



STATE OF VERMONT
LEGISLATIVE JOINT FISCAL COMMITTEE

Friday, November 13, 2015

Minutes

Members present: Representatives Ancel, Branagan, Johnson, Lippert, and Sharpe, and Senators Ashe, Ayer, Kitchel, and Sears.

Other Attendees: Administration, Joint Fiscal Office, and Legislative Council staff, and various media, lobbyists, and advocacy groups.

The Chair, Senator Kitchel, called the meeting to order at 9:47 a.m., and Representative Branagan moved to approve the September 15, 2015 minutes. Representative Johnson seconded the motion, and the Committee approved.

B. LIHEAP Update

Ken Schatz, Commissioner, Sean Brown, Deputy Commissioner of Economic Services, and Richard Moffi, Fuel Assistance Program Chief, Department for Children and Families, provided an update on the Low Income Heating and Energy Assistance Program (LIHEAP). Commissioner Schatz stated that Congressional deliberations on LIHEAP funding were ongoing but the Department anticipated that Vermont would receive an estimated \$18.4 million block grant from the federal government. In addition, there was \$2.4 million in carryforward from an unanticipated decrease in caseload, and contingent general funds provided for in Sec. C.108(a)(1) of Act 58 of 2015. The contingent fund language authorizes up to \$5 million for LIHEAP benefits, not to exceed the estimated purchasing power of the average low-income home energy benefit provided during the 2014–2015 heating season. The Department estimated that \$3.3 million of the \$5 million will be needed to provide this benefit level.

Mr. Brown explained that the Department was experiencing a steady decrease in caseload. An estimated 24,700 households would receive benefits this season with an average cost per gallon of \$2.34 blended rate or \$2.41 a gallon for heating fuel. The average per household benefit would be \$663 in keeping with legislation passed in 2015 to match a household's buying power from the previous season. Senator Ayer asked about the underlying distribution of the benefits for different income categories. Mr. Moffi responded that the program was set up to expend a higher benefit to the households with the greatest need. Senator Ayer inquired whether LIHEAP beneficiaries were automatically enrolled in the weatherization program and provided a "weatherization delegate." Mr. Moffi responded that at the end of the year, the Economic Services Division forwards a list of qualified households receiving LIHEAP benefits to the Office of Economic Opportunity for enrollment in the Weatherization Program.

In answering Senator Ashe's question about the impacts of weatherization on benefits, Mr. Moffi stated that households received the same LIHEAP benefit even after receipt of weatherization services. Senator Kitchel added that in order to capture the savings of weatherizing LIHEAP participants, there would need to be a significant reprogramming and collection of data. Representative Sharpe asked if there was a plan for tracking LIHEAP customers to addresses benefiting from weatherization benefit upgrades. Mr. Moffi responded that the Department was not capable of matching people and addresses from the two programs due to the archaic Access database system the Agency relied upon. Mr. Brown added that it was not uncommon for families to move up to three times a year, creating another level of difficulty in tracking households and their respective benefits.

Representative Ancel commented that with the lower fuel prices, the State had an opportunity to prepare for the next increase in fuel prices. She then inquired if the Department was taking advantage of that opportunity. Commissioner Schatz agreed that there was an opportunity to think through how the programs could be more effective in the future before fuel prices increased. Senator Kitchel asked if the Department had received all of the federal funding it anticipated. Mr. Brown responded that it had received the bulk of the funding, and benefits were en route to participants and dealers.

