WEST VIRGINIA LEGISLATURE

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY

2015- 2016 Interims

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Final Report of

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY

The Legislative Oversight Commission on Health and Human Resources Accountability was appointed pursuant to the provisions of West Virginia Code §16-29E-1, *et seq*. following the 2015 Regular Session of the 82nd Legislature.

During the 2015-2016 interim period the Legislative Oversight Commission on Health and Human Resources Accountability (hereinafter the Commission) met and received information on various topics of study and other important healthcare and human services issues from state agencies, political subdivisions, advocacy groups and other pertinent sources. The Commission studied six topics during the 2015-2016 interim period. These topics were:

HCR. 143. Requesting the Joint Committee on Government and Finance, to study the public-private partnership model for the operation and maintenance of all or some of the State's hospital and nursing facilities.

HCR. 138. Requesting the Joint Committee on Government and Finance to study and review the managed care system within the Bureau for Medical Services.

HCR. 135. Requesting the Joint Committee on Government and Finance to study state hospitals in regards to the Hartley Case.

Study of school based Medicaid programs.

Drug testing for welfare recipients and/or for teens obtaining a driver's license.

Structure and Authority of the Department of Health and Human Resources.

The Commission Reports as follows:

ASSIGNED STUDY TOPICS

HCR. 143. Requesting the Joint Committee on Government and Finance, to study the public-private partnership model for the operation and maintenance of all or some of the State's hospital and nursing facilities.

The Commission felt that the issue of privatization of state run hospitals and nursing facilities was a complex issue and required intensive and specialized study. Consequently a request was sent to Arnett, Carbiss and Toothman to gain some insight into what such a study would entail and the estimated cost to conduct such a study. They replied and indicated the items they would need to conduct the study, the scope of their work which would include an Operational and Clinical Assessment and a Business Valuation Process and a breakdown of their costs. The cost ranged from $35,000 to $40,000 per facility for a total cost of approximately $183,000. Due to the cost it was decided not to pursue an outside study. A copy of that letters is attached to this report.

Following the receipt of this correspondence, a series of internal meetings occurred with staff from the House and Senate Health and Human Resources Committees, the House and Senate Finance Committees and the Department of Health and Human Resources. The meetings are ongoing. A number of issues have been discussed ranging from a total sale, a sale of the just the beds, a sale of the physical plant and the real estate and a number of combinations of all of these.

The Commission **RECOMMENDS** that no action be taken on this issue at this time. The Commission encourages the continued involvement of all the aforementioned parties and would like at some point to have a presentation to the Commission of the actions of this group. Potentially, the Commission would like a draft plan – including any necessary legislation – to begin the process of privatization of all state hospitals and nursing facilities.

HCR. 138. Requesting the Joint Committee on Government and Finance to study and review the managed care system within the Bureau for Medical Services.

In anticipation of a presentation regarding Managed Care, the Co-Chairs sent an e-mail to Acting Commissioner of the Bureau for Medical Services, Cindy Beane. That e-mail contained a series of questions which the Co-Chairs wanted covered during any presentation to the Commission. Here is a list of the questions posed by the Co-Chairs:

1. What is managed care?
2. How many companies participate in managed care?
3. How many providers?
4. How many West Virginians are enrolled in managed care plans?
5. How much does West Virginia spend on managed care?
6. What is the current MLR of each company?
7. How is quality health care affected by managed care?
8. How is consumer access to care assured and monitored under managed care?
9. Do consumers have appeal rights if services are denied by a plan?
10. Discussion on the changes in the current managed care contract?

The Co-chairs would also asked the Secretary to specifically address her vision for managed care with an emphasis on the following questions.

1. The changes which have occurred since she took over?
2. The changes in the managed care contract?
3. Which populations are being added to managed care and her proposed timeline?
4. Anything else the Secretary would like to address concerning managed care.

