



DELAWARE HEALTH FUND ADVISORY COMMITTEE

Public Meeting

Health Fund Advisory Committee
October 24, 2017 - 10 a.m. to 12 p.m.

MINUTES

Present: Secretary Kara Odom Walker
Mr. Don Fulton
Senator David McBride
Representative Debra Heffernan
Ms. Paula Roy
Dr. Charles Reinhardt

Absent: Senator Bryan Townsend
Representative Ed Osienski
Ann Kempinski (via phone)

I. Welcome

- The meeting began at 10:02 a.m.

II. Approval of the Minutes

- Motion to approve the prior meeting's minutes was made by Don Fulton and seconded by Dr. Charles Reinhardt.

III. Tobacco Master Settlement Agreement (MSA) update from Deputy Attorney General Tom Brown, Esq.

- Deputy Attorney General Brown gave an overview about why the work of the committee is so important, and he applauded the members for continuing to observe the spirit of the committee by directing money to programs that curb smoking. He then acknowledged that he wanted to be brief given the agenda, but said he would be available at any time for committee questions around the MSA or other tobacco issues. He then discussed three items 1) the Department of Justice's funding request for FY19, 2) the litigation update, 3) and FY19 projected funds estimate.
 - i. Regarding point one, DAG Brown reminded the committee that his efforts to continue the litigation efforts was not self-actuating and so his litigation work is part of the DOJ budget, funded by 1% of the payment stream from MSA. Since 1998, Delaware has received around \$493 million. In 2017, Delaware received \$26.78 million. Additionally, without those ongoing efforts, the funding for FY19 and future years would be questionable.

- ii. Regarding point number two, DAG Brown discussed threats to the funding stream, including nationwide arbitration, which is handled by three, retired, Article 3, federal judges. Delaware did prevail for the year 2003, which just wrapped up, and now moves to a discussion of the withhold payment for 2004, with an estimated arbitration start date around September of 2018. Unfortunately, the state has no ability to control the timing and is in queue with other states. He said he appreciates the ongoing support of the committee for his efforts.
- iii. For point three, the funds estimate for FY19, DAG Brown started by reminding the committee that until a check is received, nothing is final with the payment and everything is an estimate. However, he did say that the estimates have proven to be accurate in previous years. With respect to the payment in 2018 for FY19, he is expecting that DE receives \$24 million, and that number could vary by \$2-3 million. He also highlighted that due to an anticipated and pre-determined change in the fund, what was two payment streams for money will collapse into one. We also still have a withhold payment that is taken out of Delaware's payment and is inaccessible to the state unless we prevail in arbitration. Again, arbitration has just finished for 2003 and they are just moving on to 2004.

IV. Budget Update

- The committee then heard an update of the state budget from Chris Hudson, Director of Budget Development, Planning, and Administration with the Office of Management and Budget:
 - i. The September estimate from the Delaware Economic and Financial Advisory Council (DEFAC) shows the finances are improving over June estimates.
 - ii. The most significant change between FY17 and FY18 revenues show a spike on the chart, which translates into 5.6% growth. However, the growth came after DEFAC met in June and it was from one-time resources, which are not built in FY18 plan.
 - iii. We have some stability in revenue moving forward, however, it's still not keeping pace with cost drivers. OMB is putting together a plan that will take available resources and factor them in to roll forward in FY19 and 20 to stabilize non-linear revenue projections.
 - iv. We are seeing 1.2% revenue growth in FY19 compared to FY18, small growth over traditional cost drivers.
 - v. The state's major spending categories—K-12 expenses (non-health care)—29.3%, Medicaid-18%, state employee salaries—16%, public safety—11.8%, state employee/retiree health care—8.7%, and higher education—5.5%, all account for 89% of state spending.
 - vi. In FY19 and beyond, some of these items are large cost drivers that exceed typical growth factors or inflation—K-12 enrollment, Medicaid, and state employee/retiree health. Specifically regarding K-12, we're seeing with more students enrolling, and that a larger percentage of those enrolling need more intense and supportive services both inside and outside of school. Looking at

Medicaid population growth, we started to stabilize in FY16 and FY17, and we continue to see that in FY18, but if you look at enrollment numbers over the last ten years, it's easy to see how this has been a significant expense for the state. Both of these areas will be intense areas of focus at the FY19 budget comes together.

vii. Budget process moving forward—

1. State agency budget requests were due in October.
 2. OMB public hearing will start the first week in November and include the operating budget and capital budget requests.
 3. DEFAC will convene on December 18th
 4. The Governor's recommended budget will be presented in January
 5. The Joint Finance Committee (JFC) will convene their public meetings in February
 6. DEFAC will meet in March
 7. Bond Bill Committee will do their work in late March or early April
 8. DEFAC will meet in April, May, and June, with OMB and JFC using those recommendations to fine tune the budget proposal.
- Paula Roy requested that slides be made available to members, and Chris Hudson told members that she and Regina Mitchell from OMB would make themselves available to answer any questions from the committee.

