JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON HEALTH AND HUMAN SERVICES

August 14, 2012
Room 643, Legislative Office Building

The Joint Legislative Oversight Committee on Health and Human Services met on Tuesday, August 14, 2012 at 10:00 A.M. in Room 643 of the Legislative Office Building. Members present were: Senator Louis Pate, Representative Nelson Dollar, and Representative Justin Burr, Co-Chairs; Senators Stan Bingham, Harris Blake, Jim Davis, Fletcher Hartsell, Martin Nesbitt, William Purcell, and Tommy Tucker; and Representatives Martha Alexander, William Brisson, William Current, Pat Hurley, Bert Jones, Marian McLawhorn, Tom Murry, and Fred Steen. Senator Andrew Brock, and Representatives Marilyn Avila, and Verla Insko were also present.

Lisa Hollowell, Denise Thomas, Karlynn O'Shaughnessy, Jan Paul, Patsy Pierce, Theresa Matula, Amy Jo Johnson, Susan Barham, Sara Kamprath, Joyce Jones, Pat Porter, Rennie Hobby, Candace Slate, and Dina Long provided staff support to the meeting. A Visitor Registration Sheet is attached and made a part of the minutes (See Attachment 1)

Chairman Burr called the meeting to order and welcomed members and guests. Chairman Dollar expressed the tremendous loss felt by everyone over the untimely death of Steve Jordan, Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, and asked for a moment of silence in his memory.

Chairman Burr asked for a motion to approve the minutes from the May 15, 2012 meeting. The motion was made by Representative Current and the minutes were approved.

Lisa Hollowell from the Fiscal Research Division provided an overview of the budget and substantive laws from the 2012 Short Session. Ms. Hollowell referred member of the Committee to a document which included the Money Report passed by the General Assembly; Session Law 2012-142, the Budget Bill; Special Provisions SL 2012-142, Section 27.3, and SL 2012-145 – Technical Corrections. (See Attachment No. 2) She said that the Budget appropriates approximately $4.7 billion for the Department of Health and Human Services which is $228.8 million over the amount appropriated by S.L. 2011-145, for FY 2012-13. While most reductions are specified, there is approximately $2.7 million that is the management flexibility reduction for DHHS which is to be achieved through administrative efficiencies.

Regarding the Medicaid program, Ms. Hollowell said that there is approximately $212 million for the Medicaid rebase to address the projected growth in the number of eligible individuals and consumption. Additionally, $55.9 million is provided for federal repayments due in FY 2012-13, $15 million to cover Medicaid provider settlements, and $5 million for administrative contracts. Additionally, there is $50 million appropriated for the Transitions to Community Living

Initiative. About $39.7 million is targeted to provide short-term financial assistance to Adult Care Homes. The remaining amount is targeted to provide housing and additional services to individuals who are no longer qualified to be in those Adult Care Homes. Additionally, there is a Blue Ribbon Commission that will be established to develop a plan and look at the long term needs of individuals with mental health or developmental disabilities. The budget also provided an additional $3.5 million for three major initiatives - Smart Start - Early Literacy Initiatives, Development Assistance, and Rural Partnerships. Those funds will be made available in January providing the Office of State Budget and Management certifies that the Medicaid budget has enough State funding. There is $9 million provided for the three-way contracts for the psychiatric beds and $4.9 million for the local health departments for health and wellness activities which will be available in January 2013. The Block Grant funds for this year are projected to be approximately $71 million less than what was appropriated for FY 2011-12. The reduction is due to the Temporary Assistance for Needy Families (TANF) reduction, and also the fact that many of the Block Grants were reduced and one was eliminated.

Jan Paul from the Research Division provided a summary of the Substantive legislation passed during the Short Session. (See Attachment No. 3) Significant legislation highlighted by Ms. Paul included: Eliminate LME Provider Endorsement, Accountable County Commissioners/Expand Local Board Authority, Local Management Entity (LME) Governance, Enact Volunteer Health Care Services Act, Strengthen Child Safety Laws/Care Facilities, Absconding Probation/Violators Forfeit Benefits, Modify the UNC Health Care System Board, and Accountable County Commissioners/Expand Local Board Authority which studies the feasibility of transferring the functions, duties, and obligations of the Division of Public Health to the UNC Healthcare System and/or the School of Public Health at UNC.

