

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 4th Meeting of the 2019 Interim

October 3, 2019

Call to Order and Roll Call

The fourth meeting of the Interim Joint Committee on State Government was held on Thursday, October 3, 2019, at 10:00 AM, in Room 154 of the Capitol Annex. Senator Wil Schroder, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Wil Schroder, Co-Chair; Representatives Jerry T. Miller, Co-Chair, and Kevin D. Bratcher, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Robby Mills, Albert Robinson, Dan "Malano" Seum, and Damon Thayer; Representatives Tina Bojanowski, Tom Burch, McKenzie Cantrell, Jeffery Donohue, Jim DuPlessis, Joseph M. Fischer, Kelly Flood, Derrick Graham, Joe Graviss, Richard Heath, Scott Lewis, Mary Lou Marzian, Reginald Meeks, Patti Minter, Jason Nemes, Jason Petrie, Rick Rand, Steve Sheldon, Tommy Turner, Ken Upchurch, and Les Yates.

Guests: Thomas Stephens, and Jenny Goins, Personnel Cabinet; Colleen Huber, Aon Consulting; Laura Hendrix, Emily Dennis, and Judge Anthony Wilhoit, Kentucky Legislative Ethics Commission.

LRC Staff: Alisha Miller, Daniel Carter, Michael Callan, Kevin Devlin, Jennifer Hans, Roberta Kiser, Karen Powell, and Peggy Sciantarelli

Approval of Minutes

The minutes of the September 12 meeting were approved without objection, upon motion by Senator Thayer.

2020 Kentucky Employees' Health Plan

Guest speakers were Thomas Stephens, Personnel Cabinet Secretary; Jenny Goins, Commissioner, Department of Employee Insurance, Personnel Cabinet; and Colleen Huber, a credentialed actuary with Aon Consulting. They reviewed the Kentucky Employees' Health Plan (KEHP) for plan year 2020.

Secretary Stephens said that KEHP covers more than six percent of the state's population. The membership includes school boards (52%), early retirees (24%), state agencies (19%), and quasi-governmental groups (5%). The plan has been self-insured since

2006. It is the largest self-funded plan in the Commonwealth, with an annual spend of \$1.9 billion. KEHP members include 180,040 active employees and pre-65 retirees, and the plan covers 292,703 lives.

Ms. Goins said the Personnel website provides a benefits analyzer tool, and the online Benefits Selection Guide includes helpful tools for choosing a plan. Premium increases are low for 2020. The highest premium increase is less than \$20—in the LivingWell PPO family plan. There are small deductible and maximum out-of-pocket increases of \$250. On the consumer driven health plans (CDHP) the maximum out-of-pocket and deductible are combined, but they accumulate separately on the PPO plans. The PPO pharmacy maximum out-of-pocket will not increase. The healthcare flexible spending account (FSA) maximum contribution is increased to \$2,700. Members eligible for a waiver general purpose Health Reimbursement Arrangement (HRA) can receive \$175/month (\$2,100/year). The Cabinet continues to monitor usage of the waiver/HRA benefit and has made a concerted effort to educate members about that benefit. KEHP must hold HRA funds in reserve. To be fiscally responsible, the cap on the carryover balance from 2019 to 2020 was lowered to \$6,000. The carryover from 2020 to 2021 will be lowered once again—to \$5,000.

StayWell is the new well-being vendor for 2020, replacing Go365. Members will continue to earn rewards for engaging in health and wellness activities. There will be no changes to the LivingWell Promise. Planholders must complete a health assessment or biometric screening between January 1 and July 1, 2020, to receive the \$480 annual premium discount incentive in 2021. Secretary Stephens said that StayWell is committed to help members improve their health through physical fitness and by better educating members in emotional, social, and financial areas.

