

PUBLIC ASSISTANCE REFORM TASK FORCE

Minutes

July 8, 2019

Call to Order and Roll Call

The 1st meeting of the Public Assistance Reform Task Force was held on Monday, July 8, 2019, at 3:00 PM, in Room 131 of the Capitol Annex. Representative David Meade, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stan Humphries, Co-Chair; Representative David Meade, Co-Chair; Senators Whitney Westerfield and Max Wise; Representatives Nima Kulkarni and Russell Webber; Elizabeth Caywood and Bill Wagner.

Guests: Anne-Tyler Morgan, Member, McBrayer, PLLC; James Ziliak, Ph.D., Gatton Endowed Chair in Microeconomics and Director, Center for Poverty Research, University of Kentucky; Douglas Beard, Director, Cabinet for Health and Family Services; and Laura Begin, Liaison, Cabinet for Health and Family Services.

LRC Staff: Chris Joffrion (lead staff), Ben Payne, Sean Meloney, Becky Lancaster, Kate Talley, and Christy Young.

Charges and Duties of the Task Force

Representative Meade stated that the charge and duties of the Public Assistance Reform Task Force shall be to specifically examine the effectiveness of establishing work and community engagement requirements for Supplemental Nutrition Assistance Program (SNAP) and Medicaid beneficiaries and to recommended protocol for implementation. The task force shall also examine the effectiveness of a substance abuse screening program for applicants and recipients of public assistance who have a felony or misdemeanor history of substance abuse and examine the effectiveness of requiring all welfare benefit cards to include photo identification. The task force will research and submit its findings and recommendations to the Legislative Research Commission in November.

Introduction of Task Force Members

Each member of the task force introduce themselves. Representative Meade stated that the task force would hear testimony from many qualified individuals to help gather as much data as possible.

Need for Public Assistance Reform

Anne-Tyler Morgan, member, McBrayer PLLC, stated that although assistance is sometimes needed by families, the goal is to become self-sufficient, but that some families or individuals may need assistance for a longer period of time.

In the United States, the current welfare system is comprised of approximately 100 different federal programs. While the system does give assistance to individuals who are currently in need, it does not offer them any training for the future, and eligibility rules require that recipients not have any assets in order to receive benefits. Recipients are also penalized through high effective marginal tax rates which makes it very difficult to get ahead because as recipients improve their financial status, the benefits are lessened or taken away. Changes need to be made to help recipients receive the help they need while improving their financial situation. Federal rules and requirements limit what can be changed or reformed in Kentucky. What can be done is to reform administration.

Ms. Morgan discussed three programs that were addressed in HB 3 from the 2019 Regular Session are Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), and the Kentucky Medicaid Program. TANF was created through the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. She stated that the challenges with TANF include that some individuals remain in the program for long periods of time or they return to the program due to recurring financial difficulties. Federal law states that TANF funds can provide assistance to needy families so that children may be cared for in their own homes or the homes of relatives. TANF funds can also be used to promote job preparation, to prevent or reduce the occurrence of out-of-wedlock pregnancies, and to encourage the formation and maintenance of two-parent families.

According to the most recent fiscal year report provided by the U.S. Department of Health and Human Services (HHS), 64 percent of this funding is spent on basic assistance, 11 percent on work training and education, 14 percent on child care, 5.4 percent on program management, 3.9 percent on work supports and support services, and 1.8 percent on fatherhood and two-parent family programs. Kentucky is one of only two states that has devoted the majority of its TANF funds to basic assistance in this fiscal year. Ms. Morgan asked the task force to study the shortcomings associated with current TANF funding allocations and how allocations could be improved. She suggested that the task force consider recommending 25 percent of the program funds for education and training programs and work programs that help families have long-term, sustainable jobs, 25 percent for work and supportive services such as transportation or childcare, 25 percent for childcare needed to help low-income parents establish and maintain employment, 15 percent for basic assistance, 10 percent for short-term assistance, and 5 percent for program maintenance. These recommendations, according to Ms. Morgan, are consistent with Federal Law and with the comprehensive five year TANF reauthorization bill that was recently approved by the U.S. House Ways and Means Committee.

Ms. Morgan stated that in 2016, Kentucky's share of administrative cost to support the SNAP program exceeded \$60 million. In the same fiscal year, there were 408 positive post-certification investigations which lead to \$2.3 million in SNAP benefits fraud discovered by the Department for Community Based Services (DCBS). In 2017, the SNAP error rates nationwide exceeded 6 percent. The photo ID recommendations found in HB 3, and discussed how concerning the photo ID only one state, Massachusetts, currently uses the photo ID system. The program has cost Massachusetts a great deal of money and has several drawbacks. One drawback, using a photo ID will limit which family member can purchase food for the family. Requiring a photo ID also does not resolve benefit trafficking or secondary market fraud concerns.

