

The Ohio Republican Party released a statement Tuesday afternoon saying that Brunner is trying to disenfranchise Republican voters and called on elections officials to reject Brunner's order.

Chairman Bob Bennett said that Ohio law doesn't require the box to be checked.

"Jennifer Brunner is asking election officials to deny these legally qualified voters their right to access a ballot, and she's manipulating the law to do it," Bennett said in a statement. "The outrageous partisan maneuvering by Secretary Brunner is putting the integrity of this election at risk, and it needs to stop immediately."

But Brunner fired back, saying that if a campaign creates a confusing form that causes voters to leave off any of the required information, than the law says the form should be rejected.

"As standard policy, our office has instructed all boards of elections that they must notify voters when their absentee ballot applications are rejected for any reason and has advised that voters should also be sent new forms," Brunner said in a statement.

The Ohio Democratic Party also weighed in with a statement of support for Brunner, with executive director Doug Kelly decrying the Republican's "partisan attacks" and saying. "At this point, the only thing that Ohio Republican's haven't sought to blame on Jennifer Brunner is the weather."

## **SEHCB Scheduled for JCARR, Eyes Third Party Compensation, Tobacco-Free Schools**

A developing model for streamlined health purchasing – one charged by the General Assembly with reining in the cost of public education – turned to its second set of proposed best practices Tuesday as draft rules set for the Joint Committee on Agency Rule Review (JCARR) cleared their final public hearing without comment.

"That we have had no public comment today would appear to indicate that we have done our job," said Chairman Stephen Loeb of the School Employees Health Care Board (SEHCB), due for its first appearance at JCARR on Monday, Oct. 6.

Four primary rules in the first set of proposals focus on the need for efficient management of patient care and coverage: wellness standards, disease management, access to specialty centers, and dependent eligibility audits. (See *The Hannah Report*, 8/8/08.) The second set of rules shifts the focus to effective management in the institutional setting, including recommendations that promote "vendor compensation transparency" and discourage "egregious medical errors." A third rule would require school systems to adopt a no-tolerance tobacco policy on all district property and at all school-sponsored events held outside district property, regardless of the time of day or night. The requirement would extend beyond the state's existing smoking ban to include all forms of smokeless tobacco.

With members of its Advisory Committee in attendance, SEHCB first took up the more challenging issue of compensation disclosure by all participating entities, citing the need to eliminate "vendor self-dealing or conflicts of interest."

SEHCB Director Bruce Gilbert framed the question facing the board, the state, and the health care system at large, both at the state and national level.

"Why do we make an intellectual distinction between health insurance agents, brokers, consultants, pharmacy benefit managers, third party payers and other vendors for a health care plan when it comes to transparency and disclosure of compensation?" asked Gilbert, adding health purchasing consortia to that group.

The proposed rule resumes the debate triggered by "Health Care Simplification Act" HB125 (Huffman), which seeks to bring more uniformity to contracts between healthcare providers and third-party payers. (See *The Hannah Report*, 3/22/07.)

"I don't think it addresses the breadth of vendors we're seeking to influence," Gilbert would say outside the meeting.

Within the transparency rule's proposed language is the following statement: "Any person or entity placing coverage for or providing any other service to a health plan sponsor must fully disclose to the health plan sponsor all sources of compensation arising out of that business relationship including but not limited to fees, commissions, rebates or any other payments of any kind."

Gilbert said the idea is already well in play across the country, with the federal government beginning to consider the impact of vendor transparency on health benefits under the Employee Retirement Income Security Act (ERISA).

"We are talking about a situation that has to be faced by every health plan and every fiduciary," he said.

Gilbert cautioned, however, that compensation disclosure in district health coverage would not necessarily lead to public savings, nor would it require institutional participants to disclose the actual amount of compensation.

"It is all but impossible for brokers to say that out the amount of contingent commissions they have received - say \$10,000 - that \$2,000 is attributable to a particular plan," he noted outside the meeting in one example.

Nevertheless, said Gilbert, simple disclosure of institutional relationships would work to eliminate conflicts of interest and allow school districts to ask for more than one quote for services.

He would make a greater case for health savings under the second proposed rule, which allows districts to refuse payment for egregious medical errors including surgery performed on the wrong body part; surgery performed on the wrong patient; the wrong surgical procedure on a patient; leaving a foreign object in a patient after surgery or another procedure; patient death or serious disability associated with a medication error; and patient death or serious disability associated with incompatible blood or blood products.

