INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND FAMILY SERVICES

Minutes of the 4th Meeting of the 2020 Interim

September 23, 2020

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Health, Welfare, and Family Services was held on Wednesday, September 23, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Senator Ralph Alvarado, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ralph Alvarado, Co-Chair; Representative Kimberly Poore Moser, Co-Chair; Senators Julie Raque Adams, Tom Buford, Danny Carroll, Julian M. Carroll, David P. Givens, Denise Harper Angel, Alice Forgy Kerr, Morgan McGarvey, Stephen Meredith, and Max Wise; Representatives Danny Bentley, Tina Bojanowski, Adam Bowling, George Brown Jr, Tom Burch, Daniel Elliott, Deanna Frazier, Robert Goforth, Scott Lewis, Mary Lou Marzian, Melinda Gibbons Prunty, Josie Raymond, Steve Riley, Steve Sheldon, Cherlynn Stevenson, Nancy Tate, Russell Webber, and Lisa Willner.

Guests: Adam Mather, Inspector General, Office of the Inspector General, Cabinet for Health and Family Services; Keith Knapp, Senior Advisor, Office of the Secretary, Cabinet for Health and Family Services; V. Faye Jones, M.D., Ph.D., Associate Vice President, Health Affairs and Diversity Initiatives, Department of Pediatrics, University of Louisville; Anita F. Fernander, Ph.D., Associate Professor; Department of Behavioral Science; College of Medicine, University of Kentucky; Gerald Neal, State Senator; Dr. Brandy Kelly Pryor, Former Director; Center for Health Equity; Louisville Metro Department of Public Health; Morgan Ransdell, General Counsel of Board and Commissioner, Board of Nursing, Cabinet for Health and Family Services; Laura Begin, Staff Assistant, Department for Community Based Services, Cabinet for Health and Family Services.

LRC Staff: DeeAnn Wenk (CSA), Ben Payne, Chris Joffrion, Becky Lancaster, Hillary Abbott, and Shyan Stivers.

Approval of Minutes

A motion to approve the minutes of the August 26, 2020 meeting was made by Representative Burch, seconded by Representative Frazier, and approved by voice vote.

Consideration of Referred Administrative Regulations

The following referred administrative regulations were placed on the agenda for consideration: **201 KAR 020:065 Proposed** - Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder. Comments and concerns regarding the regulation were made by Senator Alvarado. On behalf of the Kentucky Board of Nursing, Morgan Ransdell, General Counsel of Board and Commissioner, Board of Nursing, Cabinet for Health and Family Services, agreed to defer the regulation. A motion to defer this administrative regulation was made by Representative Burch and seconded by Representative Bentley, and accepted. The administrative regulation **201 KAR 020:065 Proposed** was deferred.

The following referred administrative regulations were placed on the agenda for consideration: **201 KAR 006:100 Proposed** - Per Diem compensation of board members; **201 KAR 020:110 Proposed** - Licensure by endorsement; **201 KAR 020:411 Proposed** - Sexual Assault Nurse Examiner Program standards and credential requirements; and **922 KAR 001:490 Emergency** - Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements. The administrative regulations above have been reviewed by the committee.

The following administrative regulations previously deferred at the August 26, 2020 meeting, were placed on the agenda for review: **921 KAR 003:025 Proposed and Emergency** - Technical requirements. Comments regarding the regulation were made by Senator Alvarado, Representative Bojanowski, and Representative Moser. A motion to find the administrative regulations **921 KAR 003:025 Proposed and Emergency** deficient was made by Senator Alvarado and seconded by Representative Moser. After a roll call vote of 19 yes votes, 7 no votes, and 0 pass votes, administrative regulations **921 KAR 003:025 Proposed and Emergency** were declared deficient.

Proposed Legislation: Health Care Disparity Reviews

Gerald Neal, State Senator, stated that his 2021 Regular Session Bill Request 97, the Health Disparities Impact bill, has been prefiled. The health disparities impact methodology will work similar to how fiscal notes or other impact statements are prepared when needed for a bill. He stated that it has been historically documented that there are disparities in the health care system. This bill recognizes disparities and the inter-relationship between health status, race, ethnicity, gender, age, and other factors. BR 97 requires the Legislative Research Commission (LRC) staff to indicate that a bill, an amendment or a committee substitute may have a health disparity impact. A health disparity impact means the difference in health outcomes that impacts the rates of incidence prevalence, mortality, burden of disease, or other adverse health condition. The health disparity impact would notify the bill sponsor and Cabinet for Health and Family Services of the possible disparities. The Cabinet for Health and Family Services can make a judgement as to whether or not a health disparity review is appropriate.

Senator Neal stated that a health disparity review is an analysis that uses the best available, evidence-based information to estimate any health disparity impact of a bill, an amendment, or a committee substitute. There is a distinction between a review and an assessment. An assessment is a more involved, time consuming process than a review and would likely have a financial aspect as well. BR 97 would give more information before policy-makers act on a bill. BR 97 does not stop a bill from proceeding but there is a 30 day period for the information to be produced. BR 97 requires that review be completed before a vote on a bill is taken.