During September Interims, the Commission heard from Jeremiah Samples, Deputy Secretary of the Department of Health and Human Resources (hereinafter the Department) regarding Managed Care. Mr. Samples provided the Commission with a comprehensive overview of managed care issues. He discussed the health of West Virginia's citizens relative to risk factors, behavioral health, and factors that fold into health outcomes. Additionally, he provided the Commission with an overview of the Department's budget and specifically the budget of the Bureau for Medical Services (hereinafter Medicaid). This included information regarding:

1. West Virginia's rank in terms of spending (12^{th}) and health outcomes (44^{th});
2. Funding Sources for Medicaid; and,
3. Medicaid cost for the past three years.

His presentation also provided answers to all of the questions presented by the Co-Chairs prior to the meeting.

Various interest groups also provided the Commission with valuable information regarding specific topics relative to managed care; most notably pharmacy care. Additionally, the Co-Chairs were kept abreast of the ongoing litigation regarding the bidding process and the awarding of the managed care contracts to provide services to the Medicaid population. That lawsuit has now been settled.

The Commission **RECOMMENDS** that they continue to monitor managed care as it relates to the Medicaid population as part of their ongoing oversight of the Department pursuant to the provisions of Article 29-E of Chapter 16 of the West Virginia Code. Specifically as contracts are required to be subject to state purchasing requirements, the Commission will be particularly concerned with costs expenditures and cost savings.

HCR. 135. Requesting the Joint Committee on Government and Finance to study state hospitals in regards to the Hartley Case.

To gain some insight into the ongoing litigation on the E.H. v. Matin case, often referred to as the "Hartley" case, the Co-Chairs requested an update from the Department on the current posture of the case. Correspondence was received from Karen Villanueva Matkovich, General Counsel at the Department, dated June 5, 2015. That correspondence provided the Commission with a procedural history of the case from its filing in 1981 to its current status.

The case initially sought a Writ of Mandamus in the West Virginia Supreme Court to alleviate what then Justice Richard Neely referred to as "Dickensian Squalor of unconscionable magnitudes" in the state rule metal facilities. Following the mandamus action, the case continued in the Kanawha County Circuit Court. The litigation remains ongoing.

The litigation has resulted in a number of decisions impacting not only the physical condition of the state run hospitals but also resulted in 1983 in a 330 page report setting forth a "Behavioral Health System Plan". Litigation has continued over the years resulting from such issues as a failed attempt in the early 1990's to construct a new state hospital, the appointment of a court monitor to oversee implementation of the courts orders, overcrowding of patients of the state operated facilities and the salaries of employees at the state run hospitals.

The Commission **RECOMMNEDS** continued oversight of the actions of the Department and the Court in the Hartley decision. No further Legislative action is necessary at this time.

Study of school based Medicaid programs.

To address this issue a request was made to the Department for an update on the level of services provided in a school based setting. The Commission received a copy of a letter from the Department to Senate President Cole dated April 13, 2015. This letter contained detail relating to West Virginia's school based health initiatives and was accompanied by extensive attachments detailing Medicaid's involvement in providing school based health care services.

The letter offered some detail on the level of services which the West Virginia Medicaid program covered in our schools, particularly with respect to special needs students. It discussed a State Plan Amendment submitted in 2000 that provided for school based health services throughout the state. The letter also went into detail about a potential $23,000,000 disallowance which could have potentially resulted in an overpayment by the Federal Government to West Virginia. Following an appeal the West Virginia expenditures were upheld and no repayment was necessary.

Finally, the letter indicated the Department continues to work with the Department of Education in providing effective school based health services within the confines of the State Plan Amendment and the direction provided by the Centers for Medicare and Medicaid Services. A copy of that letter is attached to this report.

The Commission **RECOMMENDS** that no additional action be taken on this measure but that in its continued oversight of the Department through the provisions of Article 29-E of Chapter 16 of the West Virginia Code that the Commission continue to monitor the provisions of school based health care offered by the Medicaid program.

Drug testing for welfare recipients and/or for teens obtaining a driver's license.

