of urgency to purchase; and
- failing to provide statutorily required disclosures of prior sales of new vehicles.

Avondale Automotive must provide summaries of the injunctive terms to third party marketers and to provide training to sales staff and managers about the requirements of the settlement.

The Judgment also requires Avondale Automotive to pay a total of $100,000 to the State, which could increase up to $150,000 if Avondale Automotive fails to comply with either the payment or injunctive terms of the settlement. This recovery is to be deposited in the consumer fraud revolving fund in accordance with Arizona law, A.R.S. § 44-1531.01(B), as well as the Judgment, and will be used for consumer fraud enforcement and education pursuant to A.R.S. § 44-1531.01(C).

Our notification of this settlement is made without prejudice to our Office's long-standing position that it is not under any legal obligation to provide notices of settlements to the Joint Legislative Budget Committee. We are providing this notification to you as a courtesy so that you will be aware of this important settlement.

If you have any questions, please feel free to contact me at (602) 542-7717 or by e-mail at dena.epstein@azag.gov.

Sincerely,

Dena Rosen Epstein
Section Chief Counsel
Consumer Protection and Advocacy Section

cc: The Honorable Russell K. Pearce
The Honorable Jorge Luis Garcia
The Honorable David Lujan
Mr. Richard S. Stavneak
Ms. Marge Zylla (Settlement Agreement enclosed)
Mr. Joe Kanefield
Mr. Greg Stanton
Ms. Jennifer Boucek
Mr. John T. Stevens, Jr.

#830367