

LEGISLATIVE AUDIT ADVISORY COUNCIL

Minutes of Meeting Monday, October 9, 2023 Senate Room E State Capitol Building

The items listed on the Agenda are incorporated and considered to be part of the minutes herein.

Chairman Luneau called the Legislative Audit Advisory Council (Council) meeting to order at 10:09 a.m. Ms. Tanya Phillips called the roll confirming that a quorum was present.

Members Present: Senator Jay Luneau, Chairman
Senator Beth Mizell
Senator Louie Bernard
Senator Fred Mills
Senator Jimmy Harris
Representative Barry Ivey, Vice Chairman
Representative Stephanie Hilferty
Representative Edmond Jordan
Representative Aimee Adatto Freeman

Members Absent: Representative Rodney Schamerhorn

Also Present: Michael J. "Mike" Waguespack
Louisiana Legislative Auditor (LLA)

Approval of Minutes

(Video Archive Time 01:11)

Senator Bernard offered a motion to approve the minutes of the July 25, 2023 meeting and, with no opposition, the motion was approved.

(Video Archive Time 02:00)

Louisiana Legislative Auditor Performance Audit Services Report – Pharmacy Benefit Costs

Presented by:
Performance Audit Manager, Emily Dixon, CIA, CGAP, CRMA, MBA
Senior Auditor, Julie Floyd, CIA, CGAP, MPA
Staff Auditor, Joshua Dupuis, MBA

Ms. Dixon and Ms. Floyd provided an overview on the informational report that was issued on pharmacy benefit costs. The report was prepared in response to

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legislative interest, specifically including Representative Edmond's House Resolution 167. Pharmacy costs, or the costs associated with pharmacy benefits, for fiscal years 2018 through 2022 were reviewed. Three plan sponsors were reviewed, the Louisiana Department of Health (LDH), the Office of Group Benefits (OGB), and LSU -- specifically the plans were Medicaid, LSU First and OGB's four plans -- the Magnolia Open Access, the Magnolia Local, Magnolia Local Plus and the Pelican HRA 1000. The pharmacy benefit costs vary differently across plan sponsors for multiple reasons -- different rebates that are negotiated with the drug manufacturers, the demographics, and then the utilization of medication by the different plan participants in each group. PBMs or pharmacy benefit managers, plan sponsors generally do contract with PBMs to provide pharmacy benefits. These are private healthcare companies that are contracted to provide pharmacy related services. Examples of those services could be processing claims and reimbursing pharmacies, coming up with the drug formulary, or the list of approved medications negotiating with the drug manufacturers for said rebates. They also sometimes review and process prior authorization requests. For the plans reviewed for this review, both OGB and LSU do contract directly with PBMs. However, LDH, for the majority of Medicaid recipients, contracts with MCOs or managed care organizations and they, in turn, do the contracting with the PBMs. Please keep in mind that the comparisons, the differences between the costs are for various reasons, and they can't be compared on face value.

(Video Archive Time 07:39)

The report provides information about the costs associated with providing pharmacy benefits. For the purposes of the report, the cost of providing pharmacy benefits includes the cost of each prescription plus any payments made to the PBM or other vendors for administering the plan minus any payments paid back to the plan sponsors. That includes rebates, performance penalties, federal subsidies, and other things. What was found is that the cost varies due to the differences in rebates, demographics, utilization of the plan participants, and the design of the benefit plan. For example, Medicaid generally receives a much larger percentage of drug costs back in rebates compared to commercial plans like LSU and OGB -- roughly 46% for Medicaid compared to a national average of around 20% for the commercial plans.

(Video Archive Time (09:02)

The 20% is not specific to OGB and LSU, that's a national average. PBMs generally consider that information to be proprietary and confidential. For demographics and utilization, the design of the benefit plan has to do with what medications are allowed on the formulary and then also how much plan participants contribute to the cost of the plan or the cost of the medications in the form of copays. It was also found that the price that plan sponsors pay for medications vary depending on the pricing terms that are defined in the PBM contract or specified by Medicaid.

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(Video Archive Time 10:12)

The difference in pricing is what they negotiate with the PBM. The NADAC price is an estimate of the average price paid for prescription medications and it's based on survey data from independent and retail chain pharmacies. As a comparison point to what a national average might be, for the administrative costs that plan sponsors pay, we found that those costs vary based on the specific services and the compensation negotiated between the PBM and other vendors and the plan sponsor. All of the services mentioned above are going to be negotiated between the plan sponsor and the PBM or the vendor and then the specific compensation for those services is going to be negotiated in the contract.