Ms. Morgan stated that 21 percent of Kentuckians, or about 1 of every 6 adults, receive Medicaid benefits. Approximately 462,000 Kentucky adults (with income up to 138 percent of the federal poverty level, regardless of medical condition) receive services through the Medicaid expansion. In federal fiscal year (FFY) 2016 Kentucky spent over \$9.6 billion on Medicaid services. The task force could consider creating a community engagement program for the Medicaid population that would require employment, volunteer hours, or education and job training.

In response to questions from Senator Westerfield, Ms. Morgan stated that she would provide the task force with information on the status of litigation regarding substance abuse testing at a later date, and Elizabeth Caywood, Deputy Commissioner of the Department for Community Based Services, stated that she would provide information on the amount of SNAP benefits distributed in Kentucky.

In response to a question from Dr. Wagner, Ms. Morgan stated that she did not recall if substance abuse screening requirements in HB 3 would apply to all 3 programs, but she will look into that.

In response to questions from Representative Kulkarni, Ms. Morgan stated that the recommended redistribution of TANF funds did not include efforts to prevent or reduce out-of-wedlock pregnancies and that under the redistribution model, funds allocated for childcare and child welfare could be used to Kinship Care payments.

In response to a question from Ms. Caywood, Ms. Morgan stated that TANF funds allocated for basic assistance did include child welfare activities. Ms. Caywood said that she would provide additional information on SNAP error rates in surrounding states and that the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) has repeatedly informed DCBS that substance use screening is not permissible in the SNAP program. She recommended that DCBS be allowed flexibility in how it manages TANF funds, and she stated that DCBS could testify to how funds are currently distributed. Ms.

Caywood also cautioned against penalties and punitive action against parents stated that it is important to be mindful of the impacts on children.

In response to a question from Senator Humphries, Ms. Morgan stated that TANF funds in Kentucky are allocated to the four basic assistance categories in very different quantities than in most other states. She said that it may be necessary to examine these allocations.

The Effects of Public Assistance Reform

James Ziliak, Ph.D., Gatton Endowed Chair in Microeconomics and Director of the Center for Poverty Research at the University of Kentucky, testified on public assistance participation rates. Dr. Ziliak stated that in 2000 approximately 2 percent of Kentuckians received benefits through TANF and that by 2018 that number had dropped to less than 1 percent, or roughly 40,000 people. The strong economy and reforms of the 1990's lead to a reduction in TANF participation and an increase in employment among single mothers. He also stated that the up take rates, or the percent of eligible individuals who receive benefits, has declined. Under Assistance for Families with Dependent Care (AFDC), the predecessor to TANF, 70 to 75 percent of eligible individuals received aid. Under TANF about 20 percent of eligible individuals receive aid.

On the topic of SNAP, Dr. Ziliak testified that the majority of the administrative costs covered by the state of Kentucky go toward the payment of participating vendors. Nationally, 250,000 outlets accept SNAP benefits, including over 4,500 in Kentucky. SNAP participation rates in Kentucky are higher than the national average. In 2018, Kentuckians received \$850 million in federal SNAP benefits. Research indicates that every dollar of SNAP benefits generates \$1.50 in economic activity, or \$1.27 billion for Kentucky in 2018. Households that receive SNAP benefits spend 20 percent less on healthcare than low income households that do not receive SNAP benefits.

Dr. Ziliak testified that children are by far the largest group served by the Medicaid program, but more Medicaid funds are spent on nursing homes and disabled elders than children.

Dr. Ziliak stated that states that allocate funding for training experience longer term gains from public assistance recipients than those states that attempt to push people into work through work or community engagement requirements. Rescinding the Able-Bodied Adult Without Dependent (ABAWD) waiver has led to declines in SNAP participation, but that there is little evidence that rescinding the waiver has increased job participation rates.

On the subject of substance abuse screening, Dr. Ziliak testified that federal laws prohibit participation in TANF and SNAP by convicted drug felons, but states do have the option to modify or remove those prohibitions. Kentucky, along with about half of all

states, modifies the ban. He stated that evidence from various states has shown that the administrative costs of drug testing outweighs the potential benefits and that substance use is not related to participation in public assistance programs or the length of time an individual receives benefits.

Dr. Ziliak testified that because USDA guidelines for SNAP require that benefits be redeemable by any member of the household that receives benefits, including photo identification on benefit cards is not recommended as this could prevent the use of benefits by some household members. Current SNAP error rates are near an all-time low, and requiring cards to contain photo identification will likely increase administrative costs and create problems for vendors and benefit recipients.

