PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes of the 4th Meeting of the 2020 Interim

September 10, 2020

Call to Order and Roll Call

The 4th meeting of the Program Review and Investigations Committee was held on Thursday, September 10, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Representative Lynn Bechler, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Lynn Bechler, Co-Chair; Senators Karen Berg, Tom Buford, Michael J. Nemes, Reginald Thomas, Stephen West, Whitney Westerfield, and Phillip Wheeler; Representatives Chris Fugate, Al Gentry, Kim King, Adam Koenig, Ruth Ann Palumbo, Steve Riley, and Walker Thomas.

Guests: Steven Stack, MD, Commissioner, Department for Public Health

LRC Staff: Gerald W. Hoppmann, Committee Staff Administrator, Chris Hall, William Spears, Joel Thomas, and Elizabeth Hardy, Committee Assistant.

Representative Bechler welcomed Representative King as new committee member and welcomed Gerry Hoppmann, the new committee staff administrator.

Minutes for August 13, 2020

Upon motion by Senator Nemes and second by Senator Carroll, minutes for the July 23, 2020, meeting were approved without objection.

Update on COVID-19 Testing and Reporting

Representative Bechler administered the oath to Dr. Stack, who affirmed that he would tell the truth.

Representative Bechler said that he would read through the staff questions asked of the Department for Public Health and have Dr. Stack testify on the prepared answers.

In response to questions read by Representative Bechler, Dr. Stack affirmed the written answers to several questions. He stated that the PDF version of the question-and-answer document had links to other documents with further explanations about reporting test results. Such information is distributed through several channels to reach as many testing providers as possible. According to Dr. Stack, "pop-up" is a colloquial term for an

entity that normally did not conduct testing but was now offering COVID-19 tests, so these entities are not familiar with the reporting requirements and methods.

In response to questions from Senator Carroll about inaccurate test results and the positivity rate, Dr. Stack said that all tests might have inaccuracies, but he was unware of widespread concern about excessive inaccuracies. The positivity rate has challenges and limitations. A declining positivity rate means multiple things. Kentucky has maintained a robust level of testing. The goal is to test enough people so that the positivity rate is below 3 percent, to catch as many people who are positive as possible and use other tools such as education, quarantine, and isolation to contain the disease. If the positivity rate stays low, it means other measures like distancing and masks are helping.

In response to questions from Senator Carroll about inconsistencies related to incidence versus reporting dates, how deaths are reported, and a lack of numbers on negative test results, Dr. Stack said the data have limitations and are imperfect but valuable in context. The department has taken steps to make limitations transparent and to mitigate them. A footnote on the website explains about how the positivity rate is calculated and what its limitations are. The positivity rate is an average over one week to eliminate variation. They count all positives and negatives that are reported. The number is useful for looking at trends because the calculation is the same over time and holds imperfections constant. They are working to try to find a way to make data available at the county level. The large amount of data coming from so many systems makes it difficult, but they continue to try to improve.

In response to questions from Senator Carroll about concerns of constituents and the counting of cases and deaths on the wrong days, Dr. Stack stated that people could look at the same information and come to different conclusions, but the department is acting in good faith. The public needs to have confidence that they are getting good information. The measures being used are consistent with the state of the art in public health. He presented slides showing the federal designation of Kentucky counties in red and yellow zones. He said that federal positivity data from different data sources align well with Kentucky's data. Kentucky in some instances is more lenient than federal guidelines and allows bars to be open and restaurants to open at 50 percent capacity, while federal guidelines advise closing bars and lowering restaurant capacity in red zones.

In response to questions from Senator West about federal positivity rates and the types of tests and their accuracy, Dr. Stack explained that the two largest national labs report to the federal system directly at the Centers for Disease Control and Prevention (CDC). Kentucky also enters data directly into that system. Kentucky tries to get as much information as possible from other labs. There are more than 60 labs sending electronic reports, and smaller labs fill out online surveys. The federal data may be subtly different but are similar to Kentucky's in terms of direction and relative size. Dr. Stack said he did not know for sure how many different tests were being used but could find out. He said that the PCR test accuracy is more than 99 percent. The best antigen tests are 97 percent to

99 percent. Antibody tests are more variable and have less oversight, so he recommended not using them unless a licensed doctor advises it. He agreed that false positives probably occur less than 3 percent of the time. He added that sometimes true positive results are misinterpreted as false.

Senator Berg expressed full support for the Department for Public Health and medical professionals and spoke from personal experience as a physician on the severity of COVID-19.

