

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes 2018 Interim

June 14, 2018

Call to Order and Roll Call

The Program Review and Investigations Committee met on Thursday, June 14, 2018, at 10:00 AM, in Room 131 of the Capitol Annex. Greg Hager, Committee Staff Administrator, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Lynn Bechler, Co-Chair; Senators Perry B. Clark, Dan "Malano" Seum, Reginald Thomas, and Stephen West; Representatives Chris Fugate, Adam Koenig, Ruth Ann Palumbo, Rob Rothenburger, Arnold Simpson, and Walker Thomas.

Guests: Representative Joni Jenkins; Elizabeth Caywood, Acting Commissioner, Department for Community Based Services, Cabinet for Health and Family Services; Lesa Dennis, Director, Division of Service Regions, Department for Community Based Services, Cabinet for Health and Family Services; Charlie and Kay Meyers, citizens; Hans Herklotz, General Counsel, Cabinet for Health and Family Services; and Jill Hunter, Acting Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services.

LRC Staff: Greg Hager, Committee Staff Administrator; Chris Hall; Colleen Kennedy; Van Knowles; Jean Ann Myatt; William Spears; Shane Stevens; Joel Thomas; Richard Schufelt, Graduate Fellow; and Kate Talley, Committee Assistant.

Greg Hager asked for nominations for Senate co-chair.

Senator West nominated Senator Carroll. Senator Seum seconded the motion. Senator Clark made a motion that the nominations cease and that Senator Carroll be elected by acclamation. Senator Seum seconded the motion, and Senator Carroll was elected by acclamation.

Senator Carroll asked for nominations for House co-chair.

Representative Rothenburger nominated Representative Bechler. Representative Koenig seconded the motion. Representative Palumbo made a motion that the nominations cease and that Representative Bechler be elected by acclamation. Representative

Rothenburger seconded the motion, and Representative Bechler was elected by acclamation.

Minutes for November 9, 2017

Upon motion by Representative Simpson and second by Representative Palumbo, the minutes for the November 9, 2017, meeting were approved by voice vote without objection.

Selection of Study Topics for 2018

Representative Thomas moved to study the Kentucky Wired Program. Representative Rothenburger seconded the motion and the topic was adopted by roll call vote.

Representative Bechler explained that Kentucky Wired, created to provide internet statewide, is behind schedule and over budget. The General Assembly approved additional appropriations to continue with the program only because it would cost more money to stop the program.

Representative Simpson moved to study the retention rates of Kentucky's community colleges. He would like to look at the need for an adequate workforce, the economic status of students, the composition of student bodies, and make recommendations for policy. Many students are overwhelmed by student debt, and some become homeless as a result.

Senator Seum endorsed Representative Simpson's proposal but discussed issues he has with Kentucky universities. For example, the University of Louisville reported a decrease in state appropriations in a misleading way in order to increase tuition more than was merited. Dormitories are too expensive. A printout of University of Kentucky nonmedical personnel making at least \$250,000 was more than 9 pages long. Universities say their funding must also cover research and development but could not delineate what research was done and for what benefit.

Senator Thomas said Kentucky is the only state to cut funding for higher education over the past 12 years. State funding of higher education in the 2018-2020 budget is the same as it was in 1994. About 83 percent of the University of Louisville's funding comes from sources other than state government, so these are not truly state universities. He supports salaries that are high enough to attract top academics so that the University of Kentucky can become a top US university. Dormitories are nicer than in the past, but that is to compete for current students, who want good living conditions.

Representative Palumbo noted that the suggested topic is about community colleges, not state universities.

Representative Simpson moved again to accept this topic for study, and Representative Palumbo seconded the motion. The topic was approved by a roll call vote.

Senator Carroll stated that the Senate minority and majority topics will be discussed at the next meeting.

Senator West requested that all committee members receive a copy of the Kentucky Wired contract. Representative Simpson said a summary of the contract would be useful.

Staff Report: *Kentucky's Foster Care System*

Mr. Hall said that today's presentation would cover the report's nine recommendations. Program Review staff heard from several sources that the 45-day period for a temporary custody order is often not long enough. Recommendation 1.1 is that the Department for Community Based Services (DCBS) and the Administrative Office of the Courts (AOC) should cooperate to determine a reasonable period for the temporary custody order and propose legislative to the General Assembly.