C. Administration's Fiscal Updates – 1. FY2016 Budget Adjustment Pressures

Andy Pallito, Commissioner, and Emily Byrne, Budget Director, Department of Finance and Management, explained information distributed on the FY2016 proposed budget adjustment (BAA). Commissioner Pallito informed the Committee that the Department would be ready to present the full Governor's Proposed FY2016 BAA on December 14, 2015 when the House Committee on Appropriations met. He added that the BAA pressures listed on the handout had an estimated range of \$40 million. Senator Kitchel inquired if the list included just upward pressure components. Ms. Byrne responded that the Homeowner and Renter Rebate could be positive amounts rather than pressures, but that information was still being vetted. Commissioner Pallito added that the 53rd week of Medicaid may be included in the proposed BAA. Representative Ancel asked that JFO forward a link to the FY2016 BAA proposal to the Committee when released by the Administration and posted to the JFO website. Senator Ashe suggested that the Department discuss the potential for the Attorney General's Office to file a lawsuit against the pharmaceutical companies on the grounds of anticompetitive practices since they were responsible for a large portion of State budget deficits.

2. FY2017 Budget Development Process and Projected Budget Gap

Commissioner Pallito referred to the previous handout and explained that the Department's FY2017 estimated budget gap was within \$1-\$2 million of the JFO estimate. In responding to an earlier question from Senator Sears, Commissioner Pallito explained that an early estimate showed that about one-half of the Judiciary line item of \$1.9 million may be needed for security updates.

Senator Ashe asked whether the causes for the increases to Medicaid caseload were known. Lawrence Miller, Chief of Health Care Reform, Agency of Administration, explained that at the highest level of caseload, more individuals were in the expanded eligibility of Medicaid than the Qualified Health Plans on the Exchange than originally anticipated. Senator

Ashe queried if other states were experiencing the same Medicaid caseload growth. Senator Kitchel commented that Vermont's increase in Medicaid was 10% higher than its original estimate. She added that JFO and the Department of Vermont Health Access were working together to find the fiscal drivers behind the increase, possibly due to a 40% increase in pharmaceuticals, and a \$10 million increase in Developmental Services caseload. She added that the subject deserved more exploration within the standing legislative committees and process to research what drivers were causing service costs to outpace revenue. Representative Sharpe reiterated Senator Ashe's request to message the Committee's concerns around the pharmaceutical company's high prices and to ask the Attorney General's Office to consider filing a lawsuit against the pharmaceutical companies on the grounds of anticompetitive practices.

3. FY2016 Personnel, Labor, and Administrative Cost Savings.

Ms. Byrne distributed a summary response to Act 58 of 2015's request to the Agency of Administration to find \$10.6 million in personnel, labor, and administrative cost savings in FY2016. Secretary Johnson explained that some groups of exempt state employees had extension of benefits reduced to achieve the savings. Senator Kitchel inquired if there would be discretion for lower paid workers or was the cut across the board to all exempt employees. Secretary Johnson responded there would be discretion used in deciding the reductions to the different pay scales.

In responding to Senator Kitchel's question, Ms. Byrne explained that the Department of Public Safety had a high amount of savings due in part to the \$1 million fuel savings captured in FY2016, and labor savings. Senator Ashe inquired that if fuel costs increase, would the State then find itself trying to discover funds to address that increase. Representative Johnson responded that the topic of redistribution of fuel cost savings was an issue and should be discussed further.

Senator Kitchel asked when the plan for delegating the positions from the retirement savings exercise to agencies and departments would be determined. Secretary Johnson responded that the decision had been made to refill the statutory limit of 55 positions, shown on page 5 of the handout. Representative Sharpe showed concern for the Agency of Education's high loss of staffing since the 2008 recession and its increased need for refilling those positions while struggling to respond to the workload from the enactment of Act 46 of 2015.

D. Health Department Grant Review - Grants #2787, #2788, and #2792

Barbara Cimaglio, Deputy Commissioner, Alcohol and Drug Abuse Program, and Paul Daley, Financial Director, Department of Health, reviewed the grant. Mr. Daley explained the grants totaled \$19 million over the next five years, and the expectation was that if the funding were stopped by the federal government, the program would then terminate. In responding to Senator Kitchel, Mr. Daley stated that both grants #2787, (a request for one limited service Substance Abuse Program Manager position to work on prevention), and #2788, (a request for Limited Service Substance Abuse Program Manager position to work with treatment), were expansions of current grants. Grant #2787 was a renewal and expansion for five-years, and grant #2788 was a new activity for three years.