The Department of Health and Human Services Acting Secretary, Al Delia said that DHHS would address any questions regarding how DHHS is implementing the budget direction of the Legislature. He said he wanted to address the issue of the Social Security Block Grant funding. He explained that the $4.3 million fund for guardianship services was originally placed in the wrong budget line. The Legislature was asked to correct the error but then DHHS realized that it was indeed in the correct line budget originally. Therefore, an $8.6 million cut was taken rather than the $4.3 million cut. Secretary Delia made it very clear that the mistake was with DHHS. He requested direction from the Committee that would allow DHHS to work with the Office of State Budget and Management to try to find existing funds within the Department to rectify the inadvertent cut. Chairman Burr told the Secretary that he thought the majority of the members would want the correction to be made and that the Committee did not have the authority to give that approval. He said the Department must take action on their own.

Tara Larson, Chief Clinical Operating Officer with the Division of Medical Assistance (DMA) was asked about the implementation of the Smart Card pilot program that was in the budget. She responded that DMA was moving forward with the evaluation of that process and that DMA was

working with various stakeholders on the RFP. She was also asked to provide a list with the number of State Plan Amendments (SPAs) expected to be submitted through the end of the year, and she was asked if any had been submitted to date. She said she would get a list and that the SPA for Personal Care Services had been submitted on July 20 and had received a response requesting additional information. The SPA on Pharmacy Dispensing will go next week. Approval on another SPA has been received. She said there were 6 or 7 SPAs ready to go including: Cost of Living Disregard, Non-Emergency Transportation, and the 1915(i) - addressing Special Care Units.

Steve Owen, Chief Business Operating Officer, DMA, was asked what the check write looked like at the end of the fiscal year, and what it looked like this past July. He responded that there was a cash balance of $14 million so the check write was as expected. For the first month of this fiscal year, Medicaid's total funding was at a $9.9 million surplus. He added that $42 million had been returned for Repairs and Renovation from the last allocation. Mr. Owen was also asked what percentage of the Blind, Aged, and Disabled (ABD) population was enrolled in Medicaid. He responded that 72% of the population was currently assigned with CCNC physicians. The savings are predicated at almost 75%. He said that DMA, CCNC and DHHS were meeting monthly to strategize on ways to increase enrollment, and how to implement the clinical initiatives in order to meet the 75%-80% enrollment goal.

Denise Thomas from Fiscal Research explained that in the 2011 Session, the Legislature passed H.B. 916, the Statewide Expansion of the 1915(b)(c) Waiver, which directed the Department to expand the Waiver statewide by July 1, 2013. The budget for FY 2011-2013 included a reduction in the Medicaid budget of $50.8 million which is an attempt to capture the projected cost-savings from the statewide expansion this year. She said that there are currently 4 MCOs in operation: Piedmont Behavioral Health – the first phase initiated in March 2005; Western Highlands – January 2012; East Carolina – April 2012; and Smokey Mountain – July 2012. The remaining 7 waiver sites are scheduled to begin operating on or before January 1, 2013. In light of the recent news about the financial situation at Western Highlands Network, the Chairs have asked that the Committee get a report on what happened at Western Highlands, the plans to correct the situation, and what actions the Department is taking to ensure that the situation is not repeated when the remaining seven sites go on line later this fiscal year. Ms. Thomas provided a list of questions from Committee staff to be addressed by DHHS, Mercer, and Western Highlands during their presentations. (See Attachment No. 4)

Michael Prinski, Principal with Mercer Government Human Services Consulting, provided background information on the July 10, 2012 onsite review of Western Highlands Network (WHN), and the findings and observations from that review. (See Attachment No. 5) Mr. Prinski explained the findings and recommendations relating to Management Reporting, Financial Operations, Information Technology and Claims and Clinical Operations. In conclusion, Mr.

Prinski said that Mercer recommended that DMA meet with WHN weekly for the next 30-60 days to insure that changes are being implemented to their system, and that all changes and recommendations be implemented and in process within 90 days.