(Video Archive Time 11:15)

There is not a lot of national information about average administrative costs because that information is considered proprietary by PBMs. There aren't national averages because that information is held so secretive that there's no entities that have done studies that give us a national average or a general number.

(Video Archive Time 12:10)

We provided information about how LDH, OGB and LSU monitor their PBMs and other vendors. OGB plans to implement a form of real-time monitoring. That's an emerging practice in contract monitoring that uses computer software to conduct electronic reviews of pharmacy claims in near real time to identify any deviations from the contract terms. Normally what would happen is at the end of the plan year, an audit would be done so they would be looking at issues in the past. This is a more real time identification of issues.

(Video Archive Time 16:51)

Pam Diaz, LDH Undersecretary. Kim Sullivan Interim Medicaid Director and Melwyn Wendt, Louisiana Medicaid Pharmacy Director.

Ms. Diaz said LDH is going to a single PBM at the end of October and the actuaries are expecting that the administrative cost for PBM that goes into our PMPM, that's paid to the MCOs, will go from a \$1.98 per member per month to \$.73 cents per member per month. It's about \$2.2 million per month that we'll be saving on the administration side.

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(Video Archive Time 18:22)

Ms. Wendt said on the actual drug cost side, LDH currently has a single preferred drug list which means all six MCOs use that single preferred drug list and the pricing across the board for the local pharmacies is the same. It is at the fee for service rate and that will continue to be the same when LDH moves to the single PBM. The pricing for the non-local pharmacies, which is primarily chains or specialty drugs, is currently negotiated between the MCO and that pharmacy provider.

(Video Archive Time 19:29)

The single PBM, Magellan, has already done negotiations in concert with what's in the request for proposal. The local pharmacies will be reimbursed as they currently are at the fee for service rate and the rate table is roughly at an average wholesale price minus 18.75%. The dispensing fee is going to be zero so that is also going to be somewhat of a savings.

(Video Archive Time 21:45)

Diane Allison, Director of Local Government Services for the Legislative Auditor's office.

Ms. Allison stated we have 61 extension requests to present. The main reasons for the requests -- 35 of the 61 are due to staffing issues at the agencies and turnover of key personnel. There are staffing issues at the CPA firms. A new category that you'll see is that there are some that just need additional time for whatever reasons. Sometimes it's complexities like a new single audit waiting on information from component units. But there are also two big accounting standards that they're implementing. GASB 87 on leases and GASB 96 on subscription-based IT arrangements. Those are the kind of standards that the auditor can't implement. The client has to do a lot of work beforehand.

» Non-Emergency Extension Requests – Greater than 90 Days. There are 42 requests from 39 different agencies. Of the 42, 24 are due to staffing issues, 11 need more time. There are some that are changing auditors. All except one are for fiscal years ending 2022. We have reviewed these requests and LLA recommends the committee approve. Representative Ivey moved to grant the extensions and, with no opposition, the extensions were granted.

» Non-Emergency Extension Requests Less than 90 days. There are 4 requests. We have reviewed these requests and LLA recommends the committee approve. Senator Bernard moved to grant the extensions and, with no opposition, the extensions were granted.

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» Emergency Extensions Requests Greater than 90 days. There are 2 requests from 2 different agencies. This is still Hurricanes Laura and Delta. We have reviewed these requests and LLA recommends the committee approve. Representative Ivey moved to grant the extensions and, with no opposition, the extensions were granted.

» Ms. Allison then presented those agencies that had previously requested an extension but LLA has since received the audit report. There are 12 on the chart. One for emergency and others are non-emergency. We have received all of those reports, so we recommend approval. Representative Ivey moved to grant the extensions and, with no opposition, the extensions were granted.

(Video Archive Time 28:25)

Ms. Allison reminded the Committee that LLA's Center for Local Government Excellence Program is October 18th and 19th. We have over 1,340 registered, which is a record. It's really becoming a well-received program and providing good educational value.

Senator Mills asked if there is training that takes place right at the end of the year or at the beginning of the year for those new folks coming in?

Ms. Allison said yes. Every year in January and sometimes into February, LLA and LMA does a joint training. We travel around the state at five different locations and provide training for that. This year in March, we did training for newly elected officials and we spent half a day on that. All of that is available on LLA's website.

(Video Archive Time 30:50)

Legislative Auditor Mike Waguespack said we invited the Town of Sterlington to the meeting to discuss outstanding audit reports. The Town of Sterlington ran into some real issues and were put under fiscal administration. Things happened with respect to a bond issue that went bad where some funds were misappropriated. There was a big investigation by our office, the SEC, etc. That was under the old regime and since then it's just been a very long process of trying to get their audit process caught up. 2018 was the last year where some of those transactions maybe crossed over.

