

# **INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS**

## **Minutes of the 5th Meeting of the 2022 Interim**

**October 27, 2022**

### **Call to Order and Roll Call**

The 5th meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Thursday, October 27, 2022, at 11:00 AM, in Room 154 of the Capitol Annex. Senator John Schickel, Co-Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator John Schickel, Co-Chair; Representative Adam Koenig, Co-Chair; Senators Julie Raque Adams, Donald Douglas, Jimmy Higdon, Jason Howell, Christian McDaniel, Gerald A. Neal, Michael J. Nemes, Damon Thayer, and Reginald Thomas; Representatives Kim Banta, Kevin D. Bratcher, Tom Burch, Patrick Flannery, Al Gentry, Keturah Herron, Thomas Huff, Matthew Koch, Michael Meredith, Jerry T. Miller, Kimberly Poore Moser, Ruth Ann Palumbo, Phillip Pratt, Sal Santoro, and Susan Westrom.

Guests: Mary Harville, President & CEO, Rick Kelley, Vice President of Finance and Administration, T.H. Morris, Vice President & Chief Technology Officer, and Ingram Quick, Vice President of Internal Audit, Kentucky Lottery Corporation; Dr. Brittney Welch, DNP, RN, Director of Clinical Education, Galen College of Nursing; Steve Shannon, Executive Director, Dr. Sheila Schuster, Policy Consultant, Kentucky Association of Regional Programs, Inc.; and Julie Campbell, Board Administrator, Kentucky Board of Cosmetology.

LRC Staff: Jasmine Williams, Wendy Craig, CaraBell Preece, and Lisa W. Moore.

### **Approval of the Minutes from September 29, 2022, Meeting**

Representative Flannery motioned to approve the minutes from the September 29, 2022, meeting and Senator Howell seconded the motion. Motion carried and the minutes were approved by voice vote.

### **Kentucky Lottery Update**

Rick Kelley, Vice President of Finance and Administration, Kentucky Lottery Corporation (KLC), provided a financial update. In Fiscal Year 2022, there were record ticket sales of \$1.677 billion and record transfers of \$360.8 million. He said 69 percent of every sales dollar sold on lottery tickets goes back to the winners, 21 cents is transferred to

the Commonwealth, 5 cents is transferred to the retailers, and 5 cents transfers to administration expenses. There have been \$425.2 million in sales in the first quarter of Fiscal Year 2022, and a total net income of \$91.2 million.

Mary Harville, President and CEO, KLC, said since 1989, the Kentucky Lottery has turned over \$6.4 billion to the Commonwealth. Since 1999, KLC has provided more than \$4.4 billion for college scholarships, grants, and education programs. The specific allocations are set by legislation, KRS 154A.130 and biennial state budget (HB 1 for FY 23-FY24). The Kentucky Higher Education Assistance Authority (KHEAA) administers lottery funded scholarship and grant programs, including the Kentucky Educational Excellence Scholarship (KEES), College Access Program (CAP), Kentucky Tuition Grant (KTG), Work-Ready Kentucky Scholarship, National Guard Tuition Award, and Teacher Scholarship. It was noted that 98 cents of every \$1 in student financial aid awarded by the Commonwealth comes straight from the sales of Kentucky Lottery tickets. Over 820,000 Kentucky students have received a grant or scholarship paid for by Kentucky Lottery proceeds.

Responding to a question from Senator Howell regarding KEES scholarship funds and the inflation of college costs, Ms. Harville recommended that he speak with KHEAA. KHEAA is directed in statute to administer all Kentucky scholarships. Senator Howell said KEES was designed to keep Kentucky's high performing students in the Commonwealth. The amount of KEES dollars is not significant in providing true financial assistance with the rising cost of higher education. Ms. Harville said all excess dollars are turned in, and 55 percent of the lottery funds are administered to need-based scholarships and 45 percent goes to merit-based scholarships. The budget bill controls where the rest of the lottery proceeds are distributed.

Co-Chair Koenig thanked Ms. Harville for the KLC's hard work and its contribution to the Commonwealth. He said when KEES was implemented it would almost cover the entire college cost for in-state tuition for a Kentucky student. Moving forward KEES dollars should be utilized efficiently and increased to keep the brightest Kentucky students in the Commonwealth.

Representative Koch said there is a strong stereotype in high schools that push students to obtain a standard four-year college degree. He believes KEES funding should be accessible for students pursuing two-year vocational degrees.