Mr. Priniski was asked to compare the Readiness Report from last fall on Western Highlands before it went live to the current report. He responded that items identified in two Readiness Reviews, one at 120 days and the other at 45 days, were consistent with items found in July. Key findings focused on the IT and Reporting systems which were identified but were not addressed or corrected. Chairman Pate emphasized to DHHS and the MCOs the importance of monitoring these reports to see that the best technology is in place in order to not continue to lose money, and the ability to look after the citizens of North Carolina.

Mike Watson, Director of DMA was asked who made the decision within the Department, based on the findings of the Mercer Report, for WHN to go live. Mr. Watson responded that based on the review and WHN plan of corrective action, he with the concurrence of the Secretary, decided it was appropriate to move forward. He stated that in hindsight he would not have made that decision. Members expressed their concern that in moving forward with the MCOs that there is no turning back. The MCOs cannot fail and members hoped that other MCOs were paying attention to what happened at Western Highlands. Secretary Delia reminded members that the MCO system management is run locally by a board of directors and monitored by DHHS. He said he did not have the authority to hire or fire anyone. Management changes were made at WHN and DHHS is monitoring.

Charles Schoenheit, Interim CEO of Western Highlands explained how the situation developed at WHN and he explained the corrective action to rectify the situation. He stated how providers have 90 days to submit claims, and in April it was realized the amount of expenditures that had been delivered the first 3 months were problematic. There were also a large number of authorizations from Value Options that were passed through the system that were not subject to the WHN authorization system. Providers were having a difficult time getting adjusted to the changes in the system, problems getting their bills in and getting them in the proper form. Western Highlands found it necessary to temporarily relax some of the claims deadlines and edits to keep providers afloat. He explained that WHN did not want to see services interrupted to consumers, and wanted to see that claims were paid to providers during the transition period so they could stay in business. Over expenditures were reported to the Board and CEO Arthur Carder was terminated.

Mr. Schoenheit said that the Mercer and DMA onsite review was conducted in July, and on August 1st they issued a Corrective Action Report. Western Highlands met with DMA on August 8th to review the report and WHN response in detail. A written Corrective Plan of Action was

sent to DMA August 10th with suggested changes. The Corrective Plan of Action included the following:

- Budgetary Plan to address the budget shortcomings is being revised and implemented.
- Losses experienced will be addressed using funds from the WHN fund balance, and from administrative under spending incurred over the first 6 months of the year which is about $2 million.
- Western Highlands and DMA will meet weekly via face-to-face or by phone.
- The implementation for the Plan of Corrections is underway. The services of a Managed Care consultant are currently being secured, and anticipate a consultant will be onsite within 2 weeks.
- Western Highlands will pursue recoupment of funds that were overpaid to providers when the system was relaxed.
- Western Highlands is working through the suggestions in the Mercer Report.

Mr. Schoenheit added that the Information Systems Department has been underfunded which was the source of a number of the problems, and that the problems identified from Mercer were not ignored. He said WHN had been at work trying to address the problems.

Chairman Burr asked Michael Watson to address the questions submitted regarding the BC Waiver implementation. Mr. Watson asked members to reference a narrative with the Department's response to each of the questions, many of which had already been addressed. (See Attachment No. 6) Mr. Watson commented that Western Highlands took on a different, very difficult clinical and technical problem. The major issue has been the inability to have the kind of technical and clinical tools necessary to manage Medicaid dollars, and the ability to see how to move from the LME role to the MCO role. He reviewed the financial figures and stated that there was a $138 million budget and the overage is between 3-4% of that figure. He said that from now on there needs to be a financial report from every MCO with a clear format so everyone is doing it the same way. Mr. Watson was asked to provide a financial report on East Carolina Behavioral Health.

Chairman Burr announced that members of the Subcommittee on Mental Health would be: Representatives Burr (Co-Chair), Avila, Hollo, Jones, and Brisson; Senators Pate (Co-Chair), Bingham, Tucker, Hartsell, and Doug Berger.

Jan Paul provided the opening comments for the Institute of Mental Disease (IMD), US Department of Justice (USDOJ) and Personal Care Services (PCS). (See Attachment No. 7) Emery Milliken, General Counsel with DHHS provided an update on the status of the negotiations with the USDOJ regarding its ADA investigation into North Carolina's mental health system. She reminded everyone that negotiations were continuing with USDOJ therefore;

since the matter is not resolved she would be monitoring any responses so as not to impede the State if and when there is any future litigation.

