

# Legislators probe potential Medicaid provider fraud

BY DAVID JACOBS  
The Center Square

Recent state audits of possibly fraudulent Medicaid billing for behavioral health services raise questions about oversight of those providers, Louisiana legislators said.

Two recent Louisiana Legislative Auditor reports taken together challenge a little more than \$1 million in billings for the multi-billion-dollar Medicaid program.

But lawmakers questioned whether those reports hint at larger problems with provider fraud.

A state law enacted last year limits individual behavioral health providers to performing no more than 12 hours of services per

day in most circumstances. According to the Attorney General's Medicaid Fraud Control Unit, this law helps them better investigate and prosecute fraud cases, the LLA's report says.

According to the LLA, between Aug. 1, 2019, and March 9, 2020, 315 individual providers billed for more than 12 hours of combined psycho-social rehabilitation and/or community psychiatric support treatment services in a single calendar day. This improper billing for services in excess of 12 hours totaled at least \$293,080, the auditor's office says.

The Louisiana Department of Health is responsible for ensuring providers do not bill for more than 12 hours per day, but LDH re-

lies on the managed care organizations that oversee the Medicaid program to make sure the billed amounts are proper.

"Why are we paying the MCOs to do this if they're not doing it?" asked state Sen. Jay Luneau, an Alexandria Democrat.

At an oversight meeting, legislators also reviewed a separate audit that found a single firm was paid more than \$200,000 for services that don't appear to have been delivered. The auditor also found almost \$657,000 for services provided under questionable or at least improperly billed circumstances; for example, services provided when the supposed recipient was not present.

Sen. Fred Mills, R-Parks,

said he was less concerned about the specific provider and more about "systemic problems" that can be corrected.

"Where does the buck stop here?" Sen. Louie Bernard, R-Natchitoches, asked. "There's a fog around the accountability of this."

LDH officials said the MCOs have referred some 720 providers for further investigation, so it does happen, but payments to providers cannot be suspended without due process. Asked if taxpayers or the MCOs eat the costs that can't be recovered, they said fraud-related losses are included in larger expense calculations that can cost the managed care companies money.

State health officials say there could be technical

solutions to some of the issues raised by the audits, but it would be a question of whether the benefits are worth the costs for technology and staff.

Legislators also discussed a recent Legislative Auditor report looking at potential discrepancies in the COVID-19 case counts for Red River and Desoto parishes.

Local officials publicly claimed state officials were inflating the number of cases in their parishes, but the auditor's office found the state's counts largely were correct.

Under an exception to health privacy rules mandated by the federal law known as HIPAA, during the early days of the pandemic state officials shared

lists of COVID-19-positive residents with local officials to be used by first responders who otherwise might not know if they came into contact with someone who had the new coronavirus. At the time, personal protective equipment was in short supply so "situational awareness" was considered critical, officials said.

Steve Russo, the state health department's executive counsel, said local officials using the lists for anything other than the stated purpose may have committed a HIPAA violation.

Officials from the two parishes did not speak up when asked to do so at the legislative meeting, though chairman Rep. Barry Ivey, R-Baton Rouge, said they were invited to attend.

## PROTECTIVE: Appeal being weighed

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fore a ruling was made.

On Tuesday, Sternberg said the newspapers would decide whether to appeal Barbera's ruling after he reviewed the details of the protective order, which had not been disclosed.

Beyond the three newspapers, Sternberg and his firm, Sternberg, Naccari and White represent the Louisiana Press Association on First Amendment and public records matters.

Shreveport attorney Lawrence "Larry" Pettiette, who represents Campbell as a special assistant attorney general, claimed Palowsky's attorneys, Joseph "Joe" Ward of Covington and Sedic Banks of Monroe, were "making a sport about an individual named Allyson Campbell."