Senator Kitchel asked if the State planned to retool its current plan on prevention to address drug addiction since trends showed a backward gain to the State's current approaches. Ms. Cimaglio responded that the federal government recognized the increased issues with opiates and for the first time included a requirement in a grant, #2788, to address the issue. In response to a question from Senator Kitchel, Ms. Cimaglio explained that the Department used different approaches to the various kinds of drugs. Representative Ancel inquired about initiatives on the over prescribing of opiates and other drugs. Ms. Cimaglio responded the Department did have an initiative that was included in the Centers for Disease Control and Prevention grant, #2792, a request for three limited service Substance Abuse Program Manager, Public Health Information Director, and Public Health Analyst II, allowed for more timely reports and tools for physicians. In addition, a new contractor was hired to bring the prescription monitoring system up to its full potential for real-time reporting of physicians.

Representative Sharpe asked if the State had accomplished any of its goals of battling drug addiction. Ms. Cimaglio responded that the challenges were the lack of resources and the small amount of dedicated community involvement. The grants would assist the State in changing course and advance new initiatives. She stated she would share the statistics on the communities participating in the previous prevention grant work that showed a positive impact on addiction. In responding to Representative Ancel's question, Ms. Cimaglio explained that the prescription monitoring system gathered data on the patient use of drugs along with physicians prescribing practices. Pharmacists reported within the system on each prescription filled and the prescribing physician. In addition, physicians and their designees were able to query the system for information on individual patients. Representative Ancel inquired if the Department could see physicians that were overprescribing narcotics. Ms. Cimaglio explained that the system was currently available for physicians to query on individuals but the #2792 grant would allow for the aggregation of data to better find those patterns of egregious drug prescribing.

Senator Sears inquired on the geographic availability of grant #2788. Ms. Cimaglio stated that the grant was limited, and therefore the Department would expand on the original communities selected for greatest population. She added that included in the grant initiatives was a prescription drug training component that would be available to all Vermont physicians. Representative Lippert asked if there were a context of the current need and whether the State could develop the capacity for that need. Ms. Cimaglio responded there was a legislative report in process that would be presented to the Legislature in the 2016 session.

Senator Sears moved to accept grants JFO#2787, #2788, and #2792. Representative Lippert asked what initiatives the Department was working on to continue the advancement for the use of Naloxone (Narcan) in deterring accidental overdoses of opiates. Commissioner Cimaglio responded that although a federal HIV grant ended to fund the administering of Narcan, the Department planned to submit a report on the current status of the initiative and recommendations for promoting it in the future. Representative Ancel seconded Senator Sears' motion, and the Committee approved.

An additional grant from the Department of Labor was redistributed and the Committee decided to continue within the regular grant process to allow for more review time by members.

E. Exchange – 1. Open Enrollment Update

Mr. Miller explained 80% of enrollment renewals in the Exchange had been processed. Data showed that the Exchange enrollment was substantially lower than the previous year. Passive renewals (automatic) were a week behind the goal of November 15 but clients still had plenty of time for the January billing cycle.

2. Recommendation on the future of Vermont's Health Benefit Exchange Report

Mr. Miller distributed a presentation and a report to the Committee, and stated that the Administration's recommendation for the future of Vermont's Health Benefit Exchange was to move forward with the current Exchange project implementation. He informed the Committee that Exeter Government Services, the software development company of ONEGATE, would be ending its service agreement with Vermont and stopping distribution of the product. Exeter agreed to provide Vermont with the key and other intellectual property to maintain the ONEGATE system that Vermont Health Connect was built on and transfer maintenance workers to the supervision of Optum, another Vermont contractor, in order to continue supporting the system. Representative Sharpe inquired if there was an option to create an Open Source software product to allow for more flexibility and accessibility. Mr. Miller responded it could be an option but depended on the company's financial outcome. Senator Kitchel asked what the long-term risk was in the orphan software's changing ownership. Mr. Miller opined the problem was a short-term (2-year) issue and that some type of portal tool would replace and connect to the Oracle platform. A discussion on the various software products and associated companies ensued.