Ms. Milliken first reviewed background information provided in previous meetings. She said that at this time, the State did not yet have an agreement but she was able to provide a status of the current negotiation. The State has successfully negotiated with USDOJ a path forward for North Carolina. The charge to those involved with the negotiations for the State all along have been to only do what is good public policy for the State of North Carolina, and whatever decisions that are made should be decisions based on the current system and the current infrastructure. Regardless of whether or not an agreement is reached, the "go forward plan," presented to the General Assembly during the budget negotiations appropriated funds to implement the plan. The basic components of the agreement includes: Diversion, In-Reach, Transition Planning, Supported Housing Slots, ACT Fidelity, Supported Employment, Quality Assurance, Performance Improvement, and in the event there is an agreement, an independent reviewer. Ms. Milliken reiterated that the parties have essentially reached an agreement on what the plan should include in terms of addressing the issues the Federal government alleges that North Carolina does to violate the ADA. They have not yet agreed on what the form of the agreement looks like, what the reviewer does, and who the reviewer would be. The USDOJ was insistent on court oversight, court enforcement, and a court monitor. The State has negotiated instead of a court monitor, an independent reviewer selected by the mutual agreement of the parties. The reviewer would be under contract with the State, and would file an annual report on North Carolina's compliance with the agreement, and would also have the ability to serve as a consultant to the State while the agreement is being implemented. In the absence of an agreement, USDOJ will file suit, enforcement is critical to the Justices. The Secretary added that if USDOJ agreed there could be a private settlement.

Tara Larson, Chief Clinical Operating Officer with DMA provided a briefing on Personal Care Services initiative and the Institution of Mental Disease initiative. (See Attachment No. 8) She reviewed the background of PCS, the criteria for PCS passed by the General Assembly, and provided statistics on the status of implementation which included the direct impact on those licensed facility residents and In-Home Care recipients. Ms. Larson was asked to provide the numbers comparing 2ADL and 3ADL. She was also asked if DHHS was expecting a large number of appeals. She responded that DHHS was concerned and had already started communicating with OAH, and DHHS has talked with CMS regarding extending the 90 day Federal requirement because of the volume expected. A decision has not yet been rendered by CMS.

Ms. Larson then provided an update on the Institution of Mental Disease. She gave a summary of an IMD, and reminded members that if the State determines a facility is an IMD then all Medicaid funding stops for that facility and that recipient as long as they reside in the IMD. Ms.

Larson went on to explain Phase I activities and results in determining if a facility is an IMD, Phase II activities, data which included screening and onsite review, and the discharge process.

There was concern for the residents in facilities that might not receive adequate notice of a pending move. Ms. Larson said that the Federal regulations were very specific in that once a facility is deemed an IMD all funding must stop as of that date. The "at risk" process allows a 2 - 3 week notice which is better than a 2 – 3 day notice. The facility does have the ability to keep a resident in the facility if they choose not to bill Medicaid. Ms. Larson was asked if the draft on the (i) Option includes Adult Day programs and Respite Care. There was concern over the cost and worry that the (i) Option would go beyond the intent of the General Assembly. She said that a 1915(i) had not been submitted nor had a draft to CMS. Stakeholders have been discussing the criteria. The draft submitted will be in line with the conditions that the General Assembly put forward as well as the cost figure.

Michael Watson addressed the RFP for the Medicaid evaluation. (See Attachment No. 9) Mr. Watson provided a summary detailing the specifics of the RFP, reviewed the scope of work and the requirements for the vendor application, and the evaluation process of the proposals. (See Attachment No. 9) Mr. Watson said that DHHS felt that the scope of work associated with the RFP is complimentary but not duplicative of the two legislative required audits that will take place over the next few months.