Ms. Goins said that in 2019 KEHP began offering optional dental and vision benefits through Anthem. The new program has been a huge success, with 28,449 enrolled in the dental plan and 27,897 enrolled in the vision plan. School boards represent KEHP's largest population; 680 of the 690 Kentucky schools that KEHP services have participants in the dental plan, and 678 have participants in the vision plan. Through the Department of Employee Insurance, Commonwealth of Kentucky public employees are also provided \$20,000 of basic life insurance coverage at no cost, with an option to purchase additional coverage on themselves, their spouses, and children. Secretary Stephens pointed out that the optional vision and dental benefits are offered by KEHP at no cost to the state.

Ms. Goins discussed the factors that determine each plan year's benefits, premiums, and deductibles. She said each plan year stands alone. KEHP looks at cost and claims trends, industry benchmarks, other states' health insurance plans, and works with the vendors in an effort to provide good benefits and affordable premiums. Health and wellbeing support is also critical for plan members.

Ms. Huber discussed claims trends, premium benchmarks, and pharmacy payments and rebates. As of June 2019, the total claims trend for both medical and pharmacy was 9.9 percent, compared to a projected trend of 8.5 percent. Pharmacy claims are driving the upward trend. KEHP's average employee and employer premium increase since 2015 has averaged one percent. Data from the Centers for Medicare and Medicaid Services, Office of the Actuary, National Health Statistics Group, indicates that nationally the employer contribution annual growth rate for both state and local government and private employer-sponsored health insurance is far greater than KEHP's spending increases per enrollee. Pharmacy rebates to KEHP in 2013 totaled about \$38 million but grew to \$130 million for plan year 2018. KEHP receives 100 percent of pharmacy rebates, which might not be the case in smaller employer-sponsored groups. In 2018, the net amount paid by the plan for pharmacy claims was \$308 million.

Representative Miller asked which types of quasi-governmental groups are members of the health plan and whether they are non-P1 agencies. Ms. Goins said the quasi agencies include local, city, and county governments, fire departments, public libraries, and others. They must also be participants in one of the state's retirement systems. Secretary Stephens said that they could be referred to as non-P1, although KEHP no longer uses that language because P1s are no longer issued.

Representative Nemes said that KEHP is a stunningly successful program and is a tremendous benefit for state employees. It is his desire for Kentucky's public employees to understand how good their health plan is when compared to those in the private market. That information would not only increase morale but also improve recruitment of state employees. Secretary Stephens said the Cabinet works to spread the message about the program's benefits through its wellness program, webinars, and presentations to different groups around the state. He and other human resources executives serve on a national board that considers best practices. He said it would be helpful if KEHP had the opportunity to maintain reserve funds to carry over from one plan year to the next. Representative Nemes requested that the Personnel Cabinet provide him with information showing the amount of health insurance savings for state employees in various salary ranges when compared to health insurance in the private market. Ms. Goins said that they will work with Ms. Huber and her team to develop that information.

Responding to questions from Senator Seum, Ms. Goins explained health insurance options that are available to retirees through KEHP, the retirement systems, and Medicare. She said that the life insurance benefit can be carried forward after retirement, but the retiree would pay the full cost, and the premium would be much higher.

Representative Graham said he believes that employees understand that their health insurance is very good and also very reasonably priced. He asked what happens to HRA funds that exceed the carryover cap. Ms. Goins said that the employee would lose that money, and it would go into the health insurance trust fund. The Cabinet regularly

communicates to members the importance of using HRA funds. KEHP also reaches out to individual planholders that have high HRA balances that are in danger of lapsing.

Senator McDaniel questioned whether the net pharmacy costs reflect increased utilization or spiking in drug prices. Ms. Huber said that more members are using high-cost prescriptions and specialty drugs. That is why the rebates are so important—they help reduce the overall cost impact. Senator McDaniel asked whether planholders and medical providers are encouraged to initially try lower-priced prescriptions. He also asked about insulin pricing. Ms. Huber said that KEHP always promotes usage of lower cost prescriptions before switching to more expensive or specialty drugs. Ms. Goins said the diabetes value benefit helps address the cost of insulin, diabetes medications, and supplies. Senator McDaniel questioned whether KEHP is absorbing a substantial increase in the cost of insulin. Some of the practices he has seen in other states' indicate that they are only covering the cost rather than taking steps to control it. Ms. Goins said she would need to research the impact of insulin cost on the health plan. She went on to say that one cost factor is that members are using their diabetes medications as directed. Senator McDaniel said he wants to make sure that the drug companies are not taking advantage of the Commonwealth. He hopes that drug pricing will be examined more in depth and become the topic of more conversation in the future.

