

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 1st Meeting of the 2020 Interim

June 24, 2020

Call to Order and Roll Call

The first meeting of the Interim Joint Committee on State Government was held on Wednesday, June 24, 2020, at 10:30 AM, in Room 171 of the Capitol Annex. Representative Jerry T. Miller, 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, Stan Humphries, Christian McDaniel, Robby Mills, Michael J. Nemes, Damon Thayer, and Johnny Ray Turner; Representatives John Blanton, Tom Burch, McKenzie Cantrell, Jeffery Donohue, Jim DuPlessis, Larry Elkins, Joseph M. Fischer, Kelly Flood, Jim Glenn, Derrick Graham, Joe Graviss, Richard Heath, Samara Heavrin, Joni L. Jenkins, Matthew Koch, Derek Lewis, Scott Lewis, Mary Lou Marzian, Patti Minter, Jason Nemes, Jason Petrie, Rick Rand, Steve Sheldon, James Tipton, Ken Upchurch, Russell Webber, and Lisa Willner.

Guests: Jay Hartz, Legislative Research Commission; Tricia Okeson and Mark Carter, Department of Public Health, Cabinet for Health and Family Services; and Gerina Whethers and Jenny Goins, Personnel Cabinet.

LRC Staff: Alisha Miller, Daniel Carter, Roberta Kiser, and Peggy Sciantarelli

Contact Tracing Activities and CARES Spending, Contracting, and Oversight

Guest speakers from the Department of Public Health, Cabinet for Health and Family Services, were Tricia Okeson, Deputy Commissioner, and Mark Carter, Executive Advisor. They appeared via videoconference. Their testimony included a PowerPoint presentation entitled "Contact Tracing" and a brief YouTube video relating to Kentucky's contact tracing program.

Mr. Carter said that public education and participation presents a significant challenge for contact tracing. As part of an educational effort to promote understanding of contact tracing, the Department has been communicating with county judge/executives, mayors, the League of Cities, chambers of commerce, school superintendents, independent college and university presidents, and others. The Department's work is consistent with the

guidelines from the White House and the Centers for Disease Control and Prevention (CDC). The contracting tracing and tracking system—referred to as CTT—is the tool used by disease investigators and contact tracers in conjunction with the COVID-19 containment and mitigation strategy. Privacy protections have been built into the system. The current focus on the pandemic should also provide long-term value to the Department of Public Health, local health departments, epidemiologists, health professionals, scientists, and the Commonwealth in general.

Mr. Carter reviewed the slide presentation, which explains that contact tracing combines public participation and the power of technology to help public health officials and health care providers contain the spread of COVID-19. It allows public health workers to record individual information of Kentuckians who have been exposed and to conduct outreach and monitor wellness. Disease investigators call individuals who have contracted the virus, confirm their lab results, verify their isolation needs, and ask about potential contacts. Contact tracers are then responsible for calling the individuals who have been exposed, providing information to them, and assessing the individuals' health on a daily basis. In some areas, the disease investigator and the contact tracer may be the same person. The system may also employ individuals—social support connectors—who identify daily needs of patients or contacts who are isolating and quarantining. The CTT system shares information through social media and shares communication materials with public establishments, government buildings, local health departments, medical offices, healthcare facilities, and testing sites.

The contact tracing effort requires a partnership between the state, local departments of health, and the public. The purpose of contact tracing is to help people protect their families and friends. It is also a tool to help ensure an open and strong economy in the state and to educate citizens regarding COVID-19. To ensure the best effort, Kentuckians need to be united and to spread awareness and understanding of contact tracing. Informational materials are available on the “kycovid19.ky.gov” website.

Representative Miller asked about the qualifications of disease investigators and whether contact tracers are local or state public health workers. Mr. Carter said that disease investigators typically are clinicians such as registered nurses or someone in an allied health profession who understands the disease and how to manage it. Tracers do not have to be clinicians, but it is important that they have excellent communication skills. Kentucky's 61 local health departments have been doing contact tracing on communicable diseases for decades and already had 431 disease investigators and contact tracers on staff prior to COVID-19. Since the advent of COVID-19, the Department of Public Health has used staffing agencies to hire temporary positions for regional teams of disease investigators and contact tracers. Staff in those positions may be physically located in a local health department or, if working remotely, live in the local health department's community. As of June 19, 2020, an additional 206 have been employed, for a total of 637. CARES Act funding permits hiring up to 700 people as the need arises.