DCBS and AOC were unable to provide reliable data that would allow for analysis of whether foster care hearings were meeting the statutory time frame. Recommendation 1.2 is that they should cooperate to ensure the collection of the date of any foster care court action, the type of hearing, and the result. Data should be analyzed regularly to identify problems. Recommendation 1.3 is that AOC should encourage any court hearing foster care cases to use appropriate AOC forms.

DCBS publishes a monthly Diligent Recruitment Report, which is used to help regional and county DCBS offices recruit new foster families. A calculation in the report is potentially inaccurate. Recommendation 1.4 is that DCBS should use existing data to calculate a more accurate "percent of need met" figure in the report.

DCBS reports the average number of times foster children moved while in state custody. Recommendation 1.5 is that DCBS should indicate disruptive, neutral, and positive reasons for placement changes in its reports.

DCBS's new method for calculating caseloads excludes caseworkers who are not working at full capacity but includes the cases they are working on. This inflates the caseload average. Recommendation 3.1 is that DCBS should develop a method for calculating or estimating the number of cases assigned to staff not currently carrying full caseloads and the contributions of such staff to state, regional, and county workloads. The workloads of these staff should be included in the calculation of average caseloads along with past due cases.

Recommendation 3.2 in the November 2017 report draft was removed because HB 1, enacted in the 2018 Regular Session, made the suggested change.

Nearly 70 percent of respondents to a Program Review survey of DCBS social workers said that the most time consuming task each day was documenting their work and entering information into case management software. Recommendation 3.2 is that DCBS should develop a strategy to lessen the administrative burden of caseworkers so that they can spend more time working with foster children and their families.

Recommendation 3.3 is that DCBS should develop a method for determining caseloads that is based on analysis of its workforce and workloads. This information should be used to determine the appropriate caseload standard for Kentucky social workers and necessary strategies to meet this standard. The standard should be aligned with principles established by current national standards and should focus on ensuring that as few caseworkers as possible are assigned caseloads that exceed the new standard.

A review of research literature and staff's survey of DCBS workers found that noncompetitive salaries and high caseloads are significant causes of caseworker turnover. Recommendation 3.4 is that DCBS should request funding and authorization to increase caseworker salaries to a competitive level; to increase the number of caseworkers; to offer geographic salary differentials and flexible scheduling; to expand employee recruitment, development, and recognition programs; and to develop further improvements in the hiring process. The agency should also promote expansion of undergraduate social work programs.

Mr. Hall noted that HB 200, enacted in the 2018 Regular Session, allocated nearly \$14 million for both FY 2019 and FY 2020 for increasing the salaries of DCBS social workers and approximately \$35 million for both FY 2019 and FY 2020 for hiring additional social workers.

In response to a question from Senator Carroll, Mr. Hall said a list of changes from the passage of HB 1 to the initial report presented on November 9, 2017, is included in member's folders.

In response to questions from Senator Carroll, Ms. Caywood said that while the legislature did not address all recommendations in the study, the state did increase salaries and lowered caseloads for DCBS social workers. Morale has begun to improve.

In response to questions from Senator West about the recommendation that DCBS develop a strategy to lessen the administrative load of caseworkers, Ms. Caywood said the department is developing a new technology platform to ease administrative work. The platform should be available later this year. The federal government limits what DCBS can do regarding caseworkers' workload, but the department is doing everything it can.

In response to questions from Representative Bechler, Ms. Caywood said DCBS is close to full capacity for caseworkers. The department hopes to have reorganization and personnel plans implemented by October 2018. The department will be doing more hiring.

Representative Bechler noted that the General Assembly would like to have more caseworkers in the field soon.

In response to a question from Representative Rothenburger, Ms. Caywood said AOC had not indicated whether more judges are using the AOC forms in child custody court decisions.

In response to a question from Senator Carroll, Ms. Dennis said DCBS has been working on technological enhancements to the call centers system. Kentucky now has a call center in each of the nine service regions.

In response to a question from Senator Carroll, Ms. Caywood said the newly implemented technology system will create a better platform to allow DCBS to monitor all calls in the call centers.