In defense of the proposed protective order, Pettiette objected to Ward's claims that Monroe attorney Joseph "Joey" Grassi would testify Campbell once confessed to shredding a court judgment or that Campbell once gave a bribe to another court employee who discovered numerous writs for post-conviction relief awaiting action in her office.

"That's just not true," Pettiette said. "That, judge, is the basis, if there ever was one, to have a protective order."

According to Pettiette, if records or videos of Campbell's testimony during depositions were not sealed, the public would gain access to them through *The Ouachita Citizen* or other local media outlets.

"It gets to the newspaper; it becomes a circus," Petti-

ette said. "I don't want that video on the evening news. I don't want the deposition transcript in the paper."

According to Pettiette, the newspaper regularly "put their spin" on events occurring in *Stanley R. Palowsky III and others v. Allyson Campbell and others*.

"A valid protective order is what's in need, because of what's going on in this case," Pettiette said.

Ward argued that Pettiette's arguments were the basis for why the court should reject the proposed protective order.

"He hit the nail on the head," Ward said. "He wants an advanced protective order that seals everything and he decides later what gets out and what stays in."

Concerning Pettiette's client, Ward claimed Campbell had made a personal threat against him.

"I own a hotel in south Louisiana, and his client called (unintelligible) and threatened to burn my hotel down to the ground," Ward said. "That's a fact."

"He needs to talk to his client, (about) what she puts on the internet and what she tells people," Ward added.

Ward pointed out that there were "already a million documents out there" pertaining to allegations about Campbell that were not disclosed by him or his client, Palowsky. For example, Louisiana State Police and the state Inspector General conducted an investigation of Campbell in 2015 for misconduct, and later released a report on the investigation that totaled 199 pages, including

pages from the law clerk's personnel file.

Pettiette appeared to take Ward's comments personally.

"Mr. Ward, instead of getting to the merits, he weaves in that now my client was confessing to something, taking a bribe, and threatening to burn something down," Pettiette said. "I probably will need protection, but I'm asking on behalf of my client, Allyson Campbell."

During last week's hearing, Barbera expressed surprise when Ward declined to say whether he might provide anyone, including a newspaper, with copies of depositions, transcripts or other results from discovery.

Ward indicated he might release such information, if it was not protected or restricted under a protective order.

"Why would you do that?" Barbera said.

"Why wouldn't I? If it's not protected?" Ward said in reply.

Monroe attorney Jon Guice, who represents the judges, argued that Ward had incorrectly characterized the proposed protective order.

"I do not understand where this 'everything sealed' is coming from," Guice said. "We're not saying stop depositions or limit the depositions."

According to Guice, deposition transcripts were not "normally on the street."

Guice admitted that he asked to seal the entire video deposition if any portion of it was deemed confidential.

Barbera pointed out that deposition transcripts rarely became publicly available because they were rarely entered into the court record.

At the end of the hearing, Barbera appeared to discourage Ward and his colleague from releasing any discovery documents to newspapers.

"I would hope that all counsel in this case would act as officers of the court, in keeping with their oath as a member of the bar, and handle the business in their office in an responsible fashion," Barbera said. "No case should be tried in the newspaper. We all agree with that."

The protective order put

in place by Barbera did not grant each provision sought by Campbell and the judges, though he made Campbell's personnel records, notes from judges' meetings and other internal court notes off limits.

"Otherwise, the personnel records of Ms. Campbell and the notes of the judges' meetings and the notes of the court are not relevant," Barbera said.

Instead, Barbera restricted the order's scope to include any records revealing discussions about the law clerk or complaints about her conduct.

"The court is not sealing any records or given any instructions about what should or should not be filed in the court record at Fourth Judicial District Court," Barbera said.

Barbera also ruled Palowsky's attorneys must outline areas of inquiry in advance to the defendant judges and Campbell prior to the judges and Campbell undergoing depositions, or the taking of testimony prior to trial.

Palowsky's attorneys, Ward and Banks, said they would appeal Barbera's rulings.

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