Representative Lippert commented that it was important to take note on the milestones accomplished that the Legislature included in the budget of the 2015 session on Vermont Health Connect. Some of these accomplishments included ending the backlog of as many as 10,000 changes in circumstances of Exchange customers; the functionality of open enrollment for the Exchange by November 1; and the Administration's recommendation for whether an alternative health care system should be sought. He further stated that although it was important to discuss the next challenges of the Exchange, it was important to recognize the Legislature's and the Administrations accomplishments. Representative Branagan agreed but added that costs were an important factor in determining next steps. Senator Sears requested that the minutes reflect Representative Lippert's comments.

Senator Kitchel stated the discussion on Vermont Health Connect was important, and she inquired of Mr. Lawrence whether the Administration was reporting that the milestones requested by the Legislature had been met and it was not necessary for the Committee to decide on an alternative solution to meeting the federal exchange deadline within the Affordable Care Act. Mr. Johnson stated that was the Administration's position and he added that although the current Exchange system was not perfect, it worked well compared to other states' systems, and addressed Vermont's health care subsidy and other prescriptive needs.

Senator Kitchel asked for an update on the State of Massachusetts health care premium assistance program. Robin Lunge, Director, Health Care Reform, Agency of Administration, responded that Massachusetts' premium assistance program was similar to Vermont's in that it was delivered through the state's Medicaid program and had a basic exchange system. Its system

was not functioning as well as Vermont's, but was improving. Representative Branagan inquired of the State of Hawaii's exchange system. Ms. Lunge explained that Hawaii was moving to the federal exchange technology due to a mandate from the federal government, but would need to find a system for incorporating Medicaid enrollment. Senator Ashe suggested that the Committee read an article in the Boston Globe on Massachusetts's exchange difficulties and improvements.

Mr. Miller concluded that the Vermont Exchange report was thoroughly vetted by various internal and external entities noted in the report. Vermont had the highest amount of individuals [lives] on its exchange in the country due to its mandate. Recommendations of the report include a 1332 waiver request to the Centers for Medicare and Medicaid Services (CMS) to not do the technical portion of the small business exchange as the Administration believes it has met the federal mandates for the shop function of the Exchange. If the waiver were declined by the federal government, Vermont may have the ability to use one of the federal marketplace alternatives [SHOP Marketplace]. In responding to Representative Ancel, Ms. Lunge explained the Administration would need to request legislative approval for the change in the waiver; and in order to have enough time to respond to CMS's response on the waiver, the Administration would need to file it before the end of the next legislative session. Senator Ashe suggested that Vermont join other states in not adhering to the federal mandate to do the technical amendment even if the waiver were declined because the mandate is costly and unfair to Vermont. Representative Lippert commented that if the legislation and submission of the waiver were accomplished early in the session, there may be time to respond to any fiscal challenges that could accompany the CMS response. In response to Senator Ashe's question, Ms. Lunge stated that a declining of one waiver did not preclude Vermont from submitting additional waivers. Representative Lipper requested the Administration develop information on the 1332 waiver for legislative standing committees of jurisdiction to enable them to act more quickly.