Representative Upchurch asked whether the Cabinet could place a dollar value on the health insurance package, since it is a financial incentive that could be considered part of an individual's pay. Ms. Goins said they do not have that information with them today but can get it. She said the Cabinet has been making a concerted effort in the past few years to educate people about the value of the health insurance plan and its free and low-cost benefits. The state, as employer, pays 84 percent of employees' premium cost on average—somewhat more than that for a single plan and a little less than 84 percent for a family plan.

Secretary Stephens said the health insurance plan is an amazing benefit. The unemployment rate in the central Kentucky area is at an historical low, and the Cabinet has begun to rebrand state employee recruitment. There is an emphasis on coming for a job, staying for a career, and making a difference for a lifetime. The health plan is a major highlight in recruitment efforts.

Ms. Goins said that the small deductible increase in the new plan year will save KEHP \$30 million, and the small premium increase will save \$8 million. KEHP will save \$6 million by cancelling Anthem's Enhanced Personal Healthcare Model, which was difficult to implement for a statewide plan that has more than 290,000 members. Reducing the waiver HRA cap to \$5,000 will save \$2 million. A market test by Aon to compare pharmacy pricing will save \$24 million in the 2020 plan year.

Ms. Goins said KEHP began offering the free Rethink benefit in January 2019. It offers online and telephone assistance to support those who care for children and teenagers

with learning or behavioral challenges, including autism. The Live Health Online-Medical benefit has had more than 31,000 visits and has realized cost savings of \$6.6 million. Live Health Online-Behavioral Health is a free benefit that uses the Cabinet's Employee Assistance Program (EAP) as a resource. This online benefit has had 5,691 visits, with more than 60 percent of the patients seeing a therapist and 10 percent seeing a psychiatrist. A cost savings analysis for this benefit is not yet available. EAP Director Trina Koontz has indicated that Live Health Online-Behavioral is helpful to those who need more services than her team is able to provide.

SmartShopper is a benefit that helps KEHP and its members save money by choosing lower-cost providers for medical procedures. This benefit has realized total claims savings of \$11.8 million. Members have received incentives of \$2 million, and the average claims savings per incentive is \$551.

Solera became administrator for the free Diabetes Prevention Program in September 2019. Since that time, 5,400 members have taken the quiz to see if they are at risk, and 4,030 have enrolled in the program. The Value Benefits Program now includes not only diabetes, but also COPD and asthma. This benefit provides reduced co-pays and co-insurance for most maintenance prescriptions or supplies, with no deductible.

Representative Petrie asked whether KEHP is aware of any lawsuits relating to its incentive plans. He said that in July 2019 a class-action lawsuit alleged that Yale University's employee wellness program uses financial incentives that violate the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act. Ms. Goins said that KEHP continually monitors relevant regulations and legal actions, with help from legal counsel, Aon, and the wellness vendor. The requirement to complete the health assessment or biometric screening provides the plan with aggregate data on the number of people at risk and helps with plan design. She believes the health plan is doing the right thing by not judging whether a member is healthy or unhealthy but, instead, trying to make members aware of their health status. Representative Petrie requested that KEHP's counsel contact him to discuss this in more detail.

Representative Sheldon spoke of his own experience with a self-insured company that has 15,000 employees. He stated that self-insured plans provide greater flexibility, and he believes KEHP's structure lends itself to more advantageous negotiation methods.