In response to a question from Senator Westerfield, Dr. Ziliak stated that he was not familiar with the exact modification that Kentucky has made concerning TANF and SNAP participation by convicted drug felons. Ms. Caywood stated that according to KRS 205.2005, any public assistance recipient under Title IV of the federal Social Security Act and any food stamp program recipient who has been convicted of a drug felony after August 22, 1996 shall remain eligible for benefits if the recipient has been assessed as chemically dependent and is participating in, or has successfully completed, a chemical dependency treatment or is pregnant.

In response to questions from Senator Humphries, Dr. Ziliak explained that SNAP was established based on the economy food plan of 1964 and has only been updated about once every decade since. SNAP is updated to respond to food price inflation. The economy food plan was designed for emergency use only during natural disasters and was intended to be a temporary plan. The food preparation cost is understated by between 20 percent and 50 percent for single-mother families suggesting that SNAP benefits are inadequate for some families.

Mr. Wagner reflected on Dr. Ziliak's testimony quoting his statement, "if the goal is to reduce participation in TANF, SNAP and Medicaid among Kentuckians." Mr. Wagner asked the chair to explain the goal of the task force and how to measure the effectiveness of any changes to the public assistance programs. In response to Mr. Wagner's question, Chairman Meade stated that the purpose of the task force is information gathering, to get all sides of the issue at hand, to try to decipher data, and at the end to come up with some recommendations. He compared this task force to the Child Welfare House Work Group that was formed in 2017.

Electronic Benefit Transfer (EBT)

Laura Begin, a liaison from the Cabinet for Health and Family Services, testified that DCBS uses electronic benefit transfer (EBT) cards to administer SNAP, Kentucky Transitional Assistance Program (KTAP), and Kinship Care benefits. The Kentucky Works

Program and the Work Incentive (WIN Reimbursements) program may also utilize EBT cards in active status in Kentucky and explained the process for using an EBT card. A benefit recipient, an authorized representative, or family member in the household that receives benefits are permitted to use the EBT card with a 4-digit PIN which is required for any transaction.

Mr. Douglas Beard, Director of Division of Family Support in the Cabinet for Health and Family Services, discussed restrictions and limits on the items that can be purchased using SNAP benefits. Food items that can be used for food preparation in the home, as well as seeds that can be used to grow food, are eligible to be purchased using SNAP benefits. Restricted items include alcohol, tobacco, live animals, vitamin supplements, prepared foods, cleaning products, personal hygiene items, pet food, and other non-food items. Because the EBT cards are used to transfer a variety of cash assistance benefits, the cards can be used to purchase items not permitted by SNAP and that the EBT card system deducts funds from appropriate accounts based on what is being purchased. Cash assistance program benefits, such as those received through KTAP, can be used for rent or mortgage payments, to pay utility bills, or to purchase items such as diapers and person hygiene products. EBT cards cannot be used to make any purchase as liquor stores, gambling facilities, or in adult-oriented entertainment facilities.

According to Mr. Beard, in May of 2019 approximately 529,000 individuals living in 238,000 households in Kentucky received SNAP benefits and approximately 14,000 households which were home to 27,000 children received KTAP cash assistance benefits via EBT cards. The average monthly SNAP benefit was \$251 per household, 100 percent of which is federally funded. The average monthly KTAP benefit was approximately \$217 per household. The eligibility rules for KTAP are more restrictive than SNAP; the income guidelines are lower and there must be children under the age of 18 living in the home.

Mr. Beard testified that EBT card fraud is committed by clients, retailers, and case workers. Client perpetrated fraud included trafficking or trading cards for cash, double participation which occurs when recipients receive benefits from multiple states, unreported household members or unreported income, and inappropriate purchases. Retailer perpetrated fraud includes giving cash back on SNAP purchases, stealing card information, and allowing households to purchase on credit. Case workers commit fraud by issuing cards or benefits to themselves or to ineligible family or friends. He explained that in an effort to prevent and detect fraudulent behavior, the cabinet monitors multiple replacement card requests, excessive card swipes which refers to the same card being used to make multiple large purchases in a single day, and out-of-state activity. The cabinet also utilizes secret shoppers and relies on public tips to combat fraud. Mr. Beard stated that in May of 2019, 192 cases of potential fraudulent activity were identified. For the reporting period in July to September 2018 a total of 184 individuals were disqualified from SNAP for trafficking benefits, and for the period of October to December 2018, 230 individuals

were disqualified for trafficking. Combined, trafficking disqualifications from the second half of 2018 accounted for approximately \$450,000 in fraud claims.