In response to questions read by Representative Bechler, Dr. Stack said that the department does direct outreach and provides assistance to all labs conducting tests to get them onto the Kentucky Health Information Exchange. He said that department staff enter data from various sources into the federal system, which is the source of most of the data they use. Regarding negative results and calculation of the positivity rate, Dr. Stack recommended clicking on the links in the PDF document he provided to get to detailed explanations of how the rate is calculated. He affirmed that Kentucky's process for reporting test results was consistent with the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act.

In response to questions read by Representative Bechler, Dr. Stack said Department for Public Health epidemiologists developed the laboratory survey used by the National Guard phone bank to collect lab test results. The National Guard performed other important functions to support the department. Dr. Stack said that different federal agencies are responsible for aspects of oversight. For example, the Food and Drug Administration approves tests for use, and Health and Human Services through the Centers for Medicare and Medicaid Services oversees the labs with involvement by the cabinet's inspector general. He said the department tries to be a resource to all labs that request assistance to validate their testing.

In response to questions read and asked by Representative Bechler related to unscrupulous labs, Dr. Stack said that when the department becomes aware of possible inappropriate testing operations, it refers them to the appropriate agency, such as the Board of Medical Licensure. The department, however, does not maintain a list of these labs, according to Dr. Stack. Because the department does not have regulatory authority, an agency that has such authority will handle the issue. Dr. Stack stated that there were few if any labs reporting that all results were positive. He speculated that Dr. Thoroughman at the previous meeting was using 100 percent as a hypothetical example.

In response to questions read and asked by Representative Bechler, Dr. Stack reported that department staff go through all the datasets looking for duplicates using CDC definitions. If one person tests positive multiple times, the person is still counted as just one case. Each test, however, would be counted in the positivity rate. The CDC recommends retesting only after 90 days from the first positive test. Having enough tests

performed overall would average out multiple tests for an individual. He explained that the positivity rate is the number of positive tests divided by the total number of tests, not the number of people, but that the relative size of the number and the direction of change are the important things. Dr. Stack said some hospitals calculate their own positivity rate, and with enough local data the department could report rates at the county level.

In response to questions read and asked by Representative Bechler, Dr. Stack said that the federal data system captures test results, clinical information, symptoms, and hospitalizations. If someone is indicated as deceased, department staff check the system to be sure the record is consistent with COVID-19. For example, someone who tested positive but died in a car accident or from an opiate overdose would not be counted as a COVID-19 death. He said that the proportion of COVID-19 deaths in Kentucky with comorbid conditions might be higher than the CDC average of 94 percent because of higher rates of comorbid conditions in the state. Dr. Stack explained that many people with comorbid conditions might live for decades if they did not contract COVID-19.

In response to questions from Senator West, Dr. Stack said that some people come to the emergency room on dialysis or are terminally ill, but their immediate cause of death might be pneumonia. The death certificate would show the immediate cause of death as pneumonia. The same would be true if the immediate cause of death were COVID-19. This is the standard way that cause of death is determined. He said he would check to see if information was available on the percentage of Kentucky's deaths from COVID-19 that involved comorbid conditions.

In response to questions from Senator Carroll, Dr. Stack said that the Department for Public Health does respond to and track other diseases such as flu, hepatitis, and HIV. COVID-19 is different because it kills more people than the flu, there is no vaccine or treatment, and there is no natural immunity. Even if the death rate were as low as 1 percent, the hospitalization rate is still 8.9 percent. If the hospitalization rate came down to 5 percent but one-third of Kentucky's people became infected, that would be 75,000 people seeking hospitalization, which would overrun the hospitals, and the death rate would be much higher from lack of access to care. He said he would find the number of deaths in the first 6 months of 2020 versus previous years.

Senator Berg discussed her professional medical experience during the time of the HIV outbreak and compared it to the COVID-19 pandemic.

In response to a question submitted by Representative Fugate, Dr. Stack said the recovery rate is still evolving, and current numbers are from people self-reporting their recovery. He estimated between 10 percent to 50 percent of patients have lingering symptoms after the infection is over. COVID-19 affects multiple organs, and there is a concern that some patients might never return to their previous level of functioning. The definition of *recovered* is still evolving: Is it based on how the person feels or whether the

person is infected? The CDC says that someone is recovered when they reach their normal pre-infection condition, and that is how Kentucky is counting them.

In response to questions read and asked by Representative Bechler, Dr. Stack said the department's death review committee has three medical doctors; three epidemiologists, and the state veterinarian, who is an epidemiologist. Representative Bechler read the department's answer of "1" as the number of Kentucky children who have died from COVID-19.