Senator Alvarado applauded KEHP's management of its pharmacy benefit program and the savings of \$24 million. Ms. Goins said that since becoming self-insured, it has proven beneficial for the health plan to have separate contracts for medical and pharmacy benefit management. Ms. Huber said the current arrangement with CVS Caremark is a transparent contract. The price of prescriptions at point of sale to the member is the same amount charged to the plan. Secretary Stephens stated that an audit by Aon earlier in 2019 to ensure transparency found 100 percent compliance statewide. Senator Alvarado

suggested that an approach similar to KEHP's may be applicable to Kentucky's Medicaid program.

Responding to questions from Senator Alvarado Ms. Goins said she believes the plan pays \$89 for a psychologist and \$99 for a psychiatrist when members use the free online behavioral health benefit but that she would have to doublecheck those amounts. Regarding SmartShopper, she said quality should be a primary focus of the healthcare industry but that KEHP has received little feedback regarding the quality of providers' services. That benefit, however, has led some providers to lower their rates. Senator Alvarado commended KEHP and suggested that some of its programs could serve as a pilot or testing lab for implementation on a global basis.

Responding to Representative Miller, Secretary Stephens explained how to find mobile apps relating to the health plan. Ms. Goins said that most of the KEHP vendors have an app and that KEHP members like to use the online "chat" feature offered by vendors.

Senator Schroder said it is the sense of the General Assembly to bring more transparency to the cost of health care. He welcomed feedback and suggestions from the committee on ways to address cost and improve transparency. He also asked whether KEHP has done anything to market cost comparison of medical procedures for its members. Secretary Stephens said KEHP is preparing to launch a new program for that purpose in 2020. Ms. Goins said it is a SmartShopper program that utilizes quality scores based on data from CMS and from Quantros, a leading provider of healthcare data. This program will enable KEHP to marry quality and cost. The initial focus will be on hip and knee surgery.

Senator Thayer said it is a great accomplishment that KEHP has been able to keep costs low and continue to offer a high level of coverage, including the addition of dental and vision insurance. He also praised the plan's wellness initiatives.

Senator Thayer said that KEHP is the only state-funded plan in the nation that is required by statute to start each plan year with zero funding and no prior year carryover. He asked how it might benefit KEHP for the General Assembly to revisit that policy and change the law to allow a carry forward balance from year to year. Secretary Stephens said he believes the policy should be changed. Ms. Huber said Aon has surveyed all the states and that it is best practice to have some type of solvency reserve. Healthcare costs are increasing across the country. When facing a higher premium year, funds could be rolled forward to help offset the cost to members, employers, and all involved stakeholders. Savings could be used to help keep future costs at a manageable and predictable level. Ms. Goins said that it would cost too much for a plan the size of KEHP to have reinsurance. The plan needs to have flexibility to even out costs from year to year, but this is not possible when starting each plan year at zero. Senator Thayer suggested to Secretary Stephens that

they develop language for possible legislation to address this issue and deliver it to Co-chairs Schroder and Miller for consideration during the 2020 legislative session.

Senator Schroder thanked the speakers for their presentation. He also announced that the next meeting of the committee would be on Thursday, November 21, at 10:00 a.m.

Proposed Changes to the Legislative Branch Ethics Code

Guest speakers from the Kentucky Legislative Ethics Commission (KLEC) were Laura Hendrix, Executive Director; Judge Anthony Wilhoit, Chairman of the Commission; and Emily Dennis, Counsel to the Commission. They presented five recommended changes to the Kentucky Code of Legislative Ethics that were approved by commission members in August 2019. They also submitted a draft of sample legislation for 2020.

Ms. Hendrix said the Commission believes the legislative ethics code works well. It is codified in statute and has been called one of the strongest ethics codes in the nation, due to both the strength of the code and the independent makeup of the commission. Portions of the current proposed recommendations were contained in HB 60, sponsored by Representative Kim Moser during the 2019 regular session. Representative Flood also worked on that bill with the commission and its former executive director John Schaaf. Several members of the State Government Committee also co-sponsored the legislation.