Dr. Brandy Kelly Pryor, Former Director, Center for Health Equity, Louisville Metro Department of Public Health, stated that health is more than just healthcare, our health consists of what is in the social environment and economic environment. There is 12.6 year life expectancy gap within Louisville. Dr. Pryor shared a graph displaying the life expectancy in each area of the city. The areas with the lowest life expectancy range have high populations of African Americans, other communities of color, and lower income. The area with the highest life expectancy has a high population of white individuals and high incomes. The 2017 report is the third Health Equity Report from the Center for Health Equity. The Health Equity Report reviews issues such as infant mortality, intimate personal violence and sexual assault, mental health, and substance use in the community and state. The reports looks at how the issues affect poverty rates and a person's interaction with their community.

Dr. Pryor stated that Kentucky's demographic is becoming more educated but history also shapes the community. The report studied the history of racism in Louisville along the Ninth Street Corridor. Health outcomes stem from root causes and are shaped by policies or practices. Health outcomes at younger ages impact health outcomes later in life. The report found that improving health in Kentucky requires changes to chronic disease outcomes. Dr. Pryor recommended that Kentucky increase and improve the systems for data collection, data sharing, and data analysis across all outcomes. She stated that interventions must happen at the individual, interpersonal, organizational, community, and policy levels to have the biggest impact on health outcomes.

In response to questions and comments from Representative Gibbons Prunty, Senator Neal stated that in BR 97 a review could take up to 30 days to complete. He stated that a legislator would need to plan accordingly to allow for the 30 day review during session.

Overview: Health Care Disparities

V. Faye Jones, M.D. Ph.D., Associate Vice President, Health Affairs and Diversity Initiatives, Department of Pediatrics, University of Louisville, stated that health inequity is a disparity in health that are a result of systemic, avoidable, unjust social, and economic policies and practices that create barriers to opportunity. She clarified that health disparities

are preventable differences in the burden of disease, injury, violence, or in opportunities to achieve optimal health experienced by socially disadvantaged racial, ethnic, communities, and other population groups. Health disparities exist in all age groups, including older adults. She stated that if one community is not thriving, the whole state pays the price through increased medical expenditures, a sicker workforce, premature death, and decreased opportunities for the next generation. Focusing on health disparities will improve overall health care for all.

Dr. Jones stated that the life expectancy in Kentucky ranks 45th at 75.8 years, compared to 78.6 nationally. Generally, black populations have a shorter life expectancy compared with white populations. She stated that location is critical to life expectancy and varies by county in Kentucky. In 2019, Kentucky ranked 43rd in health outcomes. Children in poverty are 23 percent of all children in Kentucky, with black and Hispanic disproportionately affected by poverty. She stated that the 2017 Health Equity Report provided evidence-based connections between health outcomes, root causes of disease, and historical context that creates inequity. She shared a list of health disparities in Jefferson County that occur in various populations. During the COVID-19 pandemic the same populations are disproportionately impacted with more hospitalizations and deaths in children and adults. Social inequities such as housing, transportation, air quality, education, access to healthcare and criminal justice, effect health inequities. She provided a graph that displayed the framework for the factors contributing to health outcomes.

Dr. Jones stated that the University of Louisville is working with area health education centers on investments in hospital systems and pipeline programs to continue research, make curriculum changes for health professionals, and further trainings regarding unconscious bias. She stated that using an equity lens in all health policies will improve accountability at all levels of policy-making and place an emphasis on the consequences of those public policies. She suggested that Kentucky create community and institutional policies that address social determinates of health, invest in research for and by at-risk populations, and to mandate cultural responsive care education as an ongoing requirement for healthcare providers.

Anita F. Fernander, Ph.D., Associate Professor, Department of Behavioral Science, College of Medicine, University of Kentucky, stated that racism is imbedded into the political systems and social structures within society and have created inequalities that lead to racial ethnic health inequities among African Americans. African Americans in Kentucky have shorter life expectancy due to higher rates of cerebrovascular disease, cancer, asthma, diabetes, and other chronic diseases. Scientific racism emerged in the late 18th century to validate existing racist ideas and prove a natural hierarchy of groups through a concept called biological determinism. The effects of racist ideology on the biology and behavior of individuals and groups have been devastating within racial groups. Race has justified political and social inequalities as natural, standard, common, and acceptable. Political determinants of health inequities are legalized processes of structuring

relationships, distributing resources, and administering power. Voting, government, and policy are three major drivers of political determinants.

Dr. Fernander listed social determinants of health inequities that account for up to 80 percent of health risk. Financial stability is a fundamental health risk factor. African Americans have the lowest median income of all ethnic groups in Kentucky. White Kentuckians have an average of 10 times the wealth of black Kentuckians. Black Kentuckians are twice as likely to be unemployed than their white counterparts. Early childhood education and development, high school graduation, and higher education impact education opportunities. African Americans have less access to high quality education at every stage of life.