In response to questions read by Representative Bechler, Dr. Stack said that the federal Department of Health and Human Services and other agencies oversee labs, and the state has no authority to ensure how labs analyze their tests. He discussed the health equity branch in the Department for Public Health, which analyzes data and seeks to improve practices. Local health departments work with communities directly with support from the Department for Public Health.

In response to questions read and asked by Representative Bechler, Dr. Stack said the federal government requires states to report their rate of use of personal protective equipment (PPE). Looking at that information and the supply chain capacity, the state has required hospitals to keep in local storage 14 days' worth of PPE at their specific use rate, and hospitals have to replenish this supply through their own purchasing. The state has a reserve supply of PPE in a warehouse, which has more than doubled in size and is almost full. The reserve should cover 2-3 months if the supply chain cannot provide enough PPE. All hospitals he has spoken with said they have their 2-week supply. Dr. Stack said that the department reviews 902 KAR 2:020 as needed. He said it was being revised when COVID-19 hit, so the department was able to include COVID-19 in the revision.

In response to a question by Senator Wheeler, Dr. Stack said if someone left a testing site before receiving a test, they should not be counted. They might receive a document confusingly saying that they were positive or were not tested and might be positive.

In response to questions by Senator Thomas, Dr. Stack said it was very important to wear a mask and socially distance 6 feet. Every federal report lists keeping mask requirements in place statewide as the first or second recommendation. Experts agree these are the two most important measures. Masks reduce the spread of particles. Dr. Stack said that measures for colder weather remain social distancing, wearing a mask, and washing hands. Fall and winter may be worse because people spend more time indoors together.

In response to questions from Senator Westerfield and Representative Bechler, Dr. Stack said that the Governor has said in-person school is permitted as of September 28. Kentucky will benefit from watching the results from other states that opened earlier. He expressed concern about transmission of the virus at sporting events. The Governor's administration is planning an announcement for September 14 about schools. Dr. Stack

said studies show that children have higher viral loads than adults in hospital intensive care units, so it is likely they spread the virus, though it is good that they are not seriously affected. Children under 10 might be less likely to transmit the disease. Football teams practicing has led to more cases. The Kentucky Department of Education worked with the Department for Public Health and others to produce a guidance document that was published on June 24, then around July 4 there was an escalation of COVID-19, so the school guidance had to change.

In response to a question from Representative Gentry, Dr. Stack affirmed that he and others in the cabinet did not inflate the perception of the seriousness of the virus for political reasons.

Representative Koenig commented on the role of the legislature, especially the Program Review and Investigations Committee, to oversee the executive branch. He said that legislators get questions from constituents and that following up on those questions does not take away from the seriousness of COVID-19.

In response to a question from Representative King, Dr. Stack said he could get the top five causes of death in Kentucky for March to September 2020 and for the same period in 2019. He also agreed to provide the number and percentage of individuals who had co-morbidities, as well as a list of studies and data on the efficacy of masks related to the department's promulgation of its proposed regulation (902 KAR 2:2210E).

Representative West commented on the role of the legislature, constitutional rights, and proper regulatory procedures. In response to a question from Representative West about studies requested at another committee meeting, Dr. Stack said he would provide information about studies showing the efficacy of masks.

In response to questions from Senator Carroll, who expressed concerns that Dr. Thoroughman did not testify at the meeting, Dr. Stack said that Dr. Thoroughman was unable to attend because of other duties. He also replied that labs have been required to report negative tests for the past few months.

In response to a question from Senator Carroll about the medical conditions that justified release of felony offenders, Dr. Stack said it was determined by the Department of Corrections and that he was not involved in the decision.

In response to questions from Senator Carroll about masks in school and children with special needs, Dr. Stack said that if there is a medical reason, the child could get a waiver. He referred to Kentucky Department of Education guidance.

Senator Carroll commented on inconsistencies in the data and how it has been presented to the public and on the role of the legislature in the process.

In response to a question from Representative Bechler, Dr. Stack confirmed that asymptomatic people can transmit the virus. He said that the effect of the viral load on the person with the disease varies. None of tests report the relative amounts of virus, but some of the machines performing certain tests might have that information.

In response to questions from Senator Nemes, Dr. Stack said that Medicare has produced new requirements for nursing homes to increase testing of staff and residents depending on the positivity rates in the community. There are many ways the virus can get from the community into a nursing home, such as staff exposure and visitation.

Senator Thomas commented on the numbers from Kentucky and other southern states.

In response to a question from Senator Carroll, Dr. Stack said that the CDC no longer advises testing when someone who had COVID-19 is discharged from a hospital to a nursing home after a certain time has passed, depending on the severity of the symptoms. He said the cabinet's Office of Inspector General could address the policy on testing of nursing home surveyors.

The meeting adjourned at 3:36 p.m.