The Commission began its work this interim period with an overview of drug testing of public assistance recipients. To gain a national perspective and learn from the lessons of other states, the Commission reached out to the National Conference of State Legislatures (NCSL). Rochelle Finzel, Group Director of NCSL conducted a video conference with the Commission. She discussed the federal authority which allows states to implement drug testing programs. In addition she gave the Commission a perspective on current trends which states are employing as they consider drug testing of public assistance applicants. Ms. Finzel also provide insight on lessons learned by states and

provided the Commission with some considerations they may want to take into account in their deliberations.

Prior to the October meeting of the Commission, the Co-Chairs requested state specific data from the Department. Correspondence was sent to the Department asking that they address four (4) questions. Nancy Exline, Commissioner for Children and Families along with Kathy Paxton, Substance Abuse Specialist from the Bureau for Behavioral Health and Health Facilities and Anne Williams, Deputy Commissioner from the Bureau for Public Health provided the Department's response.

These questions and the Department's response were as follows:

1. Anticipated costs to do a targeted type of enforcement on specific populations such as persons with a criminal history or persons with prior drug convictions utilizing the most cost efficient drug test available.

   Response: The cost for a drug test is $56.50 per test. At this time, the anticipated costs are unknown for the criminal background check as the department does not conduct a background check on individuals applying for assistance. This particular drug test is a urine drug test that screens for various substances that the Bureau for Children and Families currently utilizes in child protective services cases.

2. How many individuals does the DHHR anticipate having an adverse event from this type testing based upon our population, the percentage of our population which is drug addicted and the percentage of our population on TANF.

   Response: The anticipated adverse event is unknown at this time. The Department does not have statistics on the percentage of our population which is drug addicted. We do know the national use of illicit drugs is 8.3%. National Survey on Drug Use and Health, November 28, 2014.

   The Department records indicate TANF caseload for 2015 is 7,936.

   - # of individuals receiving TANF – 13,980 adults and children/ 2697 adults
   - 1,852,994 population of WV
   - Percent of population on TANF - .00145%

3. What is the impact on pregnant women who abuse illicit drugs while pregnant and who give birth to children who are either suffering from withdraw or have

babies who test positive for some type of illicit substance. How man woman have tested positive for an illicit substance while pregnant? How many children have tested positive for an illicit substance after birth? How many pregnant women receive TANF?

Response: The Department does not have the information on the impact on pregnant women who abuse illicit drugs while pregnant and who give birth to children who are either suffering from withdraw or have babies who test positive for some type of illicit substance.

DHHR is unaware of the number of women who have tested positive for illicit drugs while pregnant and is unaware of the number of children who have tested positive for illicit substances at birth. Further, DHHR does not keep data on the number of pregnant women who receive TANF. However, DHHR began tracking child protective services referrals involving illicit drug affected infants in August 2014. From August 1, 2014 to July 31, 2015 there were 161 illicit drug affected infant referrals.

The Bureau for Public Health's Office of Maternal, Child and Family Health does not collect data on the number of woman who test positive for an illicit substance while pregnant, or the number of children who have tested positive for an illicit substance after birth. The Office of Maternal, Child and Family Health is aware that some hospitals do test mothers and infants, but is unaware of a central repository for that data.

4. Are there other options available beyond drug testing that might prove effective in curbing drug abuse in the public assistance population?

   Continue to follow the recommendations of the Governor's Advisory Council on Substances Abuse Strategic Goals.

   Goal 1: Implement an integrated approach for the collection, Assessment and Planning analysis, interpretation and use of data to inform planning, allocation and monitoring of the West Virginia substance abuse service delivery system.

   Goal 2: Build the capacity and competency of West Virginia's Capacity Substance Abuse Workforce and other stakeholders to effectively plan, implement and sustain comprehensive, culturally relevant services.

   Goal 3: Increase access to effective substance abuse prevention, implementation of early identification, treatment and recovery management that is high quality and person-centered.

