

POST AUDIT DIVISION

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NOVEMBER 12, 2017
LEGISLATIVE LETTER REPORT

JOINT COMMITTEE ON
GOVERNMENT & FINANCE

WEST VIRGINIA HEALTH INFORMATION NETWORK

POST AUDIT STAFF CONTRIBUTORS

Denny Rhodes Director
Adam Fridley Audit Manager

Note: On Monday, February 6, 2017, the Legislative Manager/Legislative Auditor's wife, Elizabeth Summit, began employment as the Governor's Deputy Chief Counsel. Most or all the actions discussed and work performed in this report occurred after this date. However, the Governor's Deputy Chief Counsel was not involved in the subject matter of this report, nor did the audit team have any communications with her regarding the report. As Deputy Chief Counsel, the Legislative Auditor's wife is not in a policy making position within the Executive Branch. Therefore, the Post Audit Division does not believe there are any threats to independence with regard to this report as defined in A3.06.a and A3.06.b of the Generally Accepted Government Auditing Standards. Furthermore, the Legislative Auditor has instructed the Director of the Post Audit Division to document and discuss any issues he believes are a threat to the division's independence with the President of the Senate and the Speaker of the House due to Ms. Summit's position.

OFFICE OF THE
LEGISLATIVE AUDITOR
Legislative Manager & Legislative Auditor, Aaron Allred

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Denny Rhodes
Director

November 12, 2017

The Honorable Mitch Carmichael, President
West Virginia State Senate
Post Audits Sub-Committee, Co-Chair
Room 229M, Building 1
State Capitol Complex
Charleston, WV 25305

The Honorable Tim Armstead, Speaker
West Virginia House of Delegates
Post Audits Sub-Committee, Co-Chair
Room 228M, Building 1
State Capitol Complex
Charleston, WV 25305

Mr. President and Mr. Speaker:

Following the passage of House Bill 2459 during the 2017 Regular Session, members of the Health Care Authority Board of Directors expressed some concerns to the Legislative Auditor regarding the required transfer of the West Virginia Health Information Network (WVHIN). The new legislation mandated that by December 31, 2017, the WVHIN's Board of Directors:

...shall transfer the existing network, the associated assets and liabilities (of the West Virginia Health Information Network) to a private nonprofit corporation...

Currently, WVHIN is a public-private partnership under the oversight of the Health Care Authority. Specifically, the concern was raised as to what responsibilities (both financially and operationally) the Health Care Authority would have in the event that the WVHIN's Board is unable to complete this transfer by the December 31, 2017 deadline.

As a result, the Legislative Auditor posed two questions to Legislative Services legal counsel to address these concerns. The questions and a summary of legal counsel's responses are as follows:

- 1. If the transfer is not completed by December 31, 2017, does the WVHIN or any other entity have the authority to continue the operations of the WVHIN until the transfer is completed?**

Answer: Yes

According to Legislative Services legal counsel, the statutory mandate clearly shows the Legislature's intent to take the State out of the operation of the WVHIN, but does not expressly terminate it. Therefore, the duty to carry out the transfer (and other operations) continues beyond the December 31, 2017 deadline.

Legal counsel noted, however, that the WVHIN is an unusual program since it was, historically, an independent agency, but received its operations staff and funding from the Health Care Authority. Since the provisions of House Bill 2459 also required that all Health Care Authority functions be transferred to the Department of Health and Human Resources (DHHR), the ongoing responsibilities of the WVHIN would now fall under DHHR.

- 2. If the transfer is not completed by December 31, 2017, does the WVHIN's Board have any continuing spending authority for FY 2018?**

Answer: Yes

While House Bill 2459 did not terminate the function of the WVHIN, the bill did provide that the funds from the Health Information Network Account shall be paid over to the corporation "on the transfer date." According to Legislative Services legal counsel, "Under the principles of statutory construction, a statute should be read to give effect to all of its provisions, if possible." Therefore, the "transfer date" can be construed to mean the date on which the WVHIN Board is able to carry out the transfer requirement. Under this reading, the WVHIN Board may use the appropriated amounts until the transition is executed.

As additional support for this position, there is the fact that the Legislature also appropriated the same amount to the WVHIN account for FY 2018 as it had appropriated for prior years. If the Legislature intended to cease all funding and operations as of December 31, 2017, the Legislature could have appropriated a smaller, proportional amount to that account.

However, if the transfer of the WVHIN's operations cannot be completed by the end of the current fiscal year, there is some uncertainty regarding the FY 2019 funding for the WVHIN. If the formation of the non-profit corporation requires more time and is delayed beyond June 30, 2018, the Legislature will have to consider what, if any, money to appropriate to support continued operation of the WVHIN functions.

The Legislative Auditor concludes that the Health Care Authority's Board will not bear an operational or financial responsibility for the WVHIN, should the statutory transfer not be

completed by December 31, 2017. Any additional administrative support needed for the WVHIN is, per H.B. 2459, the responsibility of DHHR until such time as the transfer is complete. However, if the WVHIN transfer to a private non-profit corporation is not complete by the end of FY18, the Legislature will have to decide about whether to provide an appropriation to the WVHIN for FY19. Therefore, **the Legislative Auditor recommends that the WVHIN's Board of Directors provide an update on the status of this transfer to the Post Audits Subcommittee at its December 2017 meeting.**

Sincerely,



Denny Rhodes

- c. Joe Letnaunchyn, Chair, West Virginia Health Information Network
Harriet Fitzgerald, Secretary/Treasurer, West Virginia Health Information Network
Sonia Chambers, Chief Operations Officer, West Virginia Health Information Network
Bill J. Crouch, Cabinet Secretary, Department of Health and Human Resources