G. – 1115 Global Commitment to Health Extension Request Summary Memo and Out-Of-Pocket (OOP) Costs Report

Robin Lunge introduced Selina Hickman, Director of Health Care Operations, Compliance, and Improvement, Agency of Human Services, to the Committee, and Robin Lunge summarized the 1115 Global Commitment waiver extension request. Ms. Hickman explained that the initial waiver was typically put in place for 5 years by CMS and then requests for extensions and/or amendments submitted every 3 years thereafter. The current waiver was originally approved for 2005 – 2010 and had two extensions and multiple amendments since then, including a recent one to consolidate the Choices for Care and Global Commitment waivers. The current extension request did not include amendments (changes), and, therefore were eligible for a fast-track decision that would renew the waiver for 5 years through December 31, 2021. The Choices for Care waiver amendment extended that portion of the waiver for 5-years and by using a CMS dual eligible provision; the Administration had requested the 5-year extension for the entire Vermont Global Commitment waiver. In responding to Senator Kitchel, Ms. Hickman explained that if the 5-year extension were denied, then a 3-year extension would extend to December 31, 2018. She concluded by adding that CMS required waiver extension requests to be filed a year in advance of the waiver expiration date and after a public comment period, the waiver request would be submitted by December 31 of the current year.

H. Medicaid Pressures

Emily Byrne revisited comments from Commissioner Pallito's earlier testimony of FY16 BAA pressures. She explained that the \$40 million budget gap included the 53rd week of Medicaid.

Stephanie Barrett, Associate Fiscal Director, Joint Fiscal Office, summarized the working group's preliminary projections documented on the information handed out to the Committee. There was a \$30 million projected budget gap in Medicaid. Senator Kitchel asked what assumptions were used to project Medicaid's budget shortfall. Ms. Barrett responded that budgeted and actual experience is compared and new forecasts including the most recent actual experience are made. When viewing the FY2017 budget, constant pressures in areas not within the Department of Vermont Health Access (DVHA) are seen, such as Developmental Services (DS), Mental Health, and some pressure in Choices for Care budget which is administered by DDAIL. In responding to Senator Kitchel's question, Ms. Barrett stated that the estimate was in the \$8 million range for DS in FY2017.

Ms. Barrett explained that a factor in the budget gap for Medicaid hinged on assumed savings from a given rate through a lower estimate to autism, and an internal decision to increase rates to Applied Behavior Analysis (ABA). Ms. Byrne added that the rate increase was due to providers who claimed they had not been reimbursed enough, making it unaffordable to provide services that in return created an access issue for autism clients. Mr. Barrett clarified that earlier in the year there was a separate rate issue on group therapy that was not related to the ABA issue. In response to Senator Kitchel's question, Ms. Barrett explained that the number of enrollees for the new cystic fibrosis drug, Orkambi, was about 40 people that would cost an estimated \$8 million in FY2017.

Senator Kitchel commented that there were discussions and concerns on how assumptions were made in estimating the Accountable Care Organization's (ACO) Medicaid payment each fiscal year. She added there were questions on the integrity and the methodology of the estimates for the ACO payments when actual payments were translated from the technical conversations of trend rates and technically avoided savings. Ms. Barrett explained that the trend lines were estimated through an ACO contract, and it had come up within budget meetings on whether to include an estimated ACO payment but any payment required meeting performance measures of the contract. Representative Lippert asked if the State's share for ACO payments could grow for FY2016 beyond the current estimate. Ms. Barrett stated the estimate could increase or decrease. Senator Kitchel and Representative Lippert directed JFO to discover if there were an upward limit exposure in the contract. In responding to Representative Ancel, Ms. Barrett stated the ACO savings payment contract extended through FY2018 and then might depend on the status of a State All Payer Model. Representative Ancel requested that the Administration work with JFO to create a range chart of the impacts of the ACO adjustments within the next few years. The Chair commented that in light of the budgetary impacts of ACOs, it seemed imperative that the Legislature build its knowledge on the Organization's, and to investigate a means to limit the State from liability of possible high costs associated from poorly developed trend lines.

I. Fiscal Office Updates – 1. Education Fund Outlook

Mark Perrault, Senior Fiscal Analyst, Joint Fiscal Office, explained that the Commissioner of Taxes would release estimates for the Education Fund balance on December 1. It was estimated there would be an Education Fund surplus of about \$20 million in FY2016, primarily due to a significant reversion from FY2015. This surplus will allow for lower education tax rates in FY2017, but because this is one-time money its se will put pressure on education tax rates in FY2018.

