

ALL HEALTH CARE IS LOCAL: EXPLORING  
THE ROLES OF CITIES AND STATES IN  
HEALTH CARE DELIVERY AND REFORM

GOVERNMENT PANEL SUMMARY

PANELISTS:

TONY HULLENDER, *OFFICE OF THE ATTORNEY GENERAL OF  
TENNESSEE*

GABE ROBERTS, *STATE OF TENNESSEE, DIVISION OF  
TENN CARE*

CHRISTOPHER SABIS, *OFFICE OF THE UNITED STATES  
ATTORNEY, MIDDLE DISTRICT OF TENNESSEE*

JANE YOUNG, *TENNESSEE DEPARTMENT OF HEALTH*

*Moderated by Marc Overlock, Metropolitan Nashville  
Hospital Authority*

FEBRUARY 9, 2018

On Friday February 9th, 2018, the Belmont Health Law Journal hosted a symposium entitled *All Health Care is Local: Exploring the Roles of Cities and States in Health Care Delivery and Reform*. A panel of government lawyers representing various state and federal agencies and organizations took part in the symposium. Among them were Tony Hullender from the Office of the Attorney General of Tennessee, Gabe Roberts from the Division of TennCare, Christopher Sabis from the Office of the United States Attorney, Middle District of Tennessee, and Jane Young, General Counsel for the Tennessee Department of Health. The panel was moderated by Marc Overlock, General Counsel for the Metropolitan Nashville Hospital Authority. The symposium was held in the Randall and Sadie Baskin Center, located on the campus of Belmont University in Nashville, Tennessee.

The following is a summary of the discussion that took place. The panel opened with a discussion of what the impact to TennCare would be if the federal government put more pressure on the states to regulate healthcare.<sup>1</sup> The panelists discussed the Indiana Medicaid waiver that had been recently approved, as well as amendments to TennCare waivers.<sup>2</sup> The conversation then pivoted to whether Tennessee would implement work requirements for TennCare beneficiaries and, if so, what those requirements might look like. The consensus was that work requirements could be a possibility, but that such requirements actually would not have a significant impact, as it is doubtful that a substantial number of Tennesseans would be affected by their implementation.

The panel then discussed initiatives undertaken by the State of Tennessee to combat the opioid crisis. Ms. Young explained the components of the Tennessee Together initiative, which had been recently announced by the Governor.<sup>3</sup> The initiative contains three major components: 1) prevention; 2) treatment; and 3) law enforcement.<sup>4</sup> It consists of proposed legislation and Governor Haslam's proposed FY 19 budget, as well as other executive actions. The proposed legislation portion would prescribe limits for opioids and increasing the frequency with which providers must check the Controlled Substance Monitoring Database, a prescription-monitoring program.<sup>5</sup> In addition, some of the proposed legislation involves adding fentanyl analogues to Schedule 1 drugs, which are drugs that have no accepted medical use and high potential for abuse.<sup>6</sup>

With regard to the executive portions of the initiative, the Governor has, by Executive Order, appointed a group of medical education experts to develop curricula for use in medical, dental, nursing, and similar schools regarding pain management and opioid use treatment.<sup>7</sup> Further, the proposed FY 19 budget would provide

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<sup>1</sup> Mandy Pellegrin, *How U.S. House Medicaid Reforms Could Impact TennCare*, THE SYCAMORE INSTITUTE (2017), <https://www.sycamoreinstitute.org/2017/03/10/ahca-impact-tenncare/> (last visited Nov. 11, 2018).

<sup>2</sup> Medicaid Waivers, THE ARC OF INDIANA, <https://www.arcind.org/supports-services/medicaid-waivers/> (last visited Nov 11, 2018).

<sup>3</sup> Ending the Opioid Crisis, TENNESSEE STATE GOVERNMENT, <https://www.tn.gov/governor/2018-legislative-priorities/tn-together.html> (last visited Nov 11, 2018).

<sup>4</sup> 2017 Legis. Bill Hist. TN H.B. 1831

<sup>5</sup> *Id.*

<sup>6</sup> 2017 Legis. Bill Hist. TN H.B. 1832

<sup>7</sup> *Haslam Establishes Commission on Pain and Addiction Medicine Education*, State of Tenn. Off. of the Att'y Gen.,

\$25 million for treatment of those with a substance use disorder, and contains a sentence credit provision for criminal offenders who are under the jurisdiction of the Department of Corrections.<sup>8</sup>

In addition to the Tennessee Together Initiative, Mr. Hullender explained that Tennessee, through the Attorney General, was leading the investigation into malfeasance on the part of drug manufacturers.<sup>9</sup>

Concerning the federal government's aid in remedying the opioid crisis, Mr. Overlock stated it had begun to put additional focus on hiring experienced Assistant United States Attorneys who were dedicated to combatting opioid fraud. Mr. Overlock also mentioned that one such position had been created in the Eastern District of Tennessee.<sup>10</sup> Ms. Young revealed that the Tennessee Department of Health had received a grant from the Centers for Disease Control and Prevention, which had been used to hire new staff members such as epidemiologists.<sup>11</sup> On a negative note, Mr. Roberts stated Substance Abuse and Mental Health Services Administration (SAMHSA) regulations made intervention difficult, as Managed Care Organizations are reluctant to contact enrollees when they see the enrollee doctor shopping.

