

LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE

Minutes of the 4th Meeting of the 2022 Interim

September 15, 2022

Call to Order and Roll Call

The 4th meeting of the Legislative Oversight & Investigations Committee was held on Thursday, September 15, 2022, at 1:00 PM, in Room 131 of the Capitol Annex. Senator Danny Carroll, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Jason Nemes, Co-Chair; Senators Morgan McGarvey, Michael J. Nemes, and Reginald Thomas; Representatives Lynn Bechler, John Blanton, Ken Fleming, Joni L. Jenkins, Steve Riley, and Scott Sharp.

Guests: Wendy Morris, Commissioner, Department of Behavioral Health, Developmental and Intellectual Disabilities; Phyllis Millspaugh, Assistant Director, Department of Behavioral Health, Developmental and Intellectual Disabilities; Gerina D. Whethers, Cabinet Secretary, Kentucky Personnel Cabinet; Mary Elizabeth Bailey, Commissioner, Department of Human Resources Administration; Jamie Link, Cabinet Secretary, Kentucky Education and Labor Cabinet; Sam Flynn, Chief of Staff and General Counsel, Kentucky Education and Labor Cabinet; and Buddy Hoskinson, Executive Director, Office of Unemployment Insurance.

LRC Staff: Gerald W. Hoppmann, Committee Staff Administrator; Committee Analysts William Spears, Jacob Blevins, Joel Thomas, Jeremy Skinner, Shane Stevens, Chris Hall, Ryan Brown, Taylor Johnston, McKenzie Ballard; and Jennifer Luttrell, Committee Assistant.

Minutes for August 11, 2022

Upon motion by Representative Flemming and second by Senator Nemes, the August 11, 2022, meeting minutes were approved without objection.

Committee Testimony (not related to assigned study topics)

Court-Ordered Assisted Outpatient Treatment (2022 RS HB 127)

Wendy Morris introduced herself as the Commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) and Phyllis Millspaugh as Assistant Director of the Division of Mental Health, DBHDID.

The commissioner presented information about court-ordered assisted outpatient treatment (AOT) and the implementation of HB 127 (2022 RS), which amended KRS 202A.0811 and KRS 202A.0815, also known as Tim's law. The law allows for patients under a civil court commitment to receive AOT, instead of receiving treatment in a facility or hospital; but implementation of the law was contingent upon funding after its passage in 2017.

Kentucky received a \$4M million Substance Abuse and Mental Health Services Administration (SAMHSA) grant award in July 2020 for \$1M per year from 2020-2024. Commissioner Morris stated they have submitted a request to SAMHSA regarding the potential for changing the scope of work in the grant to include community referrals for AOT. The grant implementation consists of two phases to reach counties in the Central State Hospital Region and the Western Kentucky Hospital Region and covers client support funds, community mental health center provider staff costs, and administration and oversight of the program. An additional \$1.5M from the legislature for BFY 2022-2024 allows expansion in the Eastern State Hospital region and the Appalachian Regional Hospital region.

Representative Flemming discussed the importance of Tim's Law as a means to keep the mentally ill in our communities out of the jails and hospitals. However, he is concerned about a May 2021 whistleblower case, which seems to indicate efforts to thwart the law, a delay in the state's application to SAMHSA, very little communication between courts and judges, and an unwillingness to implement the law due to lack of funding.

Commissioner Morris responded that she believes that DBHDID has done a good job with the law's implementation, given some of the past funding constraints. Regarding the whistleblower case, she noted it did not have anything to do with Tim's law, regardless of what the terminated employee might have stated.

She said they do interact with judges and noted that Judge Burke is on their state standing committee and that several judges have been through the department's training. Ms. Millspaugh added that other judges will be attending a national symposium in Texas to learn about best practices, which is allowed by the grant.

In response to Representative Fleming's question about the number of people who have received AOT services, Commissioner Morris responded that 46 individuals have been through the program, with five of them cycling back through a second time, resulting in a total of 51 episodes, which is 82 percent of projections. Representative

Fleming noted that the number he had was 56. According to the commissioner, the state AOT team recently met, where the number 46 was cited specifically.

Commissioner Morris agreed to provide the most recent federal reporting numbers in writing, while Stephanie Craycraft, the deputy commissioner, also stated that during the first year of the grant \$373,746 was expended. Out of that amount, \$269,998 went to community health centers for implementation of AOT, \$54,000 for staffing and travel associated with a project director, and \$49,689 to the University of Kentucky for the assessment and evaluation of the grant.

