

# LEGISLATIVE AUDIT ADVISORY COUNCIL

## Minutes of Meeting September 14, 2020 House Committee Room 1 State Capitol Building

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

Representative Barry Ivey called the Legislative Audit Advisory Council (Council) meeting to order at 10:10 a.m. Ms. Liz Martin called the roll confirming quorum was present.

**Members Present:** Representative Barry Ivey Chairman  
Senator Jay Luneau, Vice Chairman  
Senator Louie Bernard  
Senator Jimmy Harris  
Senator Fred Mills  
Senator Beth Mizell  
Representative Aimee A. Freeman  
Representative Edmond Jordan  
Representative Markham Scott McKnight as proxy for  
Representative Stephanie Hilferty  
Representative Rodney Schamerhorn

**Also Present:** Daryl G. Purpera, CPA, CFE, Louisiana Legislative Auditor (LLA)  
Representative Barbara Freiberg

### Approval of Minutes

Senator Mills offered the motion to approve the minutes of the August 17, 2020 meeting and with no opposition, the motion was approved.

### Extension Requests

(Video Archive Time 2:05)

Mr. Bradley Cryer, Director of Local Government Services, presented two extension lists and briefly detailed the reasons for the agencies' extension requests. Chairman Ivey made the motion to confirm the list of Emergency Extensions – 90 Days or Less and with no objections, the motion was approved. Vice Chairman Luneau made the motion to approve the list of Emergency Extensions – Greater than 90 Days and with no objections, the motion was approved.

**Louisiana Workforce Commission's Discussion of Unemployment Insurance and Related Matters.**  
**Any matters related to fraud prevention efforts which are confidential in nature may be discussed in executive session in accordance with RS 42:18**  
(Video 10:20)

Mr. Purpera provided a summary overview of the *Louisiana Workforce Commission (LWC) – Detection and Prevention of Worker Misclassification* Performance Audit Issued June 20, 2019 . He pointed out the number of unemployment insurance (UI) claims that LWC is processing has increased from roughly 100,000 in a year to over one million claims due to the COVID-19 pandemic. His office is planning to do an audit due to the volume of UI claims being processed and potential for scams and frauds. Ms. Ava Dejoie, LWC Secretary, provided a letter to Mr. Purpera and the Council Members responding to LLA's request for data to perform that audit.

Secretary Dejoie commented on the work by her agency to address and correct worker misclassifications. She testified to all the efforts and accommodations by her office and commended her staff for handling the drastically increased UI claims due to the COVID-19 pandemic. LWC typically handles \$153,000,000 in unemployment claims per year. This year to date LWC has processed \$6,065,000,000 in claims. She explained the different funding streams and federal and state regulations for distributing funds, as well as their efforts to verify, prevent and catch fraud.

Secretary Dejoie explained that when there are problems or complaints regarding UI claims, the next step is the adjudication process. She shared some of the issues and parameters of the technical and difficult process. Even though they work through approximately 1,000 adjudications per day, they still average 12,000-17,000 remaining adjudications. LWC hired contract workers to help with adjudication processing and considering hiring retirees because her staff is working around the clock. She explained the necessity of qualified and educated staff. LWC went from one type of UI to processing six different types of UI. She noted that this year has been the highest number of UI claims and greater than any previous records.

Council members commended LWC for handling the unprecedented increase in UI claims and encouraged LWC to continue working through their backlog and adjudications so all citizens are helped.

Referencing Louisiana Revised Statutes 42:18, Chairman Ivey requested a motion to go into executive session. Senator Bernard offered the motion to move into executive session which was approved at 11:17 am. (*Video 1:04:40*) The Council ended executive session and returned to a public open meeting at 12:20 pm. (*Video 2:07:04*)

### **Challenges and Gaps in Louisiana's Efforts to Address Human Trafficking – Performance Audit Issued February 26, 2020**

Ms. Karen LeBlanc, Director of Performance Audit Services, stated that human trafficking is a major concern in Louisiana and it includes sex trafficking as well as labor trafficking. The number of victims has been increasing 261% from calendar year 2014 to 2018 and most of those are juveniles, but is probably underreported because it only includes self-reported statistics. This is a research driven report and provides recommendations for matters for legislative consideration and a road map for what needs to be done to address this important issue.