As far as the state government's involvement in combatting the opioid epidemic, the Tennessee Department of Health's primary enforcement tool is the Controlled Substance Monitoring Database ("CSMD").<sup>12</sup> CSMD has been a vital tool in discovering abuses in the dispensing and prescribing of controlled substances to patients.

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<https://www.tn.gov/governor/news/2018/1/24/haslam-establishes-commission-on-pain-and-addiction-medicine-education.html> (last visited Nov 12, 2018).

<sup>8</sup> Anita Wadhvani, *Gov. Bill Haslam unveils \$30 million plan to combat opioid crisis in Tennessee*, THE TENNESSEAN (2018),

<https://www.tennessean.com/story/news/politics/2018/01/22/gov-bill-haslams-plan-combat-opioid-crisis-include-boosts-prevention-treatment-and-law-enforcement/1054217001/> (last visited Nov 12, 2018).

<sup>9</sup> *Tennessee Attorney General Sues Purdue Pharma*, State of Tenn. Off. of the Att'y Gen., <https://www.tn.gov/attorneygeneral/news/2018/5/15/pr18-10.html> (last visited Nov. 10, 2018).

<sup>10</sup> Press Release, *Eastern District of Tennessee Selected to Participate in Department of Justice Opioid Fraud and Abuse Detection Unit*, Dep't of Justice, <https://www.justice.gov/usao-edtn/pr/eastern-district-tennessee-selected-participate-department-justice-opioid-fraud-and> (last visited Nov. 10, 2018).

<sup>11</sup> *CDC Awards \$28.6 Million to Help States Fight Opioid Overdose Epidemic*, CENTERS FOR DISEASE CONTROL AND PREVENTION <https://www.cdc.gov/media/releases/2017/p0905-opioid-funding.html> (last visited Nov. 10, 2018).

<sup>12</sup> Health Professional Boards Controlled Substance Monitoring Database Program, Tenn. Dep't of Health, <https://www.tn.gov/health/health-program-areas/health-professional-boards/csmd-board.html> (last visited Nov. 10, 2018).

Data analysts review hospital discharge data and nonfatal overdoses in order to drive the state's response to the opioid epidemic.

TennCare is also working to develop ways to legally share data<sup>13</sup> and to align its reimbursement policies regarding opioids.<sup>14</sup> Developing relationships with law enforcement will also play an important part in the Tennessee Department of Health's response.<sup>15</sup>

The panelists were asked their personal opinions on what changes the federal government could make to improve health care in America. Answers ranged from focusing on prevention and population health to increasing resources dedicated to combatting fraud.

The panel finished with a discussion of fraud issues associated with electronic health records ("EHR").<sup>16</sup> Mr. Hullender explained how EHR systems that routinely populate similar data may make a provider look suspicious.<sup>17</sup> Mr. Sabis reinforced this, mentioning that EHR systems have created new opportunities for fraud, and that automatic and pre-populating of medical charts has become a huge drain on resources.<sup>18</sup>

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<sup>13</sup> *eHealth Information Exchange*. Tenn. Div. of TennCare.  
<https://www.tn.gov/tenncare/providers/ehealth-information-exchange-overview/ehealth-information-exchange-web-page-faqs.html>.

<sup>14</sup> *TennCare's Opioid Strategy*. Tenn. Div. of TennCare.  
<https://www.tn.gov/tenncare/tenncare-s-opioid-strategy.html>.

<sup>15</sup> Mandy Pellegrin and Courtnee Melton, *The Opioid Epidemic in Tennessee: 2018 Update on New Policy Actions*, THE SYCAMORE INSTITUTE (August 9, 2018), <https://www.sycamoreinstitutetn.org/2018/08/09/opioid-epidemic-tn-policy-actions/>.

<sup>16</sup> *HER-enabled fraud remains a concern*, MEDICAL ECONOMICS (August 1, 2016), <http://www.medicaleconomics.com/editors-choice-me/ehr-enabled-fraud-remains-concern>.

<sup>17</sup> *Medicare Fraud & Abuse: Prevention, Detection, and Reporting*, Centers for Medicare & Medicaid Services (September 2017), [https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/fraud\\_and\\_abuse.pdf](https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/fraud_and_abuse.pdf).

<sup>18</sup> Holly Louie, *False and Nonsensical Medical Records Reportedly Not Unusual*, ICD10 MONITOR (October 31, 2017), <https://www.icd10monitor.com/false-and-nonsensical-medical-records-reportedly-not-unusual>.