Responding to a question from Senator Thayer regarding minimum requirements to obtain KEES funding, Ms. Harville said KHEAA determines the qualifications for scholarship funds. KHEAA's handout states a student must earn at least a 2.5 GPA per year at a certified Kentucky high school. ACT bonus award based on at least a 15 composite ACT score (or equivalent SAT score). Senator Thayer said the KHEAA requirements need to be increased as the current standards barely qualify as student participation. This would

allow more funding to be available to the students who are deserving of merit scholarships and he believes the requirements should be changed in statute.

Responding to a question from Senator Higdon regarding online lottery ticket sales, Ms. Harville said online lottery tickets sales accounted for 13 percent of revenue in Fiscal Year 2022. She noted the KLC pays a higher percentage of 16.99 percent to online vendors for providing online ticket sales. Senator Higdon said retailers deserve a higher percentage of lottery proceeds for services provided.

Responding to numerous questions from Co-Chair Schickel regarding how the lottery numbers are selected, Ms. Harville explained Kentucky utilizes a digital drawing system (DDS) known as a random number generator (RNG), certified by a third party. A RNG generates a number by a process where the outcome is inherently unpredictable, and cannot be reliably repeated. She noted 44 of 46 lotteries in the United States responded to a survey as using an RNG for drawings. RNGs are regularly used in lottery operations in addition to drawings, when players select “quick picks” to choose numbers when wagering. The Kentucky Lottery has been using an RNG for drawings for 18 years. Before April 2020 and the Covid-19 pandemic, only three Kentucky draw games were drawn using balls and machines. Multi-state games, Powerball and Mega Millions, continue to be drawn using balls and machines, but may go to RNG in the future.

Senator Thomas asked Ms. Harville to talk to other states about lottery numbers that statistically appear in drawings more than others. Co-Chair Schickel said he is not worried about the integrity of the game, but the perception and appearance of impropriety. Ms. Harville said people quit watching the lottery balls being drawn on television and TV stations no longer wanted to give it air time. Sponsorships for live drawings no longer exist.

Responding to a question from Senator Thayer, Ms. Harville said she is not aware of the KLC getting involved in any form of pari-mutuel games. She said there have been no bans passed on “gray machines” and the KLC will continue to run the lottery and compete.

Responding to a question from Representative Bratcher, Ms. Harville said cheating does exist within lottery games worldwide. She said the KLC is constantly reviewing and updating the controls. She encouraged members to contact Mr. Ingram Quick, Vice President of Internal Audit, KLC, who is charged with keeping Kentucky’s lottery games free from scandal and cheating.

### **Regional Mental Health Centers**

Dr. Sheila Schuster, Policy Consultant, Kentucky Association of Regional Programs, Inc., said the Community Mental Health Center Act was signed by President John F. Kennedy in 1963, shortly before his assassination. It moved thousands of individuals out of psychiatric institutions into treatment within their home communities.

Kentucky was the first state to implement the federal law by establishing the statewide system of Regional Community Mental Health Centers (CMHC) in statute and guaranteeing that each of Kentucky's 120 counties would receive services for mental illness, addictions, and intellectual disabilities. CMHCs were established in statute in 1964 and there are currently 14 serving all 120 counties of Kentucky.

Mr. Steve Shannon, Executive Director, Kentucky Association of Regional Programs, Inc., said the CMHCs are recognized as licensed regional entities by: statute reference, regulatory reference, Medicaid Manual reference, and the Department for Behavioral Health, Developmental, and Intellectual Disabilities contract reference. CMHCs are quasi-governmental organizations.

Mr. Shannon said one mental health service provider has been providing services in the designated service regions of eight other CMHCs. They are now identifying themselves as a CMHC in 56 counties outside of their service region. They are functioning as a Behavioral Health Service Organization (BHSO), providing a limited mental health service in a single location and not providing all of the other availabilities and services required of CMHCs. They are billing these services at the CMHC rate, not at the BHSO rate, although they are functioning as a BHSO. House Bill 359 in the Regular Session of the General Assembly attempted to address the problem. New legislation will be filed in the 2023 RS to put the counties in each region in statute, to designate CMHCs as having reached the status of BHSO and requiring any provider identifying as a CMHC, providing services outside their region, to do so as a BHSO.

Responding to a question from Representative Banta regarding needing more mental health providers, Dr. Schuster explained the providers identifying as a CMHC are receiving higher rates of pay for providing more limited services. It is not a matter of personnel, but what mental health services the license allows them to provide when operating outside of their region.

Responding to a question from Representative Santoro, Mr. Shannon said it is not about limiting access to mental health services, but protecting access to services in all 120 counties. Mental health providers have an obligation to get the appropriate licensing and then provide services.