Upon motion by Representative Simpson and second by Representative Palumbo, the report was adopted by roll call vote.

Changes to Foster Care System from HB 1

Mr. Hall summarized changes that HB 1 made to foster care and adoption. The bill established the Child Welfare Oversight and Advisory Committee, made the Office of the Ombudsman a stand-alone agency within the cabinet for Health and Family Services (CHFS), and required the cabinet to standardize the procedure and requirements for home studies. The bill requires CHFS to implement performance-based contracting for licensed child-care facilities and child-placing agencies by July 1, 2019, and to make recommendations about the feasibility of privatizing all foster care services in Kentucky by that date.

Procedural changes HB 1 made to dependency, neglect, and abuse court cases include requiring CHFS to review cases after the child has been in care for 6 months and every 3 months thereafter, to submit a petition to terminate parental rights no later than after a child has been in care for 15 cumulative months out of 48 months, and to submit necessary paperwork no later than 30 working days after a court terminates parental rights.

Under HB 1, a court may now grant an involuntary termination of parental rights (TPR) when a child is diagnosed with neonatal abstinence syndrome at the time of birth. A court must make a final judgment within 6 months of the filing of a petition for an involuntary TPR, an appeal to the judgment must be made within 30 days, and the court

must make its final ruling on the appeal within 90 days. When TPR is voluntary, a court must now enter its final judgment within 6 months.

HB 1 requires local Citizens Foster Care Review Boards to hold public forums at least twice a year and to report public concerns to the state board. The bill also created a putative father registry, which is a statewide database that protects putative father's rights in cases in which the mother wants to give the child up for adoption.

D.O. v. Glisson Ruling

Mr. Hall summarized an October 2017 ruling of the US 6th Circuit Court of Appeals that requires CHFS to pay per diems to caregivers who are relatives and fictive kin of the child in the same manner it pays certified foster parents who are not relatives. Based on the ruling, CHFS established three eligibility criteria:

1. A court must have placed the child in CHFS custody during the current removal episode,
2. A court must then have granted temporary (not permanent) custody to the relative or fictive kin during the current removal episode, and
3. CHFS must have approved the home by conducting a home study and background check.

Mr. Hall explained the criteria and, based on actual cases, described how each criterion has been used to rule that a relative or fictive caregiver was ineligible for the requested per diem.

According to CHFS, there is no administrative appeals process once an eligibility determination is made. The only recourse for a denied caregiver is to bring a court action against the cabinet.

As of May 30, 2018, CHFS's Kinship Support Hotline had received nearly 15,000 calls from relative and fictive caregivers inquiring about eligibility for the per diem. By that date, the cabinet had determined that 1,083 were eligible, and 349 had signed an agreement with CHFS to receive the per diem.

In response to questions from Representative Bechler, Ms. Caywood said DCBS will have a process in place by the end of the year for answering all calls.

In response to questions from Representative Bechler and Senator West, Mr. Hall said CHFS has interpreted *Glisson* to mean that kinship payments are only applicable after the time of the ruling. Ms. Caywood said that so far, 956 children have qualified. The department does not yet know how many more need a determination. DCBS is trying for a 45-day turnaround in its responses.

Audience members Charlie Meyers and his wife, Kay Meyers, appeared before the committee. Mr. Meyers said they were awarded temporary custody of a grandchild, whom they have cared for since the now 2-year old was 5 days old. At the birth hospital, a state social worker said the parents were not fit to care for the child and sent the child home with Mr. and Mrs. Meyers, to whom a judge awarded temporary custody of the child. Their attorney advised the Meyers to try to qualify for grandparent funding.

Mrs. Meyers said they received a letter from CHFS stating they qualified except that the child went directly to their home, not initially to DCBS custody.

In response to a question by Senator Carroll, Mr. Herklotz said there is a pending lawsuit to expand the ruling.

Senator Carroll cautioned that the committee should be careful in its discussion because of the pending lawsuit.

In response to questions from Senator Thomas, Mr. Meyers said a social worker was at the hospital when they took the child, but he does not know if the social worker was from DCBS.