Mr. Beard explained that while federal regulations permit the inclusion of photo identification on EBT cards, under no circumstances can the inclusion of photo identification impact a household's eligibility or ability to use the card to purchase allowed items. Many recipients have authorized representatives who also must be allowed to use the cards to make permitted purchases. For these reasons, there are many situations in which photo identification may not work well. In the one state that includes photo identification on EBT cards (Massachusetts), he stated that 75 percent of benefit recipients are exempted from the photo identification requirements and that overall the program has not been proven to be beneficial. Maine previously implemented a photo identification requirement, but after 3 years, the state ended the program citing high administrative costs and no return on investment. Oklahoma attempted to implement a photo identification program only to determine that any potential benefits would not justify the administrative costs and burden. As alternatives to requiring photo identification on EBT cards, he discussed the possibility of connecting public assistance benefits to state issued driver's licenses or combining all public assistance benefits including Medicaid benefits on a single card.

In response to questions from Senator Westerfield, Mr. Beard stated in some cases of benefit fraud, the individual remains eligible but that benefits are captured by the state for restitution. Benefit interception of this sort typically lasts for about 12 months. He also explained that in some fraud cases there are hearings to explore the recipients' intentions prior to any criminal proceedings.

In response to a question from Senator Wise, Mr. Beard stated that anyone with the PIN number could make a purchase and it may not necessarily be healthy. Itemized data is not provided from the vendor so it's hard to know what products are purchased. He stated that Farmer's Markets were now accepting EBT cards, and suggested that the task force to explore FNS incentive programs for more nutritious purchases. Ms. Caywood added that some areas do not have access to fresh produce or fresh items. She also discussed the SNAP Nutrition Education Program that is available to communities which provides training on how to best utilize the benefits, purchasing in-season produce, gardening, and making economical and nutritious meals.

In response to a question from Senator Wise, Mr. Beard stated that the technology exists to reject the purchase of alcohol and tobacco products, but there are situations in which "Mom and Pop" stores may skew how those items are identified.

In response to questions from Representative Kulkarni, Mr. Beard stated that feminine hygiene products would be included under TANF funds, and that the funds were of cash value, so there would be little restriction, including for internet and other utilities.

Public Comments

Tracey Pully of the Family Resource Youth Services Center for Fulton Independent Schools stated that she was surprised and unhappy to hear Ms. Morgan make the statement that the only way to end poverty is to move people into the workforce. She stated that the vast majority of the parents she works with in Fulton, where half of the children are living in poverty, are employed. She stated she was disturbed to hear that only 1 percent of public assistance funding in Kentucky is lost to fraud but about 40 percent of this meeting was about fraud.

Charlotte Goddard, a teacher, stated she agreed with a lot of what Ms. Pully said. She was put off by remarks that have been made such as whether people are productive or not. She asked what the criteria was to determine the level of productivity or unproductivity. She stated that sometimes by reforming these programs, it can be detrimental to the families. Ms. Goddard asked that stigmas and stereotypes be put aside and start listening to evidence and research. Ms. Goddard stated that if she could show the task force a picture of a bed one of the children in her community is sleeping in, they would be appalled and said that we should not be demonizing the poor.

Megan Meyer, Chair, Pennyroyal Indivisible in Western Kentucky, stated that in Kentucky, 46 percent of SNAP recipients are children, up to 62 percent of recipients are disabled and elderly, and 36 percent are the working poor, so only about 4 percent of people receiving these benefits are not in some way turning in applications or proving that they are at least looking for work opportunities. She asked the task force to provide more jobs that pay more than \$10 an hour. She stated that the cost of living is too high to live on \$10 an hour and that the last time you could live in a 2-bedroom apartment for \$10 an hour was 1976. She asked the task force to look at reform through a lens of how you can invest in your people and not how you can divest people from assistance.

Amanda Groves, representing Kentuckians for the Commonwealth, Western Kentucky chapter, stated that every citizen in Kentucky is entitled to good education, quality healthcare, and quality fair economic justice and economic policies. She asked if the purpose of the task force is it to bring in more revenue, because if that is the case, then look at the corporate welfare. She also asked that the task force hear from constituents on these issues.

Reverend Don Gillette, Executive Director, Kentucky Council of Churches, stated that the drug testing and photo identification would create higher administrative costs, and cause food insecurity, reduce health coverage and care, cause bankruptcies, and negative spillovers. He stated the system needs to be reformed for the better. He requested that the task force listen to constituents.

With no further business the meeting was adjourned at 5:29 PM.