Senator Thayer said he wants to go on record that he is dubious and skeptical about contact tracing. He believes it infringes on people's freedoms and liberty, and he thinks the legislature should be more involved in making decisions when there is a state of emergency. He asked about the Governor's promise to reimburse local health department costs related to COVID-19 and whether any funds have been disbursed. Ms. Okeson said the Governor has allocated \$10 million to reimburse local health departments, and the Department of Public Health is tracking local health department costs relating to COVID-19 activity. She believes a little over \$6 million has been sent to the local health departments, based on their costs to date. Senator Thayer said he would like to have verification from the local health departments that they have received the funds. He also expressed concern that people are being hired through staffing agencies when the health departments have employees on staff who are already trained. Mr. Carter said the additional staff were hired in order to provide flexibility to move resources to areas that might experience outbreaks. The Department of Public Health recognizes the competency and expertise of the local health departments, and they have final say regarding the hiring of additional staff. There is emphasis on hiring staff from the local communities where they will be working. Mr. Carter said he understands Senator Thayer's concerns but believes there is a good balance between central control for deployment of staff and ensuring that they are properly supervised on a daily basis.

Responding to questions from Senator Nemes, Mr. Carter said that the CTT system for COVID-19 is being funded by the CARES Act through the end of the current calendar year and will also be applicable to other communicable diseases. Without reauthorization of CARES funding, no state funds are available to continue paying the additional hires. Local health departments have jurisdiction to require a person to quarantine, and most will likely comply when they understand that the program is designed to help protect them and their loved ones from the virus. Contact tracing for large group events is a matter of practicality. It is recognized that an identified contact would probably not know everyone in attendance at the event.

Representative Graviss asked about the potential for using current staff or "ramping up" staffing if there should be a future need, once the current pandemic subsides. Mr. Carter said that many of the current staff are competent at contact tracing, and he believes there would be a good pool from which to choose. At least one Kentucky institution of higher education is trying to develop a certification program for contact tracers, and that bodes well for the future. Lack of the necessary technology has been one of the biggest challenges during the pandemic. From an overall staffing perspective, though, the Commonwealth would be able to respond effectively in the future if needed. The department has also had a crisis response function in place for years, and much has been learned from dealing with COVID-19.

Representative Bratcher asked whether someone who has been in contact with an infected person will be required by law to quarantine and whether law enforcement would be notified. Mr. Carter said the Department of Public Health would not report it to law enforcement as a matter of routine, and there are privacy policies in place to protect a patient's identity. The local health department and county officials would be responsible for dealing with the rare exception of someone who refuses to cooperate or participate in the program.

Representative Minter said that Warren County has been a hotspot and that contact tracing has been a big part of the heroic work of the Barren River District Health Department, which covers eight counties. Matt Hunt, director of the Barren River District Health Department, has indicated that they are hiring 35-40 people as contact tracers so that other health department staff can resume their normal duties. Representative Minter said contact tracing has a long history in United States public health. She expressed thanks for public health officials' work and for bringing in new technology and methodology.

Representative Tipton asked about the employment status and compensation of contact tracers. Mr. Carter said that 431 are already employed by local health departments as disease investigators and contact tracers. The new people being hired through staffing agencies were selected through the procurement process and are being located either physically or virtually within the local health departments. The state pays the staffing agencies an hourly amount, and those agencies recruit and pay according to the competitive labor market. He said he would be happy to obtain additional information about the compensation.

Representative Marzian said she is in favor of contact tracing—that it is a life issue and should not be coupled with politics. She was notified that she had been exposed and was grateful for the effort, since it allowed her to take steps to protect her elderly mother-in-law. She also asked whether there would be enough funds to pay for all the contact tracers. Ms. Okeson said she believes the CARES funding will be sufficient through December 31, 2020. After that date, the Department might also be able to access funds through federal grants.