In response to Representative Fleming's question about how the department expended the first year of grant funds, Commissioner Morris explained that out of the first \$1 million, which was to be used to serve the Central State Hospital Region, \$626,254 was not expended. Out of that amount, \$250,000 will carry forward to the second year, but the remaining \$376,254 reverted to the federal government. For the second year of the grant, DBHDD has \$1.25M to expend, which will expand service to community mental health centers in both the Central State Hospital Region and the Western State Hospital Region. Deputy Commissioner Craycraft added that asking to carry forward more than the \$250,000 would have required a 6-9 month federal review. Representative Fleming reiterated that his primary concern is what appears to be a lack of urgency and coordination among the primary players, including the courts.

Responding to Representative Fleming's question about how quickly the new criteria has been accommodated, the commissioner said the new criteria were put into place immediately. They also updated pamphlets and flow charts to reflect the recent changes. The Administrative Office of Courts posted the new criteria on their website by the middle of July. Representative Fleming stated that he will continue to follow up on this issue because of its importance and reiterated his request for a full accounting of grant expenditures and related purposes. Commissioner Morris said they will provide the most recent federal report, which is very detailed.

Senator Carroll revisited the money that was sent back to the federal government and asked if the department felt as though it needed immediate access to the \$250,000, instead of waiting for the 9-month federal review process to pass. The commissioner stated there are three options related to grant money that is not expended. The first option is not to request any carry forward money, the second option is to request the 25 percent, and the third option is to request the full amount. Because of an immediate need for services in other parts of the state, the department chose to request the 25 percent. She also said that whether the state requested the 25 percent or the full amount, the money has to be used for purposes different than what was proposed in the original grant. Senator Carroll requested that the cabinet submit to the committee something in writing that fully details grant expenditures and purposes, as well as providing the federal policy that lead the cabinet to request a 25 percent carry forward of unexpended funds.

Representative Jenkins asked why funds were sent back to the federal government when the Louisville region has a need for AOT services. The commissioner responded that unexpended funds could not be used for the same region or for the same programs. Representative Jenkins also asked whether circumstances at the time kept the cabinet from gearing up in time to spend more money or if processes simply were not in place to provide services. Commissioner Morris responded that the program started slowly because of COVID-19, which impacted seeing patients, hiring staff, as well as holding court hearings. Representative Jenkins stated she is still concerned that available resources in Jefferson County were not used to expend the federal money.

Representative Nemes discussed the money that reverted back to the federal government and emphasized the impact to the Louisville area, given its mental health issues due to COVID-19 and the opioid crisis. He discussed his intention to submit written questions on the record for a formal response and indicated he may request responses under oath. He also asked whether referrals have been taken from jails. Commissioner Morris stated referrals from jails have not been taken, since the grant requirements discuss hospitals specifically.

Personnel Cabinet-Executive Branch Teleworking

Secretary Gerina D. Whethers and Commissioner Mary Elizabeth Bailey presented information related to the current status of teleworking among executive branch employees. Senator Carroll noted that he has personally experienced difficulty contacting various state entities, waiting a week for return calls and up to two weeks to receive results of a background check. He has heard similar concerns from other providers in the state. He wants to understand the process better, as well as the latitude granted to cabinets to carry out Personnel Cabinet guidance.

Secretary Whethers explained that 56 percent of executive branch employees work fulltime in an office and eligibility depends on work duties. She noted that the cabinet is embarking on a new work environment with five different generations in the workforce for the first time in history. Within the last two years, things have improved with respect to telework and customer service.

The Secretary stated that they still have to recognize the needs of state employees in an evolving work culture. It is important to retain top talent and promote and train new people. State agencies need options, flexibility, and opportunities to work within the new work environment and still serve the citizens. She also took the opportunity to thank the legislature for the recent pay increases for state employees.

Commissioner Bailey said that the Personnel Cabinet sets the telecommuting policy for the executive branch, but the determination of eligibility is made by the agency's

appointing authority. Even though 56 percent of the employees in the executive branch are working full-time in the office every day, the cabinet still offers flexible work schedules. She stated that 35 percent of executive branch employees telecommute on a partial level, while 9 percent telecommute full-time. She also noted that the cabinet reviews positions for telecommuting eligibility on a quarterly basis and require employees to abide by the policy, the terms and agreement, the safety checklists, and have flexible work schedules.

Commissioner Bailey responded to Senator Carroll's question about how agencies are monitoring teleworking staff's production by stating that the cabinet requires each agency's leadership to put procedures in place to monitor workload. Some common methods include keeping a daily log, monitoring phone activity, status reports, and staff meetings. Secretary Whethers added that the Personnel Cabinet is working with agency human resource directors to ensure they have the training and tools needed to manage a teleworking workforce.