Ms. Julie Floyd, Performance Senior Auditor, provided an overview of the audit including the need for coordinated approach for addressing the needs of trafficking victims which could include an entity responsible for case management for adult and minor victims not in Department of Children & Family Services (DCFS) custody. Some federal grants were awarded to the state but there is not a consistent and dependable source of state funding. Although state law created a dedicated fund in June 2013 to pay for anti-trafficking efforts, no funds have ever been deposited. Multiple law enforcement entities are required to conduct investigations of human trafficking but do not receive any funding to support the increasing demands. Likewise most non-profits organizations and faith based organizations do not receive state funding to support their efforts to address human trafficking. She mentioned that other states fund initiatives by imposing fines, fees or legislatively appropriate anti-trafficking funds. Another recommendation to the legislature is to consider establishing and funding a statewide awareness campaign to equip Louisiana residents with information on how to recognize, understand and report human trafficking.

Ms. Floyd further explained that the gaps in services include the lack of sufficient placement options and specialized mental health services for victims of human trafficking. Due to the limited placement, shelter

or housing options for victims, the only option at times is for law enforcement to place victims into jails. The state does not have adequate availability of specialized, trauma-informed and evidence-based services for trafficked victims. State laws penalize traffickers but could make improvement to laws by offering prosecutorial immunity for youth and criminal record relief for adult victims. Important that people who have been victims of human trafficking be treated as survivors of trauma rather than as perpetrators of the crimes they were forced to commit. Because Louisiana has focused most of its efforts on sex trafficking, awareness of labor trafficking and efforts to address it are lacking in Louisiana. Statistically labor traffickers seeking to exploit vulnerabilities in victims are rampant in the aftermath of natural disasters. The full report has further details and all matters for legislative consideration.

Discussion and questions continued with all the Council members engaged and concerned about this very serious problem. They asked many questions and several expressed interest in filing legislation to help with awareness, funding, and protection for the victims.

Ms. Christy Tate, DCFS Child Welfare Manager of In-Home Programs, provided a handout that outlined screening tools and identification, training, partnerships and services provided. She pointed out the additional training, partnerships and studies largely due to the passage of [Act 409](#) during the 2019 Regular Legislative Session. She also gave an update from DCFS' report issued in March 2019 for year 2018. Overall in 2019 there were 927 victims and of which 543 were juvenile (102 of those were under the age of 12). This shows a 26% increase from 2018 and there is an increase every year of trafficking victims. Of those 543 juvenile victims, DCFS is only serving from 60-80 of those because of parental culpability. DCFS is serving a very small number compared to what is found statewide. Also the numbers are believed to be underreported because we only know of the victims that are reported and not every service provider is reporting.

Council members asked numerous questions including Senator Mills' question if the coalition formed by Act 409 had developed a human trafficking delivery service model. Ms. Tate explained that an extension was granted due to COVID-19 but the report required by Act 409 with recommendations will be submitted by the end of September. Ms. Tate said the report will include recommendations for funding and a model delivery service but more time will be needed to work out the specifics. Senator Mills commented that based on Council members' concerns for funding he recommended discussing further with the Senate Finance and House Appropriation Committee members to possibly include funding in the Medicaid managed care program.

Dr. Dana Hunter, Executive Director of the Office of the Governor's Children's Cabinet, testified to the many efforts by Governor Edwards' administration to raise awareness statewide. She shared about federal grants received that provided training, stakeholder meetings, and how service providers are working together.

Ms. Natalie LaBorde, Chairperson of the Human Trafficking Prevention Commission and Executive Counsel for the Department of Public Safety and Corrections, was unable to attend or send a designee.

**Louisiana Department of Health's Audit Update Report Dated July 31, 2020**

*(Video 3:08:25)*

Ms. Ruth Johnson, Medicaid Executive Director for the Louisiana Department of Health (LDH), briefly explained incentives for MCOs to determine fraud and report it to LDH. She stated that LDH takes audits very seriously and briefly went over their handout provided to the Council "Internal Audit /Program Integrity Functions".

Senator Mills questioned what happens when LDH does not concur with LLA's audit findings. Ms. Virginia Brandt, LDH Compliance Director, explained that even when they disagree that does not mean nothing is being done. LDH still follows up with MCOs and ensure all is paid correctly and where warranted get recoupments.