Representative Blanton asked whether the people hired through the staffing agencies are being paid more than the local health department employees who are doing the same work. Mr. Carter said \$50/hour—the highest rate being paid through a staffing agency—would be for professionals such as disease investigators, and that rate is a function of the labor market. Local health department employees have full-time, permanent positions that include health insurance and pension benefits, whereas someone working for a staffing agency is just receiving hourly pay, with no benefits or job guarantee after December 31. The compensation issue has arisen in discussions with local health department directors, and the Department of Public Health is trying to help them understand the discrepancies in pay. He said he believes it was a good decision to have

new positions and centralized control and flexibility to move them from region to region. Representative Blanton said he understands the temporary nature of the staffing agency hires, but he wants to make sure that local health department employees are treated fairly.

Responding to Representative Heavrin, Mr. Carter explained that the information gathered by contact tracers would be exempt from open records requests.

Representative Flood requested a breakdown, by gender, of the contact tracers and disease investigators, especially the 206 hired through the staffing agencies. She also expressed support for protecting and enhancing the salaries of health care workers. Mr. Carter agreed to provide the gender information.

Representative Sheldon asked whether the contract with Deloitte Consulting to provide a software system for contact tracing was done through a bid or a no-bid contract, and whether the software system was already in use outside Kentucky. Mr. Carter said the Cabinet already had a contract in place with Deloitte, and it was amended and expanded to include development of a contact tracing and tracking system. Other states use the system, but he does not know their timeline. Representative Miller asked Mr. Carter to provide the requested information to LRC staff.

Representative Sheldon agreed on the need for contact tracing but expressed concern about the need for privacy and keeping the information secure. Mr. Carter said that the processes and policies in place include an emphasis on privacy. Disease investigations and contact tracing have always been reported through a secure system to the Department of Public Health and to the CDC. The information is not physically kept locally. The new people hired through the staffing agencies undergo a 2½ day training curriculum developed by the Department’s epidemiologists and, when assigned to local health departments, they are expected to fulfill the same Health Insurance Portability and Accountability Act (HIPAA) training given to local health department staff.

Senator Thayer stated, “We, as an elected body, would do well to remember that freedom and liberty do not die during a pandemic. If we are not careful, there are certainly big government do-gooders, both elected and unelected, who will try to limit both. We need to be wary of that throughout this state of emergency as long as it lasts.” He also expressed sympathy for school superintendents who are trying to get schools reopened. He posed the question of how school districts and superintendents will be able to respond if contact tracing finds that a teacher, student, or school bus driver has been exposed to the virus. Mr. Carter said he would have to defer on the school question. The Department of Education is engaged in discussions with school superintendents, and he is not privy to those sessions. In the event of infection in a school, the Department of Public Health would communicate with the school system. The goal of contact tracing would be to isolate and contain the infection and avoid a situation where an entire school or school system would have to be shut down.

Senator Mills asked how it would be handled if contact tracing detects exposure at abortion clinics, which have been allowed to stay open throughout the pandemic. Mr. Carter said, to his knowledge, no exposure has occurred at an abortion clinic, but it would be handled the same as any other disease investigation or tracing effort. If an entire facility was impacted, it could possibly be closed.

Representative Miller thanked the speakers for their presentation and asked that they provide LRC staff with the information that has been requested.

LRC Response to the COVID-19 Pandemic

LRC Director Jay Hartz addressed the committee. Mr. Hartz said that about March 16, LRC moved to a minimal staffing plan, in response to COVID-19. That staffing plan continued through March and April. Beginning May 1, LRC began moving additional staff into the office—below the 50-percent level recommended by the Governor. This has been possible by allowing staff to telework. All LRC systems continue to function, though some possibly to a lesser degree. He commended LRC staff for the great work that they do.

Mr. Hartz said the Senate President and the Speaker authorized him to make LRC staff available to the state unemployment insurance office to help reduce the backload of applications. Approximately 100 LRC staff volunteered for that activity. As it turned out, unpredicted administrative hurdles prevented that participation. However, LRC's Constituent Services staff have done an amazing amount of work to help expedite the unemployment insurance process. They generally receive 2,500-3,000 yearly requests for help or information, but since March 16 they have answered 2,148 legislative referrals. Currently 3,472 additional requests await processing, for a total of 5,620. The vast majority of those relate to unemployment insurance. Those numbers are all generated by constituents of legislators, who then forward the requests to Constituent Services. Legislative assistants and leadership staff have also been assisting with unemployment insurance inquiries.