Representative Palumbo said the intent of HB 1 was to cover people like the Myers. Its intent was that if grandparents become the caregivers, they should receive financial help and should not have to wait for a ruling.

In response to a question from Senator Carroll, Ms. Caywood said an appeals process will be part of the new array of services.

Senator Carroll said legislators will have to review this. He commended the Meyers for taking their grandchild in. It makes a difference when legislators hear how a statute is working in practice. He would like to meet with Ms. Caywood concerning further needed legislation.

Staff Update: Supports for Community Living

Mr. Knowles said that while Program Review staff were studying Supports for Community Living (SCL) reimbursement rates, the Department for Medicaid Services hired a consulting firm to advise the state on redesigning SCL and similar Medicaid programs. A redesign would include changes in the types of services provided and the rates paid to providers. If the department proceeds to conduct a rate study, Program Review staff will observe and evaluate the rate-setting process and present a final report with recommendations after the new rates have been determined.

Today's presentation, which summarizes information obtained as of December 2017, includes information on types of residential settings and changes in rates paid to SCL

providers since 2004. The rate for staffed residences has increased slightly in nominal dollars since 2004 but has declined when adjusted for inflation. The rates for direct personal services, case planning, and therapy fell. Rates for group homes, residential family care, and employment services increased in both nominal and adjusted dollars.

In 2004, the General Assembly enacted a tax on providers of intermediate care facilities and SCL services, with some of the revenue to be used to increase reimbursement rates.

Inflation has offset most of the increases in rates since 2004.

The amount spent per member has been stable since late 2006, but the number of members served has increased, causing the overall SCL budget to increase. Most SCL funds are spent on residential services; that is, group homes, staffed residences, and adult foster homes.

Analysis of spending on different types of services indicates that providers shifted the types of services they delivered in ways that probably increased their revenues or reduced their costs.

States are free to set Medicaid rates as they choose and are not required to ensure provider profitability. Federal law simply requires a state to ensure that there are enough providers to offer adequate services where they are needed. It appears from Kentucky's waiver applications that the state has set rates that kept spending within budgeted limits since 2006.

Providers will receive a 10 percent rate increase as specified in the 2018 budget bill.

In response to a question from Representative Rothenburger, Mr. Knowles said that a combination of all services such as personal aides and respite services resulted in, on average, \$2.79 per unit.

Representative Rothenburger said he is concerned that some personal caregivers are paid \$8.00 per hour. The legislature should review this so the program is retaining qualified people.

Senator Carroll said that his agency has multiple sources of revenue and does not depend on a specific waiver, so it is able to survive. There is competition among providers to try to contract with the best people, leading to higher salaries. His agency's revenue sources are diversified, and quality is always a concern. He would like to see providers paid more to attract more good providers.

Ms. Hunter said her department is working with Navigant Consulting for possible help with a redesign of the six waivers. The redesign is on track. Stakeholder interviews have been completed. The department is beginning a provider cost survey and study. A 10 percent increase for SCL was approved by the US Centers for Medicare and Medicaid Services beginning July 1, 2018. Navigant has drafted recommendations.

Representative Rothenburger said he serves as co-chair of the Local Government Committee. There is a need to look at saving money. For example, ambulances are sometimes called for nonemergency situations. Working with ambulance services can result in savings.

Senator Carroll said anything on the federal level we can do to treat potential emergency situations for less money should be reviewed. He asked if there were any federal rules that prevent providers from offering low-level medical care on site rather than sending members to the emergency room. Ms. Hunter stated that she would find out.

Senator Carroll said some fees for services his agency provides seem high. The program should streamline such areas to cut costs. His agency is considering private pay consumers to help sustain the programs. He complimented Ms. Hunter and her staff for being responsive to legislators' calls and questions.

Audience member Kitty Davidson, with Tri-Generations, spoke. She is an SCL provider. She said that when residential home provider rates increased, they did not cover respite care.

Senator Carroll said that his center covers respite care for adult foster care homes.

Ms. Davidson clarified that in the old waiver, money was set aside for respite services, which mandated family home providers receive 60 days per year. Family home provider rates increased, but funding for respite care was removed, resulting in a net loss.

Senator Carroll agreed that there was a net loss of revenue.

The meeting adjourned at 11:53 am.