Goal 4: Manage resources effectively by promoting good sustainability stewardship and further development of the West Virginia substance abuse service delivery.

Options available beyond drug testing that might prove effective in curbing drug abuse in the public assistance population

Risk Associated with the Population	Option
Ability to pay for behavioral health care	1. Medicaid Expansion 2. Medicaid Coverage expansion for behavioral health services including medication
Inability to access and navigate behavioral health care services (including transportation)	1. Help Line: 24/7/365 with clinical and peer staff providing education, crisis and referral support in accessing and navigating behavioral health services. The staff also provides follow up, helps in accessing payment systems and transportation. 1-844-HELP4WV 2. Increase in the number of primary care sites offering behavioral health service 3. Increased the number of treatment and recovery beds for those seeking help from 409 759 4. Reentry Substance use services have been expanded in 22 counties with 242 individuals served through Treatment Supervision 5. Availability and expanded coverage of telehealth services for rural areas where transportation may be an issue or workforce 6. Provided payment codes for Screening, Brief Intervention & Referral to Treatment (SBIRT) in emergency rooms and DHHR offices
Lack of Housing Opportunities	Safe and Affordable Housing (The Coalition to End Homelessness)

Generational Use	1. Substance Use in Pregnancy Prevention Programs in all regions 2. Implementing the START Program in January 2016, providing early intervention and family treatment teams for pregnant and postpartum women that have a substance use disorder. 3. Expanded school based behavioral health services 4. Safe at Home providing intensive family based wrap around services in home and community 5. Juvenile Justice Programs to focus on early intervention and connection to community services vs. punitive action 6. 4 Moms and Babies 3 year Integrated Recovery Programs to improve health outcomes of mom and child 7. Developing Regional Youth Service Centers to support families close to home 8. 13 Youth Liaisons provide resource coordination and referral supports for youth and families in each comprehensive behavioral health center

At the October meeting, Counsel to the Commission also provided the membership with two bills from the 2015 Regular Session of the Legislature pertaining to this subject. The first was Senate Bill 348 – Creating pilot program for drug screening of cash assistance applicants. The second was House Bill No. 2012 - Implementing drug screening for recipients of federal-state and state assistance. The difference and similarities between the two pieces of legislation was discussed with Commission members to help guide their deliberations. At the November meeting of the Commission, draft legislation was presented.

The Commission **RECOMMENDS** the passage of legislation during the 2016 Regular Session of the Legislature that would require specified populations seeking public assistance who raise a reasonable suspicion with the Department be tested for substance abuse. A positive test would result in a prohibition from receiving assistance. The time

of the prohibition would be on a sliding scale depending upon whether the test resulted in a positive test and whether it was the first, second or third offense.

Structure and Authority of the Department of Health and Human Resources.

The Commission continues to struggle with the size of the Department. They are concerned that services which the Department are required to provide are impacted by the magnitude of bureaucracy and the inefficiencies inherent in an operation of that size. Although the Commission continues to monitor various operations of the Department pursuant to the provisions of West Virginia Code, Chapter 16, Article 29-E, it is their belief that an independent consulting firm should be contracted to provide a study that would offer options for partitioning the Department into two or more entities. The end result would be delivery of a plan that would provide guidance on what would be most cost effective to the state, what would provide a more efficient operation and offer a structure that would provide the best delivery of services to the citizens of West Virginia.

The Commission **RECOMMENDS** that the Legislature contract with an independent consultant with an expertise in business management and delivery of services to conduct a thorough analysis of the Department and report back with findings and recommendations on the best way to separate the Department into manageable entities. This should include a cost analysis, organizational structure recommendations and a timeline. The study should be returned to both the Joint Commission on Government and Finance and this Commission.

Draft copies of all legislation which would be recommended for passage during the 2016 Regular session of the Legislature are attached to this report.

Respectfully submitted:

Senator Ryan J. Ferns
Co-Chair

Delegate Joe Ellington
Co-Chair