In response to the COVID-19 public health emergency the Legislative Research Commission has incurred, and will continue to incur, necessary unbudgeted expenditures to comply with protocols established at both the federal and state levels. The unbudgeted expenses are vital to protect LRC employees, legislators, state and county elected officials, employees of state agencies and local governments, and, most importantly, the general public as they seek to effectively communicate with members of the General Assembly. Currently room 171 is the only committee room equipped for videoconferencing. LRC is negotiating with vendors to similarly retrofit all the committee rooms prior to the next regular session, including room 327 in the Capitol. LRC is also in the process of moving to a new phone system, using voice-over-internet protocol. This will benefit staff who are working from home and help members of the General Assembly to more effectively communicate with their legislative assistants and other LRC staff. The Legislative

Research Commission will be seeking reimbursement through CARES Act funding for these necessary expenses to upgrade and improve ability to assist the public and keep them informed.

Mr. Hartz also announced that on June 25 all committee meetings will be held remotely, and all LRC staff will be working remotely. A large crowd is expected for an event at the Capitol, and for safety reasons the State Police have advised limiting the number of people working at the Capitol campus. He understands that a similar request was made to the executive branch. In response to Representative Graham, he later explained that the June 25 event relates to the Breonna Taylor situation in Jefferson County.

Representative Miller said he had received 50 or 60 requests from constituents regarding the unemployment issue, and he thanked Constituent Services staff for doing a wonderful job.

Representative Graviss asked about the possibility of training LRC staff to assist in reducing the unemployment insurance backlog. Mr. Hartz said that executive branch unemployment insurance staff are working seven days a week in an attempt to deal with the situation, and it is his understanding that they have been unable to resolve the administrative hurdles that prevented LRC staff from participating.

Senator Nemes expressed gratitude to Mr. Hartz and to LRC staff for trying to help with the unemployment insurance backlog, but he stated that it is not LRC's responsibility. He said the people of Kentucky need to be aware that, although LRC is offering to help, unemployment insurance work is the responsibility of the executive branch administration.

Representative Graham asked whether there is a timeline for transitioning back to a normal staffing model. Mr. Hartz said it depends on what happens. In consultation with his senior management team, he decided not to establish an arbitrary date for returning to full capacity, and he does not know when that might be. He is wholly focused on making sure that the General Assembly is able to convene for the regular session in January and that legislators are able to function and work effectively for their communities and constituents.

Senator Thayer thanked Mr. Hartz for his excellent testimony and noted that the LRC recently decided to renew his contract. Representative Miller also thanked Mr. Hartz on behalf of the committee.

Personnel Cabinet's Response to the COVID-19 Pandemic

Guest speaker Gerina Whethers, Personnel Cabinet Secretary, appeared via videoconference. Her testimony included a PowerPoint presentation entitled "COVID-19 Response." She recognized members of her staff who were available during the videoconference: Deputy Secretary Lindy Casebier; Jenny Goins, Commissioner,

Department of Employee Insurance; Mary Elizabeth Bailey, Commissioner, Department of Human Resources; and Robbie Perkins, Director of Technology Services.

Secretary Whethers said that part of the cabinet's mission is to provide leadership and guidance to attract, develop, motivate, and retain a talented, diverse workforce. It also has the responsibility to ensure continued communication during the pandemic. There are an estimated 29,237 executive branch employees located in 850 state offices/facilities; that number includes 159 employees in the Personnel Cabinet.

Secretary Whethers reviewed the COVID-19 response timeline. The Governor declared a state of emergency on March 6. At that time, KEHP began expanding coverage to protect employees teleworking from home. Personnel Memo 20-02 was disseminated in mid-March, relating to HR protocols for COVID-19. To promote the health and well-being of state employees and reduce spread of the disease, agencies were directed to reduce on-site staffing by up to 50 percent. Telecommuting increased to 75 percent later that month. A Business Continuity Plan (BCP) was initiated around March 30. To keep employees safe, personnel restrictions, policies and guidelines were implemented during May as employees began the transition from "healthy at home" to "healthy at work." The BCP provides processes for alternative work sites, including procedures and technology for all staff who are working remotely. It is updated annually, tested periodically, and audited by the Auditor of Public Accounts.