Ms. Hendrix reviewed the five recommended changes:

1. Create a comprehensive ethics prohibition against discrimination and harassment by legislators and legislative agents against legislative employees, legislators, or legislative agents. The recommendation would specifically define “discrimination,” “workplace harassment,” and “sexual harassment” as actions that violate either Kentucky or federal statutes, regulations, or case law relating to protected classifications; and define “legislative workplace complaint.” It would prohibit legislators, legislative agents, and the LRC director from intentionally engaging in discrimination or workplace harassment against an employee of the legislative branch, legislator, or legislative agent, and provide that a violation is ethical misconduct. Ms. Hendrix said that the Commission feels strongly that specifically defining harassment and discrimination is key to ensuring public confidence in the workings of the legislature. Alleged violations would necessitate filing of a formal complaint, signed and notarized under penalty of perjury. Complaints of one employee against another would be handled through LRC’s human resources function. Anyone with a complaint regarding discrimination, sexual harassment, or harassment based on a protected characteristic would also have the choice of going directly to the state Senate or House, the Equal Employment Opportunity Commission, or the Kentucky Human Rights Commission, or the courts. The Legislative Ethics Commission feels that putting specific definitions in the law would help create a safety valve for employees and people who interact with each other in the legislative arena. It is also important to have a clear definition because, in the past, the definition issue has been raised by attorneys for complainants. Having a clear definition is also important for use in training.

2. *Add a requirement for ethics training for legislative staff and change the commission's current issues seminar to two hours. Require that the seminar and the orientation course for new legislators qualify for continuing legal education credit.*

3. *Authorize the commission to dismiss a complaint without prejudice via teleconference call, if the complaint or preliminary inquiry is publicly disclosed by the complainant, or the complainant comments publicly about the complaint.* Ms. Hendrix said that fairly often a preliminary inquiry reveals that a complaint does not rise to the level of an ethics complaint, might have no basis, or might be political in nature. Enabling the members to meet via teleconference instead of in person would give the commission another avenue to expeditiously resolve a complaint.

4. *Clarify that the Legislative Ethics Commission has authority to adjudicate a complaint filed against a legislator, even if the legislator leaves office after the complaint is filed, as long as the complaint is based upon action that occurred not more than a year prior to the separation from office. Clarify that the commission may adjudicate a complaint filed against a legislative agent up to a year after the agent is no longer a registered legislative agent.* Ms. Hendrix said the commission feels it is important and in the public interest to clarify its jurisdiction and its authority to act regarding ethics code violations.

5. *Clarify that any alleged violation of the Code of Legislative Ethics can be adjudicated by the commission as ethical misconduct, even if it is designated as a misdemeanor or a felony.*

Ms. Hendrix concluded her review, and Senator Thayer commended the recommended changes as a solid proposal. He said that shortening the annual training is a welcome step in the right direction. The recommendation to dismiss a specious claim via teleconference is long overdue, and he looks forward to supporting that recommendation. He said he has been subjected to a specious claim that was later dismissed as frivolous and that both political parties have inappropriately used the ethics commission as a weapon.

Representative Nemes asked whether the commission has the right to extend its investigation into others members of the legislature on the basis of information discovered when investigating a complaint. Ms. Hendrix said that the commission can only act on a sworn complaint, but there is a provision in the law to allow a commission member to file a sworn complaint. The commission also has the ability to issue both formal and informal opinions. Representative Nemes suggested that the commission should be able to investigate ethical violations by others that may be discovered during the course of an investigation of someone else without having to wait for the filing of a sworn complaint. Judge Wilhoit said that on occasion their investigators have filed a complaint against someone based on information that came to light while investigating another.

Senator Thayer said the recommendations are a solid plan overall but that not all of them may win passage. He also suggested that the issue raised by Representative Nemes could present a legal problem.

Representative Graham questioned how an inquiry would be affected if someone other than the complainant makes its existence public without authorization. Ms. Hendrix said that this could present a problem. The commission strives to maintain confidentiality and would look into any disclosure to clarify who made the disclosure and determine its effect.

There was no further discussion. Senator Schroder thanked the speakers and said the committee looks forward to working with them in the future. Business concluded, and the meeting was adjourned at 11:44 a.m.