Asked by Senator Carrol if the Personnel Cabinet is hearing about instances where the cloud-based phone systems used by many teleworkers is causing problems, Commissioner Bailey responded that she was not aware of any problems beyond those experienced early in the pandemic as they were rolling out new technology. Senator Carroll commented that customer service has suffered since COVID-19 related to constant delays, which reflects negatively on the Commonwealth. Although things have improved, he stated that additional work needs to be done regarding checks and balances to ensure that customer service is timely.

In response to Representative Blanton's question about how the Commonwealth benefits from state employees teleworking, Secretary Whethers noted that the modern work force is different. All state agencies have to maintain a high level of customer service while retaining current employees and being able to recruit new employees. Representative Blanton stated he is not opposed to teleworking as long as employees complete their jobs and are available to the public.

Commissioner Baily replied in the affirmative to Representative Blanton's question about whether agencies are still doing the same type of employee evaluations they used prior to teleworking. She noted that they also require all managers to take their performance management training.

Representative Nemes noted that the occupational tax rate varies between counties and asked what the state is doing to ensure those taxes collected on teleworking employees will make it to the correct county. Commissioner Bailey responded that teleworkers must fill out a form that indicates in what county they will be teleworking. This allows occupational taxes to be collected at the correct rate and ensures those dollars make it back to the right place.

Representative Nemes noted that Franklin County in particular could take a significant hit to the revenue it collects through occupational taxes, since state property is not taxed. He asked if the cabinet knows how much teleworking reduces tax revenue for counties such as Franklin. Commissioner Bailey said that she knows it has some impact on county-based tax revenue, but was not sure of the exact number. Representative Nemes requested information on the Commonwealth's contribution to the occupational tax base for the city of Frankfort and Franklin County, using 2019's occupational tax base as a control year and 2022's tax base as a comparison year.

Representative Nemes asked if the state has realized any efficiencies related to personnel complement or in a reduction of rented office space. Commissioner Bailey noted that they have seen a slight increase in the number of employees, but that numbers have remained relatively flat for the past 5 years. She added that some leases have been terminated, but that she would defer to the Finance and Administration Cabinet for details and cost-savings.

Senator Carroll noted that this subject would make a good study topic for LOIC staff to study in a couple of years.

Kentucky Education and Labor Cabinet Unemployment Insurance Contracts

Secretary Jamie Link, General Counsel Sam Flynn, Executive Director Buddy Hoskinson, and Executive Director Shelby Lewis introduced themselves to the committee. Secretary Link stated that the pandemic of 2020 caused an unprecedented increase in unemployment insurance claims, which was essentially ten years of claims in one year. When the pandemic struck, a lot of people were out of work and needed assistance, so the objective of contracting with Ernst & Young was to get Kentuckian's help who were impacted by the pandemic as quickly as possible. The company had national and global experience in this area, which is why it was selected.

Mr. Flynn discussed the timeline starting in 2017 when UI services were removed from Kentucky's career centers, with a reduction of 95 employees. The UI processing was moved back to the central office, where a call center was built up. Mr. Hoskinson discussed the pop-up locations where people could go to receive assistance. He also discussed the surge of claims that exceeded the amount of UI staff and manageable workloads.

The first contract to provide immediate support, was a \$7.6 million dollar sole source emergency exemption procurement, which the Finance and Administration Cabinet approved and the Government Contract Review Committee reviewed in July of 2020. The second contract to provide continued support was a \$4.9 million "not feasible to bid" procurement, which was approved by the Finance Cabinet. Mr. Flynn also stated that the Government Contract Review Committee reviewed the contract on October 13, 2020. For the first four weeks of the contract, UI had 100 personnel from Ernst & Young assisting

them. Following the first four weeks, UI then had 25 personnel from Ernst & Young assisting with reviewing claims. The first contract was for over 141,000 claims and issues worked and the second contract had almost 36,000 claims and issues worked. Senator Carroll followed up and requested the cabinet to provide the committee with a breakdown of the cost per claim for Ernst & Young's services.

In response to Representative Sharp's question about the scope of work for the Ernst & Young contract, Mr. Hoskinson stated the purpose of the procurement was for them to work through aspects of the initial and continued claims the cabinet asked them to review. Secretary Link also noted that it was a lump-sum contract based on the terms delineated within the contract.