"Healthy at Home" action steps included implementation of a telecommuting policy (Personnel Memo 20-02), increased workplace cleaning, agency communications, suspension of work-related travel, and suspension of in-person government services to the public. Directives were communicated to employees across the Commonwealth to ensure that they knew what was happening and that the Personnel Cabinet was open to their questions and concerns. Essential services were maintained. Telecommuting has varied among state agencies, based on the mission of the organization. The cabinet also offered virtual training courses for those working from home. The cabinet has been facilitating meetings, virtual trainings, and programs throughout the process. The Kentucky Employee Assistance Program also produced and hosted a live webinar. In addition, a 10-day state-of-emergency paid sick leave was authorized for employees who tested positive for COVID-19.

Much of the KEHP expanded coverage that started in early March was provided at no cost to members. It covers COVID-related inpatient and outpatient services received January 1-December 31, 2020; screening and testing for COVID-19; and expanded pharmacy benefits. The suspension of elective procedures helped cover KEHP's cost for the free services. For the benefit of members, adjustments were made to flexible spending and health reimbursement accounts. KEHP expanded telehealth services for medical and behavioral health through September 30. LiveHealth Online Medical experienced a 34 percent increase in usage from January-May 2020, compared to the same time period in

2019. Usage of LiveHealth Online Behavioral Health increased by 55 percent. KEHP now is working to minimize the impact of COVID-19 for high-risk populations and to promote the importance of preventive services.

The Kentucky Workers' Compensation Insurance Program provides coverage for more than 63,000 employees and volunteers. To date, the program has received 170 injury reports related to COVID-19. As of April 30, 2020, Kentucky Deferred Compensation is assisting 76,845 participants in the plan, with no interruption of services. The Office of Legal Services team has been instrumental in helping to rapidly develop policies in relation to the Emergency FMLA Expansion Act and the Emergency Paid Sick Leave Act, designed to ensure that employees have expanded leave options during the COVID-19 crisis. The Department of Employee Insurance is working with individual agencies to assist members who are having difficulty paying premiums due to COVID-19 constraints.

As part of the transition to "Healthy at Work," a Healthy At Work Task Force was created. Telecommuting has been encouraged, and free COVID-19 testing for state employees is being offered in partnership with First Care and local health departments.

Senator Mills said he received an email from a county judge (Crittenden County) who expressed frustration because he has not received an answer to email inquiries he has been sending to state agencies for several months. The recipients of his emails appeared to be working from home. Agencies he attempted to contact included the Finance and Administration Cabinet, the Department of Revenue, the Transportation Cabinet, and the Education and Workforce Development Cabinet. Senator Mills said it is important for state government to serve local elected officials and citizens of Kentucky when they seek information or assistance. Secretary Whethers said it is important to respond to citizens and to answer their questions as quickly as possible. She wants to make sure that every effort is made to do so—and as quickly and safely as possible. She said she would be happy to reach out to the official if Senator Mills would forward the inquiry to her.

Representative Willner said she is encouraged that so many people are taking advantage of the telehealth benefit. She asked whether its continuance should be affirmed through legislation or administrative regulation. Ms. Goins, Commissioner of the Department of Employee Insurance, agreed on the importance of telehealth services and said it is coming more into focus on the national level, as well as in Kentucky. She said more conversations are needed regarding the telehealth environment and that it would be helpful to have policy, or possibly legislation, in place related to telehealth services.

Representative Graham asked what action should be taken, or protocol followed, regarding the email issue raised by Senator Mills. Secretary Whethers said she would reach out to the cabinet secretaries involved to ensure that the county official is contacted. She said there is protocol and policy in place within state agencies, but she feels it is still her responsibility to make sure that questions are answered.

Representative Miller thanked Secretary Whethers and staff. He announced that the next meeting of the committee would be on July 28. Business concluded, and the meeting was adjourned at 12:35 p.m.