In responding to Senator Ashe, Mr. Perrault stated that the merger incentives to schools under Act 46 mergers were estimated at \$2.3 million. He responded to Senator Kitchel's question that schools received tax and grant incentives for district merge's, whether they were Supervisory Unions, Regional Education Districts (REDS), or a Union School District. Mr. Perrault agreed with Senator Ashe that the cost of the incentives is borne by the Education Fund.

The Chair commented on a legislative request sent to the Chairs of the Appropriations Committees from the Vermont Board of Education, advocating for the Agency of Education (AOE) to receive additional funding for administering Act 46. Representative Johnson commented that she had discussed the plea from the Board with the Chair of the House Committee on Education (Representative Sharpe), and assured him that if the Agency or the Committee submitted its prioritized list of results-based funding requests, the House Committee on Appropriations would seriously consider the funding of those priorities. A discussion ensued on legislative mandates and the ability of the AOE to achieve them with the same staffing capacity.

Mr. Perrault explained that spending thresholds put in place by Act 46 for FY2017 and FY2018 could have an impact on the Education Fund Outlook. The House Committee on Education had a meeting scheduled next week to review the thresholds.

Mr. Perrault gave a reminder that a new system for adjustment of the tax rates would be in place when the Commissioner announces the tax rate on December 1. The Legislature would no longer determine the tax rate; instead the rate would be fixed at \$1.00 and the Legislature would set the yield to determine spending adjusted tax rates.

Senator Kitchel inquired on the statewide grand list. Mr. Perrault responded that the Legislature's economist had projected the statewide grand list would have a positive annual growth of 1.7%.

2. Revenue and Tax

Sara Teachout, Senior Fiscal Analyst, Joint Fiscal Office, explained there was a review of the property transfer tax surcharge on the new Clean Water Fund because there appeared to be an oddity between that fund and the underlying property tax revenues. Since this is a new fund, the review would show how the transfer was occurring and if it were on the right schedule. She promised to e-mail the Committee if information surfaced on the oddity.

Ms. Teachout gave an update on the tax expenditure's program and the work of the Office in partnership with the PEW Charitable Trust and the Institute on Taxation and Economic Policy (ITEP) on evaluating Vermont's future tax expenditures. Senator Kitchel asked if Tax Incremental Financing (TIFs) should be included in the study. Ms. Teachout responded that she had considered removing that component of the study because the State Auditor was reviewing that program on an existing auditing schedule but they would be evaluating all the TIFs that affect the bank franchise tax. She explained that the Legislature's Economist was working with a Regional Economic Model, Inc. (REMI) to evaluate the outcomes of implementing a sales tax on a select group of services in Vermont. It would confirm whether the REMI could work in evaluating outcomes of proposed tax policy.

3. Fiscal Officers' Report

Stephen Klein, Chief Fiscal Officer, Joint Fiscal Office, highlighted areas of his report, pointing out the attached JFO proposed budget with a 1.7% General Fund growth but with the Pay Act, the Office was at zero growth. In discussing personnel, Mr. Klein explained a vacant position remained open to allow for interim work on the legalization of marijuana along with funding current fiscal analysts. The in-house Economist's contract was renewed for two more years under the health care contract and the Office would cover 25% of the cost through its base budget the first year and 50% the following year. At the end of the contract, the JFC would then decide if the position should continue. Representative Lippert asked about the Information Technology contractor position. Mr. Klein explained that the FY2016 Capital Bill designated \$250,000 to JFO to hire a contractor or limited service position for two years to assess the future of the Vermont's Health Benefit Exchange.

Senator Ashe requested an Executive Session to discuss the personnel of JFO, Representative Johnson seconded the motion, and the Committee accepted the motion.

The Committee recessed for Executive Session at 12:49 p.m.

The Chair reconvened the Committee at 1:02 p.m. and Senator Ashe moved to adjourn the meeting at 1:05 p.m. The Committee adjourned.

Respectfully Submitted,

Theresa Utton-Jerman, Joint Fiscal Office