Responding to Representative Sharp's follow-up question about whether any other firms were considered for this contract, Secretary Link said that he would have to get that information to the committee at a later date. The secretary confirmed that no other contractor was doing this kind of work on unemployment insurance claims for the state during the pandemic. Representative Sharp followed up by requesting a copy of the Ernst & Young contract that includes the scope of work, as well as all invoices for expenses that were paid.

Senator Thomas thanked the secretary for the work he and his staff did to ensure that people received unemployment benefits during the pandemic. With the expectation of one constituent with residence eligibility questions, Senator Thomas stated that 57 people who requested his help ultimately received their UI benefits.

Senator Carroll asked about fraudulent claims and the total financial loss to the Commonwealth. He also asked about pending court cases and if any state employees were prosecuted. Secretary Link noted that fraud was a significant problem early in the pandemic. He noted that the cabinet implemented an additional line of security called "ID.me" that has multi-factor identification requirements, which has all but eliminated fraudulent claims.

Mr. Hoskinson stated that the overall amount of fraud related to the federal UI programs will end up topping over \$100 billion nationwide. He added that federal and state task forces are actively prosecuting individuals for fraudulent claims. Mr. Flynn further stated that when they identify a possible fraudulent claim within the state, they forward that information along to local prosecutors for further legal action. Regarding individuals within the cabinet suspected of filing fraudulent claims, he noted that the Governor immediately called for an independent investigation into claims that cabinet employees were among those filing fraudulent claims. This resulted in a report being published that investigated 35 people. Of that total, 31 were employed by the cabinet and had filed claims. Seventeen of those individuals were paid and the remainder had stops put on their claims before payment occurred. However, all 17 were required to pay those funds back. One

individual who worked on their own claim was dismissed. Senator Carroll followed up by requesting that the cabinet provide the committee the total dollar amount the state lost due to all fraudulent UI claims. Mr. Hoskinson stated they would provide the exact dollar amounts for both the state and federal UI programs. Representative Bechler later requested an anonymized list of the 35 fraudulent claims investigated, the purpose of the investigations, the results of the investigations, and the resulting disciplinary actions.

Senator Nemes said that Ernst & Young was not qualified by the federal government to do anything other than receive calls and obtain basic information. Senator Nemes further stated that the office closures had nothing to do with a shortage of UI employees to process claims, and that the initial claims work could have been performed by LRC staff.

Mr. Flynn responded that the Kentucky Constitution and statutory law prohibits LRC staff from providing UI services, and federal regulation specifically prohibits it. Overall, allowing LRC staff to help process the UI claims would cause a concern with separation of powers.

Representative Nemes noted that the closure of 12 offices and the cutting of 95 trained staffers that provided UI and employment related services to the Commonwealth during the pandemic had no consequence at least for the first 13 months because those offices would have been shut down anyway. Mr. Hoskinson responded that when funding for the career centers shrinks, staffing will as well. Representative Nemes said that the constant blame of cutting the 12 UI offices and staff being placed on the Bevin administration is wrong.

Senator Nemes noted that some of those positions were taken away because of lack of federal funding. Mr. Hoskinson concurred and noted that most of those positions were federally funded and time limited. Secretary Link added that this is why Ernst & Young was engaged; the cabinet simply did not have the personnel to handle the volume of claims that started in March 2020.

In response to Representative Sharp's question about the status of the new unemployment insurance system, Secretary Link responded that they had procured a new vendor, but in August 2022 there was a federal indictment of two people affiliated with the vendor. As a result, the cabinet decided to cancel and reissue a Request for Proposal (RFP). He indicated that the RFP should be issued by the end of September 2022 and could take between 36 to 42 months before full implementation, which should start in spring 2023.

In response to Representative Sharp's question about how much the state has paid that vendor, the secretary noted that no money has been paid. Secretary Link also responded to Representative Sharp's question about a possible off-the-shelf product for claims processing by noting they have not been able to find such a product nor have other states.

In response to Representative Bechler's question about how close the cabinet is to finishing all the pandemic claims, Mr. Hoskinson noted that backlog is continuous, but that he hopes they are finished with nearly all the 2020 claims by February, the same for 2021, and that 2022 claims are being processed in local offices on a month-to-month basis.

Mr. Hoskinson responded in the affirmative to Senator Thomas's questions about whether there were people working in those offices that were closed.

Senator Carroll noted that none of the comments or concerns they had expressed as a body had anything to do with the front-line workers. He stated that part of the committee's frustration came from the long period of time where it appeared things were not working or getting any better, and that there did not appear to be a sense of urgency from the Governor's Office. He did state however, that reorganizing the office into the right cabinet helped as well.

Senator Carroll adjourned the meeting.