Representative Meredith said the key point is not about limiting mental health services, but about not receiving the CMHC increased reimbursement rate when operating outside their region for increased pay while not providing 24-hour wrap-a-round services. If they provide services outside the region, they should operate as BHSOs.

Responding to a question from Senator Howell, Mr. Shannon said the BHSO can provide whatever services they wish. This does not force them to provide all wrap-a-round

services. Dr. Schuster said there are thin margins for the CMHCs and this loophole can weaken the CMHCs operating at full capacity within the region.

Responding to a question from Senator McDaniel, Mr. Shannon will discuss with him steps taken to rectify the situation with the Cabinet. Senator McDaniel suggested looking at ways to make modifications without doing a complete statutory change that may have unintended ramifications.

Responding to a question from Representative Moser, Mr. Shannon said the amended version of the bill that passed the Kentucky House of Representatives during the last regular session was being discussed. Representative Moser said there were several variations of the bill before different committees.

### **ABC Licensing Fees**

Senator Higdon discussed the resolution provided in members' folders to work with the Alcoholic Beverage Control Board (ABC) in the upcoming session to review how licensing fees are determined. He commended Commissioner Taylor and looks forward to working with them and obtaining feedback and suggestions on how to improve the process of determining licensing fees.

Senator Higdon and Julie Campbell, Executive Director, Kentucky Board of Cosmetology, discussed a cosmetology compact being requested by the Kentucky Cosmetology Board, the Kentucky National Guard, and the Army. Ms. Campbell said the draft language is being reviewed and will be ready for committee members in the near future. She said this a military friendly compact and the Board is very supportive of getting legislation passed in the upcoming session.

### **Nursing Shortage in Kentucky**

Dr. Brittney Welch, DNP, RN, Director of Clinical Education, Galen College of Nursing, said nurses comprise the largest profession throughout Kentucky. She is representing 90,080 Kentucky nurses, but there is still a 36 percent shortfall. This shortfall did not start with the pandemic, but was exacerbated by it, and needs to be addressed now. People are living longer, and more nurses are needed to care for future generations. The October 2021 KNA survey indicated 25 percent of nurses reported being likely to leave their job in the next 3 months. It is noted that 26 percent of respondents cited physical exhaustion as a reason for the nursing shortage. The average age of a nurse is 42. Many are leaving due to retirement. She also cited pay incentives as a primary contributor to the nursing shortage in Kentucky.

Dr. Welch said turnover of nurses is very costly, and it is estimated that it costs \$46,000 to replace and train a new nurse. Doctors and top administrations should utilize nurses in decision-making, in order to retain experience and eliminate job burnout and keep sufficient numbers of nurses in the job pipeline.

Responding to a question from Representative Moser, Dr. Welch said she would provide committee members with the survey and results so they can review responses in-depth. Dr. Welch said there is a multi-faceted problem causing the nursing shortage in Kentucky. She said an aging population and a pipeline issue are two huge contributing factors.

Responding to a question from Senator Douglas, Dr. Welch will provide committee members with the percentage of nurses who actually left their jobs in the 3 month time period indicated on the survey. He said education levels and competency should never be questioned with Kentucky nurses.

### **Music Therapy – Other Business**

Senator Gerald Neal and Katie Cowan, MT-BC, NICU MT, Music Therapist, said music therapy is the clinical and evidence-based use of music interventions to accomplish individualized goals within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program. A volunteer task force of music therapists in Kentucky, along with a representative from the American Music Therapy Association (AMTA) and the Certification Board for Music Therapists (CBMT), are working to increase recognition of the music therapy profession and the MT-BC credential in the commonwealth of Kentucky. He said 15 other states have implemented this to date.

Ms. Cowan, Co-Chair of the Kentucky Music Therapy Task Force, said music therapists work in hospitals, hospice agencies, and schools. Music therapy helps with feeding hospitalized premature infants, recovery of military veterans, and helps decrease pain and nausea for Kentuckians battling cancer. Currently, the University of Louisville and the University of Kentucky provide a music therapy program. She noted 57.89 percent of music therapists, who completed a survey about Kentucky music therapists, receive funding through their facility budget, while 31.38 percent receive funding through private pay.

Senator Thomas discussed the medical centers providing music therapy and the patient benefits. He is a strong supporter of the program and said it does work.

Responding to a question from Senator Nemes, Ms. Cowan said insurance does cover music therapy costs if providers get a state license.

With no further business before the committee, the meeting adjourned at 12:10 p.m.