Mr. Purpera explained that audits are brought before the Council when the agency does not agree with the findings for discussion and input. Senator Mills asked how the Council can be notified of the unresolved findings such as spread pricing issues were found years ago. Chairman Ivey requested LLA not only inform the Council when there is a difference between the LLA and the agencies on findings but also the significance of the findings and if consequential.

Senator Mills requested that LDH provide a spreadsheet of the audit findings and action being done and completion date. He gave Ms. Brandt an example of a template to use. Ms. Johnson said that would be helpful since Secretary Phillips is interested in tracking the findings.

Further questioning and discussion ensued regarding LDH and the MCOs' responsibilities to find fraud on the provider and enrollee side. Ms. Brandt shared that LDH did a comparison of providers who are also enrollees or family members who are enrollees and found 102 matches. Senator Luneau asked LDH and LLA for suggestions on how to tighten up provider fraud.

Ms. Johnson mentioned that LDH is redrafting the Request for Proposals (RFP) for MCOs and paying particular attention to where there are gaps in finding fraud, waste and abuse and welcome any input from the Council. Senator Mills asked LDH to include in the RFPs the recoupment of losses if a major provider fraud is found and to specify who will have the responsibility for not catching fraud.

Chairman Ivey mentioned his meeting with Ms. Kathy Kleibert, referring to the letter dated September 9, 2020 from the Louisiana Managed Medicaid Association, regarding measures to mitigate fraud.

Ms. Brandt explained LDH's initiative to find provider fraud using a more risk based approach to addressing the complaints in Program Integrity. They developed a complaint model to evaluate complaints for the level of risk and return on investment to put more resources into areas that will yield results.

Discussion continued regarding behavioral health providers' classifying as either employees or 1099 contract labor and the need for more definitive rules. Senator Luneau said the state needs to pass a statute with a litmus test using a list of what the IRS considers how to determination whether someone is an employee or a 1099 contract workers. It is not fair for a contractor to be paying workers compensation and insurance when their competitor should also be paying but skirts the law. Contractors who pay those benefits will lose bids every time to someone without those expenses and when their contract worker gets hurt then Medicaid and the taxpayer pays that bill. Senator Luneau asked for LDH and LLA's help to prepare legislation for the spring regular session. Ms. Brandt mentioned the lack of clarity for staffing agencies. Chairman Ivey asked if LLA could look into other states' guidelines and definitions for 1099 purposes.

Chairman Mills questioned if LDH could have any exposure for disallowance with CMS. Ms. Johnson responded that every audit is reviewed by CMS and will let LDH know if need to make any adjustments or repayment. Chairman Mills asked LDH to report any disallowances to this Council at the next meeting. Ms. Brandt said she will implement the Audit Tracking Spreadsheet offered to include any other requested information. Chairman Ivey requested the dollar values and background information as well as a glossary of all the acronyms be included in their responses.

**Louisiana Department of Health's Emergency Order: SCHOOL REPORTING AND DATA SHARING ORDER #2020-COVID19-001** *(Video 3:47:40)*

Mr. Stephen Russo, LDH Executive Counsel, explained the legal authority for this Emergency Order from Title 40 given to State Health Director Dr. Jimmy Guidry. Under Title 51 in the sanitary code they identified class A diseases that are reportable within 24 hours, and this year under rulemaking COVID-19 was added as a communicable disease. He listed the mandatory reporters including physicians, health care workers, laboratories, and under Section 113 school principals and parents are included. Chairman Ivey said his concern was violation of parental rights, and student privacy and confidentiality. Mr. Russo explained that there is tight confidentiality as per Title 43.1 that attaches to any reports received and this was meant as an early warning system for any outbreaks. Chairman Ivey noted there could have been better communications with the public.

Senator Bernard expressed his concern and frustration with delays in allowing visitation for the elderly in nursing homes before they pass away without being able to see family members. He asked them to come up with some method to accomplish visitation in an outside setting. Mr. Russo explained the legal element for causation when the elderly are involved. He shared that he was currently typing up a pilot for outside visitation for nursing homes with certain statistics for 28 days to ensure the protocols work before rolling out to all nursing homes.