We invited the Mayor and more specifically the outside audit firm to give us a game plan on how we're going to get this caught up. The report for fiscal year end 2018 is a total disclaimer, which means they are not going to render any type of opinion to rely on the financials as stated. I am asking the committee to talk to the Mayor about his issue as well as the CPA that's in charge of the audit. We can't take them off the non-compliance list and they're missing great opportunities from the Water Sector Commission and elsewhere. We need to get them caught up so they can get on a better path moving forward.

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(Video Archive Time 30:50)

Matt Talbert, Mayor of the Town of Sterlington introduced himself. He stated he became Mayor in January and was on the council in January of 2019 and then ran for mayor and took office in January.

Jerrod Tinsley with Heard, McElroy & Vestall, CPA firm introduced himself.

Mayor Talbert said in September of 2020, the Fiscal Administrator engaged Mr. Tinsley to do the audit. Without the audits getting done, we've got our hands tied, we've got a lot of needs. We were given several deadlines to have the audit issued.

Senator Luneau asked the Mayor if he got requests from the auditor to provide documentation or things of that nature?

Mayor Talbert said he has not received requests from Mr. Tinsley to provide documents or anything of that nature. Mr. Tinsley came to Sterlington in either June or July and worked with our CPA to finalize a few things and we thought he was going to have it out by the end of the month.

(Video Archive Time 30:50)

Senator Luneau asked Mr. Tinsley why he is just now getting a draft on the fiscal year end 2018 audit in 2023?

Mr. Tinsley said there were fraud issues going on and he was trying to wait out the SEC investigation part, which did not get finished until 2022. He was hoping to be able to issue an opinion on the financials but when the final numbers for all the funds were received in July of this year, that's when he made the decision to do a disclaimer.

Senator Luneau asked why the disclaimer?

Mr. Tinsley said he issued a disclaimer because some of those bond proceeds were misused and he was trying to figure out where those need to be recorded and couldn't get comfortable with that.

Senator Luneau asked if it was possible to do a partial disclaimer? Do you have to do a disclaimer of your whole report?

Mr. Tinsley said he would personally not be comfortable with doing that.

Senator Luneau asked if the issue is what happened to the bond money and you do a disclaimer on all of the bond money?

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Mr. Tinsley responded I suppose I could do a partial, but I mean at this point we just need to get this thing out. We need to get 2018 done so we can move on and start getting caught up.

Senator Luneau said let me state the obvious. The problem for them is that they're going to lose all of this funding. They can get game changing money to fix their water system and it's going to be gone soon. If we can at least get a partial disclaimer, maybe we could work with that. If it's a complete disclaimer of the whole audit, that audit does us no good whatsoever.

Mr. Waguespack stated that the fiscal administrator, Mr. Junior Shelton, engaged this firm and Mr. Tinsley advised him that the 2018 report would be finalized by June of 2021. I don't know what changed or what was the delay between 2021 and 2023?

Mr. Tinsley responded that it was getting final numbers. I didn't have final numbers on the funds until July.

Senator Luneau asked -- Are you talking about the bond, the funds from the bond,

Mr. Tinsley said the Town bond issue, the general fund utility funds, sales tax fund. When I say funds, that's what I mean.

Senator Luneau asked if he had all of that information now?

Mr. Tinsley said yes, since July.

Senator Luneau asked why we didn't get it until July of 23. Did they hold it back or they refused?

Mr. Tinsley responded no, they did not hold back. They were working on it. It was just trying to get all the numbers in the right place from all the bond proceeds and the spending of that money. A lot of it was on capital projects too and they were just trying to get all that straightened out.

Representative Ivey asked how big is the budget for the Town of Sterlington for that year? 2018? How many dollars? Ballpark is it a hundred million? 10 million, 20 million?

Mayor Talbert said probably three.

Representative Ivey said these are small numbers relatively speaking. I don't understand how it's hard to account for where money went from this account to somewhere. And so has all the money been accounted for even if in the fraudulent expenditures? Yes. Okay. So you know where all the money went and so I'm not a

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CPA, I don't understand what may necessitate a disclaimer, but you know what money was spent legitimately correct. That's all been accounted for. Right. And then there's the money that was illegally spent. If we know those numbers and are you confident in those numbers then why not a partial disclaimer?

Mr. Tinsley said that's something that Mayor and I and their outside CPA can discuss and we could probably get there. It was just from my side liability and risk side.