Since 1930, red-lining has continued to shape the environment. Health is adversely effected by neighborhood characteristics such as air pollution, poor water quality, lack of green spaces, food deserts, substandard housing, limited access to hospitals and clinics, and disparate impact of climate change. Dr. Fernander shared a historical timeline of the lived experience of African Americans in the United States. African Americans have a history of unequal and inadequate health care facilities, access, and treatments. Racial disparities in medical care and treatment continue to impact health outcomes of African Americans. There were two periods in history where health reform was specifically addressed the correction of race-based health inequities. She stated that to eradicate health equities, it is not sufficient to only address healthcare. She stated that everyone must examine how racism and discrimination effect all the political and social determinants of health. A study estimated that eliminating health disparities would have reduced direct medical care expenditures by $229.4 billion and indirect costs due to illness and premature death by approximately $1 trillion in the period from 2003 to 2006.

The Cabinet for Health and Family Services and the Department for Public Health Response to COVID-19: CARES Act Funding and Guidance for Long-Term Health Care Facilities

Adam Mather, Inspector General, Office of the Inspector General (OIG), Cabinet for Health and Family Services (CHFS), stated that as of September 17, 2020, in Kentucky there were 3,950 cases and 609 deaths among long-term care (LTC) residents due to COVID-19. There was 2,486 cases and 5 deaths among LTC staff due to COVID-19. Keith Knapp, Senior Advisor, Office of the Secretary, Cabinet for Health and Family Services, stated that the Centers for Medicare and Medicaid Services (CMS) found that Kentucky is ranked 28th with the number of COVID-19 cases and 18th with the number of deaths due to COVID-19 among LTC facilities in the United States. Inspector General Mather stated that to reduce the cases of COVID-19, Kentucky is focused on rapid and sustained public health interventions, surveillance, infection control, and prevention then following up with mitigation efforts. Mr. Knapp stated that Kentucky created the Long-Term Care Task Force that serves CHFS Secretary as a professional resource on COVID-19 in LTC and

recommends evidence-based policies, procedures, and protocol. The task force has 16 members and meets at least weekly.

Mr. Knapp shared a timeline of specific items and issues that the task force discussed or worked in efforts to assist the LTC facilities in Kentucky. The task force gave guidance regarding the phased reduction of restrictions on visitation to LTC facilities. He shared the CMS guidelines for Phase II-III that affect adult day health centers and adult day training. He stated there will be a 14 day waiting period, with no new COVID-19 cases that were facility acquired, to be eligible to consider safe visitation programs.

Inspector General Mather stated that a comprehensive, baseline testing of all residents and employees of nursing facilities was completed July 15. CHFS partnered with Norton Healthcare and started a provider 24-hour helpline with the Kentucky Department for Public Health (DPH) and the Healthcare-Associated Infection (HAI) team. He stated that consistent with CMS guidance, CHFS is offering LTC facilities Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to provide ongoing surveillance testing. Mr. Knapp stated that CHFS created Long-Term Care Strike Teams that can be deployed to help address staffing issues at LTC facilities due to symptomatic staffing.

Inspector General Mather stated that the federal government issued $129 million provider relief funds and Kentucky Medicaid has created a COVID-19 specific Medicaid rate per day, expanded bed-hold days, expedited eligibility, and increased Medicaid payments to LTC facilities by 8.5 percent. The LTC Ombudsman program worked to identify, investigate, and resolve residents' problems and concerns. From March 13, 2020 to July 31, 2020 there were 7,753 telephone and virtual contacts made statewide with LTC residents, families, and staff. The CARES Act funding provided personal protective equipment (PPE) for ombudsman visits to LTC facilities and COVID-19 educational materials to LTC residents and families. The OIG created infection control surveys and received civil money penalty (CMP) funds to establish emergency grants for tablets and other devices to conduct tele-visits with family. He shared how the CARES Act funding was distributed to LTC facilities. Inspector General Mather stated that going forward the key anticipated issues are: residents' safety, the emotional toll of extended isolation, sufficient staffing, Polymerase chain reaction (PCR) testing, PPE, and the influenza season.

In response to questions and comments from Senator Alvarado, Mr. Knapp stated that he is proud that Kentucky is in the middle in regards to the rankings for the number of cases and in the top third for lowest number of deaths due to COVID-19. He stated that the provider community is stepping up to the plate and doing the best job possible in the situation. Inspector General Mather stated that the provider community has been collaborative with the HAI team and working to make sure they are following processes.

In response to questions and comments from Senator Danny Carroll, Inspector General Mather stated that his question regarding PPE would be able to be answered by

the Department for Public Health. He stated that any type of price gouging issue would be investigated by the Attorney General's office. Mr. Knapp stated that he has heard that the supply of gowns is causing concern for providers. Mr. Knapp stated that discussions regarding adult day health centers are very similar to conversations regarding visitation in LTC facilities. There is a delicate balance between safety and services that are not being delivered during the interim. There is not a risk free solution but CHFS will need to find a middle ground that allows the centers to operate.

Adjournment

There being no further business, the meeting was adjourned at 3:00 PM.