Dr. Dawn Marcelle, Regional Medical Director for the Capital Area, Region 2 Office of Public Health (OPH), said that LDH understands and shares the concern about the lack of visitation but want to be sure that visitations will not cause more harm. Further discussion continued about the reasons for and against having outside visitation at a nursing home. Dr. Marcelle said they want to make the most informed decision based on the information they have and charged with keeping residents healthy and mitigating the spread. She said that the Centers for Medicare & Medicaid Services (CMS) is looking at rapid testing for nursing homes but it would be a joint decision of CMS, LDH and Louisiana Nursing Home Association on safe protocols for visitations.

Representative Freeman shared Senator Bernard's frustrations for the need for family members to visit their elderly in the nursing homes especially in light of being in Phase 3. She stressed the need to look at the mental health on both sides from the isolation. She said besides unemployment and rental assistance, this is the next highest issue that her constituents complain about. She thanked LDH for all their hard work but asked that this issue be put into the highest level.

Further discussion continued about protocols for employees at nursing facilities that could be implemented on the visitation side to be safe. Mr. Russo said that weekly testing for the staff and infection control protocols have helped lower the spread of COVID-19. Chairman Ivey requested that LDH forward to the Council their extensive guidelines for safety protocols at nursing facilities. Dr. Marcelle explained that case numbers have improved also due to better access to PPE, nursing homes increasing testing and being cooperative to mitigate the spread of disease. She noted that all the Council members concerns have been noted and received.

Chairman Ivey mentioned the same concerns apply to veterans home residents. He expressed frustrations about the delay in procedures after six months and in the real world our constituents are not seeing their family members. He asked when the cure becomes worse than the risk of the disease.

Senator Mills commented that legislators have been on daily calls regarding the hurricane. He asked LDH to coordinate regular conference calls available for all legislators to receive status reports on all these issues

so they can continue this ongoing discussion. Mr. Russo agreed and Dr. Marcelle commented it is helpful for the reinforcement of information and for updates on the pilot program. The governor's office already charged all nine regional OPH directors to schedule conference calls with legislators in their districts. Chairman Ivey suggested LDH communicate with the House Speaker and Senate President's offices to coordinate the calls for all legislators.

### **Legislative Auditor's Update on Main Street Recovery Grant Program**

*(Video 4:27:00)*

Mr. Purpera provided LLA's input on the documentation and accuracy of the program that Treasurer Schroder has implemented as per Act 311 while maintaining independent.

Representative Schamerhorn commented that only \$7 million has been given out and there are concerns about the nine page application that is harder to complete than the PPP program. He would like to have LLA's input on how to streamline the program while still be able to check for any fraud or abuse.

Mr. Purpera explained his review of the application and necessary documentation and did not find it to be difficult. He said the tax preparer can be paid through the program to complete and submit the application for the businesses. Eventually LLA has to audit it and follow the requirements of the CARES Act. Chairman Ivey said he appreciates Treasurer Schroder's due diligence and accountability.

Senator Luneau said he has received many calls complaining that the program is too difficult and needs to find out why the money is not getting out to the businesses. Mr. Purpera pointed out that if too much is removed for the verification and accuracy of awarding grants, then the federal government could come back and ask for recoupment. Chairman Ivey asked for Mr. Purpera to provide from an audit perspective at the federal level guidance on this program. Representative Jordan recommended finding some balance and that people who are in need receive these grants as efficiently and expediently as possible.

Ms. Nancy Keaton, First Assistant State Treasurer, testified that the Treasurer's office continually evaluations the program and is making necessary tweaks. As of Friday the program had given out \$40 million and every day additional dollars are awarded. A report would be going to Joint Legislative Committee on the Budget the next day. She would make sure that the Council receives that report and any additional reports after that. The deadline for applications is the end of November 2020.

### **Other Business**

No other business was discussed.

### **Adjournment**

Senator Mills offered the motion to adjourn and with no objection, the meeting adjourned at 2:52 p.m.

***Approved by LAAC on: Monday, November 16, 2020***

The video recording of this meeting is available in House Broadcast Archives (total time 4:40:05):  
[https://house.louisiana.gov/H\\_Video/VideoArchivePlayer?v=house/2020/sep/0914\\_20\\_AuditAdvisory](https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2020/sep/0914_20_AuditAdvisory)