"In a system in which most individuals access coverage through employer-sponsored health plans, employers - including public sector employers - bear a substantial portion of that expense," noted supporting language for the rule, suggesting the state should not bear the cost of deficient health care.

As with compensation disclosure, Gilbert said that the move against medical errors did not originate in Ohio, that states are refusing coverage for a range of omissions and commissions, and that Medicare itself will begin withholding payment for "certain medical mistakes" beginning Oct. 1. It was noted, in fact, that most health carriers are moving to adopt Medicare language on medical errors.

SEHCB member Gary Smiga, superintendent of Centerville City Schools, noted the proposed rule excludes everyone from payment responsibility for medical errors except the consumer. "Should health care plans have an agreement with providers that no one can be billed for medical errors?" he said, noting patients might be saddled with balance-billing in the case of nonpayment. Gilbert would address the question both inside and outside the meeting.

"The question is not whether that is good policy but rather whether our authority extends that far," he said.

Board member Reed Fraley noted that some hospitals have been advised by their legal counsel that they should charge for botched services anyway so as not to suggest an admission of medical malpractice. Gilbert said he appreciated the hypothetical question of malpractice naturally forced by institutional policies against medical error, but that SEHCB's charge is simply to devise good policy on the front end.

"Malpractice is a legal conclusion," he said outside the meeting. "And no one is reaching that conclusion."

Fraley also suggested medical error language should be broader, rather than identifying triggering events, so that the state does not have to revise rules on a regular basis to add new items under the definition of egregious medical error. Gilbert said the proposed rule is pursuing the "lowest common denominator" for widely agreed medical errors and suggested the board should not get mired in the many possibilities. Chairman Loeb asked Fraley to submit proposed changes for the board's consideration.

On the final draft rule, tobacco-free school grounds and events, Gilbert said proposed language merely reflects the common conclusions reached by various medical and public authorities nationwide:

"Establishing a tobacco-free environment in public schools sets a clear example of good health practices, provides a healthy atmosphere; results in lower clean-up costs; encourages both employees and students to quit tobacco; use; and significantly lowers long term health care costs," reads supporting language for the rule.

So the state and SEHCB does not have to keep with ever-changing marketing strategies by tobacco companies, Smiga suggested that rule language itself employ the general term, "tobacco products," including snuff and the newer smokeless pouches.

Gilbert was asked about the practicality of enforcing such a rule in a campus parking lot or at school-related events held outside district property.

"I develop policy. I'm not into compliance," he said outside the meeting, noting as Smiga had observed of his own district that schools are already implementing a wholesale tobacco ban. "No one is reinventing the wheel," said Gilbert

As for the larger statutory charge of SEHCB to accomplish health care reforms which are challenging the nation as a whole, Gilbert agreed that he and his colleagues are working produce a harbinger for change.

"The subject matter we deal with, the problems we work to solve, are not limited to public school districts in Ohio," he said. "They are part of this larger societal issue."

The next gathering of SEHCB is scheduled for Oct. 22 at the Ohio School Board Association (OSBA). A Nov. 12 meeting follows at the Columbus Convention Center, where the board hopes to complete the internal process for the second set of rules; a final date for 2008 is scheduled at OSBA on Dec. 3.

The JCARR hearing for the first set of rules will begin 1:30 p.m. on Oct. 6 in Statehouse hearing room 121. The second set of rules is not expected to be filed with JCARR until after the new year.

## **IG Report Critical of Overtime Pay for ODOT Employees**

A new report from the inspector general's office found that the Ohio Department of Transportation (ODOT) paid more in overtime than any other state agency, including to employees who should be exempted.

The report issued Tuesday said that since 2005, ODOT has paid nearly \$6 million in overtime compensation to employees who should not have received it under the department's own analysis.

According to the report ODOT performed an internal review in 2004-05 that identified 1,229 employees who were exempt from premium overtime compensation under federal guidelines but were eligible for comp-time, and another 30 staff not eligible for either overtime or comp-time. Despite that analysis, the report said that the agency ignored the exemptions and allowed premium overtime pay to all but 120 positions.

ODOT records showed that the decision was rationalized on the premise that ODOT executive, administrative and professional compensation is less than what is given in the private sector.

The report also found that ODOT did not follow state law that requires any policy exemptions to be approved by the Ohio Department of Administrative Services (DAS).

The investigation was launched by the inspector general's office after a review of improper overtime payments to an ODOT employee showed that the agency's overtime payments appeared to be excessive.

"We find that ODOT's policy is out of line with other state agencies in permitting and paying premium rate (time-and-one-half) for overtime worked by executive, administrative and professional employees," the report said.