Beth Wood, State Auditor, provided three handouts. The first one, addressed the objectives of the audit based on legislation in the State Budget Bill; the second, was a copy of the State Budget Bill addressing what is requested of the Auditor's Office; and the third, was a comparison of the State Budget Bill and the DHHS RFP. (See Attachment No. 10) Auditor Wood described the program areas that the audit would cover which included: Administration, Projections and Budget, and Reporting. She said the preliminary report was due November 1, 2012, and the final report would be due February 1, 2013.Auditor Wood pointed out that the Comparison document contained examples of what would be considered a duplication or overlap of what the Auditor's Office would be reviewing and the Department's RFP. She expressed concern that both projects had the same preliminary due date, which could create a significant impact on the staff of DMA to be able to perform their Medicaid functions, and have adequate time to provide information to the Auditor's Office and the vendor. Auditor Wood was also concerned that there was a conflict of interest for DHHS to want to get their report finished, and her office would not get all the information that the vendor would be provided. There is also concern that her office will not get the attention or response needed in order to pull all of the information together to meet the Legislative mandated timeframe.

Senator Brock stated that the Budget Bill said that any audit from the State Auditor Office takes precedence over any RFP by any agency. It was suggested that the DHHS audit be delayed until

the Auditor's Office finishes their audit. Chairman Burr responded that the Committee did not have the authority to take action when the General Assembly was not in Session. Michael Watson stated that the audit was in no way intended to disrupt the State Audit, and that the vendor would be looking at the external Medicaid environment. Mr. Watson was asked what the DHHS audit would have that the Auditor's Office would not have. He responded that DHHS was looking for very specialized external information generated by someone who is an expert in Medicaid who can look at comparable states around the country and in our region, and generate information regarding payment strategies, provider rates, costs and expenditures, optional services, cost containment strategies, uses of independent assessment or prior authorizations in other Medicaid programs. He was also asked where the money came from to do the RFP and how much it was going to cost. Mr. Watson said the funds were coming out of Medicaid contract funds and part of the evaluation of the RFP would be the projected cost. The Auditor was asked to report back to the Committee on any delays or issues regarding the audit.

Regarding the consolidation of leased space for DHHS Administrative Offices, Mark Bondo from Fiscal Research provided a broad overview of leasing at the State level and some specific issues surrounding DHHS. (See Attachment No. 11) He explained that the Department of Administration (DOA) was responsible for the control of real property for the State. Mr. Bondo described the positive and negative aspects of leasing, shared a statewide graph of leases that fall under DOA, and a pie graph depicting State, Federal and other leases in Wake County. He also reviewed the specifics for the RFP.

Ann Bander, Chief Operating Officer for DOA and Terry Hatcher, Director of the Division of Property and Construction, DHHS provided an update on the consolidation of leased space for the DHHS Administration Offices. (See Attachment No. 12) Ms. Bander explained the role of DOA as the target lead in the initiative in the consolidation of spaces. She explained that DOA issued an RFP in February to retain a tenant representative to assist in exploring options for DHHS employees working in leased and State owned space throughout Wake County. The firm selected would help prepare an RFP to solicit proposals for the acquisition by lease of space for consolidation. Mr. Hatcher explained the data gathering process, and told of the less than ideal conditions with DHHS being spread throughout the county. Ms. Bander also discussed the space planning effort for the IT space requirement. Once data was gathered, DOA assembled a multi-disciplinary group to review and refine the draft RFP. The RFP was then finalized and issued on July 10, 2012. The proposal deadline is August 17, 2012. She said that any recommendations from the proposals would be reported to the Committee on Governmental Operations.

Chairman Dollar asked if the report would come before any leases or contracts are signed. Speros Flaggus, Chief Deputy Director of Operations for DOA, responded that there was no requirement but as a matter or courtesy DOA would submit to Governmental Operations, and then to the Council of State for consideration. Chairman Dollar said on behalf of administration,

he would like to see any recommendation presented to Governmental Operations before action is taken. Mr. Hatcher was asked to provide a list indicating how much more money would be needed in State dollars to move all of DHHS off of the Dix campus. Several members expressed their concern over selling the Dix property. It was stated that DHHS should be consolidated in one central location, and that the cost of buying land and building would be too costly to the State. It was also suggested that leases could be extended and that the issue could be considered in January or February. Chairman Burr directed staff to locate the proposal from several years ago which consolidated the Department on the Dix campus and to send it to members. He said there were actually several concepts that could be considered.

There being no further business, the meeting adjourned at 4:20 PM.

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Senator Louis Pate, Co-Chair

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Representative Nelson Dollar, Co-Chair

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Representative Justin Burr, Co-Chair

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Rennie Hobby, Committee Clerk