Mr. Waguespack said he can understand the Mayor's frustration because they've also spent a lot of money out of their budget on this one particular year and I've been told it's nearly \$70,000, which is a tremendous fee. Which means if they spent that much time and hourly work on it, we should have a product that one should have been issued by now and probably as you alluded to, maybe giving them some comfort level on the opinion to be issued. So \$70,000 disclaimer and we're still four years behind. It's a little disheartening, hence the reason the invitation was granted.

Senator Mills asked what's the plan to get caught up?

Mr. Tinsley responded that he and Mr. Maxwell have discussed and the game plan is to do the next year's in four month tranches. So '19, '20, '21, '22 each for four months. So that would get it done in a year. That's pretty aggressive but I mean it can be done.

Mr. Waguespack said the Mayor actually has an outside CPA that keeps his books so it should be really clean. It should be pretty clean going forward. I mean most towns can't afford to have an outside CPA. It's kind of like why are we here? Why are we such so delayed when we've got what appears to be going forward 19 through 22 should be clean set of books. All the issues with the bond stuff and the bond spend is out the way. I would just like to have a real commitment from the auditor. I just think we need some clarity.

Senator Luneau said getting us an audit not totally qualified is worthless. They cannot get a penny. They can't get any other funds. Mayor and Mr. Auditor, I'm just going to be very frank, I think I'd go with another firm to get these audits done. I don't know how in the world we're going to produce four years worth of audits in one year when we can't do one audit from 2020 to 2023.

Mayor Talbert said he thinks another issue is when you have two disclaimers back to back, I don't think an audit firm wants to take that responsibility. If we can knock these audits out in four months a piece, I'm on the road to do that.

Senator Luneau asked Mr. Waguespack -- if we can get, even if it's a qualified audit dealing with the bond money, if we could at least get that, what are our options as far as helping the Town to get back in a situation where they can get some funding

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for these various projects? I mean my big concern is obviously the water sector money, it's going to be gone before long.

Mr. Waguespack said if we can get this audit in, could we look at some type of extension, do some extension approval? The problem is we're extending or the approval, typically the extension process is maybe 90 days, but this will be for four years. I guess we could do 90 days at a time.

Representative Ivey asked when was the fiscal administrator assigned approximately?

Mayor Talbert responded he came on board August of 2019 to about April 2021.

Representative Ivey said so there's an inherent built in level of accountability there just by the fact that it's a fiscal administrator. And so I think for that time period where they are behind on those but they were under the responsibility of the fiscal administrator, perhaps some flexibility in extension would be warranted for that time period. Just because there's a little more built in trust factor with that. Again, not unlimited, but certainly maybe warranted some extension that time period.

Mr. Waguespack responded he is comfortable with that approach.

Representative Ivey asked about our options with the commitment from the auditor on this for 2018 to get that in? Can we have a date certain, can you give us a date where you can commit to having 2018?

Mr. Tinsley said submitted by Friday with the partial.

Representative Jordan said he thinks we need a drop deadline date for that. And if it's six months, if it's four months, if it's three months, let's choose a date.

Mr. Waguespack suggested March 31st, 2024.

Senator Luneau asked Jenifer Schaye, General Counsel for the Legislative Auditor's office - So my question to you is, in this instance, if we grant extensions on the other four audits for 90 days and we give an extension on this audit until next week, are we within our bounds to do that?

Mr. Schaye responded that you have some precedent for doing that in emergency situations. And this would be tantamount to an emergency situation because of those funds, they're going away those water funds. So your motion could be Mr. Chairman that you move to remove them from the non-compliance list contingent upon the fact that they will finish the audits of four years of audits and receive the partial disclaimer by X date. Whatever date you all choose. I think that would work for you to formalize that because then that would give Ms. Allison the approval to go forward and remove them from the non-compliance list, which would then give

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the division of administration the authority to open it for the movement of any funds that they might apply for.

Senator Luneau said members y'all heard the motion that was made.

Mr. Waguespack asked for clarification on the date. I understand six months was kind of a consensus that would maybe push it around March 31, 2024 to catch up years 2019 through 2022, subject to us receiving the 2018 Friday.

Representative Ivey said for further clarification. The motion is kind of two part -- one is motion to remove the Town of Sterlington from the noncompliant list subject to the submission of the 2018 partial disclaimer and the other motion is an extension through March 31, 2024.

Senator Luneau asked if there is opposition to those motions? With no opposition, that motion passes.

Public Comment

No public comment.

Other Business

None.

Adjournment

Senator Bernard offered a motion to adjourn and, with no opposition, the meeting was adjourned at 11:08 a.m.

Minutes Approved: Minutes Approved at the Legislative Audit Advisory Council meeting on December 14, 2023.

The video recording of this meeting is available at:

https://senate.la.gov/s_video/VideoArchivePlayer?v=senate/2023/10/100923LAAC