V. Process for Developing FY 19 Recommendations

- Secretary Walker gave members an orientation of what materials were in their folder—a disc containing the applications for FY19, as well as materials for three, potential funding scenarios the committee could consider as they deliberated. The Secretary also pointed out that due to lack of quorum, the committee would only consider information and have discussions today, but wouldn't vote. She then asked Michelle Stant, the Budget Manager for the Dept. of Health and Social Services, to run through the scenarios.
- Michele Stant started her presentation by discussing Scenario 1, which shows that if everyone who applied for FY19 was to receive the same funding levels as FY18, then the amount to be funded is \$33,883,800. She pointed out that this figure will need to be compared against the revenue projection of \$24 million, plus \$150 thousand in projected interest, for a total of \$24,150,000. Additionally, there is \$4 million in reserve funds. She then went to tab 2 of the Scenario 1 spreadsheet and gave members an orientation of how all of the funding requests for FY19 have been grouped thematically, and how her unit also made sure to include historical funding for these programs next to each requested item.
- Senator McBride then addressed the committee on a couple of points. Because of the new members, he reminded the committee that the endowment at one point was around \$50 million—Don Fulton interjected to say that number was actually \$70 million, compared with the numbers the committee is discussing today. He then discussed the Delaware Prescription Assistance Program (DPAP). He said that this

committee recommended \$2,500,000 for FY18, but it ended up being completely defunded in the final budget. He then gave a history of DPAP--the bill creating it was introduced in 1980 and for 20 years, it wasn't funded, but that was finally remedied with the use of tobacco funds. The Senator said that while he understands the struggle with state finances, it is unclear to him the process by which DPAP was defunded and said he wants to discuss how it can be restarted. He would like someone to come before the committee to do a presentation on DPAP. He said he hears frequently from constituents that ending DPAP has been a financial burden for them. He again questioned why the state felt it prudent to completely end the program.

- Repetitive Debra Heffernan joined the discussion to provide context around the cut from her perspective a member of the Joint Finance Committee (JFC). She said that DPAP was cut during markup when there were a lot of draconian cuts. However, unlike other programs, this funding wasn't restored, which was very disappointing. Her recollection was that JFC was told that this cut wasn't such a bad one to make because people had other ways to access funding support if the program went away. Since the session has ended, Representative Heffernan has also heard from constituents who used the program and were also upset it had ended. She also said that the Health Fund Advisory Committee is advisory, and unfortunately in tough budget times, sometimes the decisions made in this committee aren't followed. Representative Heffernan says she, too, wants to see the funding replaced and she is talking to whomever she needs to see it replaced.
- Senator McBride then said that he understands that often JFC may adjust the numbers recommended to them by Health Fund Advisory Committee or others, but to cut a program completely out, something was done and needs to be explained. He wants the committee to get an understanding of that process, and agrees with the Representative that DPAP needs to be reinstated. The Senator then said he has sought information about DPAP and how it could have been cut from DHSS, and to the Secretary and her staff's credit, they have been forthcoming. However, the health policy concepts around changes to DPAP mainly involve federal programs and often are difficult for people to fully understand. He's hopeful that it's within order to have someone from DHSS come and explain that information to the committee.
- Representative Heffernan says she totally agrees with what Senator McBride has just said and again, that the DPAP elimination was a very disappointing cut that she voted against. She also stated the decision to eliminate it was made at a higher level than at the JFC meetings.
- Paula Roy joined the conversation and said that she is one of the members who in various capacities has been on the committee since the beginning. She said if her memories serves her, finding a funding source for DPAP was the number one reasons behind Senate Bill 8, and so DPAP is in the statute.

- Don Fulton asked if legislation is needed to reinstate the program or if it can be done by recommendation of the committee.
- Secretary Walker stated it needs to be included in the budget bill to be reinstated. Additionally, she said that DHSS can help provide context to the committee around the state of the program before elimination, including how many seniors were accessing the benefit, as well as more technical details around the federal policy changes that impacted the program.
- Senator McBride in answering Don Fulton’s question said that the General Assembly set up the program with legislation, but JFC through the budget bill can change the law, and did so in this case. To add the program back in, it would have to be through legislation, either from the floor or in the budget bill.
- Representative Heffernan said JFC could add it back in if JFC requests it, or JFC can request that DHSS put it back in during the JFC hearings.
- Secretary Walker asked that the committee have a fuller DPAP discussion as part of the deliberations of the committee as they consider other requests for FY19.
- Senator McBride said that as he looks around the room, there are lobbyists for many other programs, but there aren’t seniors in the room who can speak to the impact of the prescription program, so he is appointing himself their champion. He also said that since the Governor decided to defund it, he believes the Secretary should recuse herself from voting on it, and he, again, hopes that the committee can receive the requested information about the program to actively and fully consider making a recommendation to reinstate DPAP for FY19. He said he will champion that recommendation in Legislative Hall next year.
- The Secretary reiterated her support for having a DPAP presentation at the next committee meeting, and then moved on to a discussion of the other two potential funding scenarios.
 - i. Again, the first scenario funded all programs at FY18 levels for FY19, and has a shortage of \$9.7 million between the \$24 million in projected funds and \$33.8 million in funding request.
 - ii. Scenario 2, would be to fund all programs at FY18 levels, with the exception that any program that requested a lower amount or was cut in the case of DPAP, and all entitlements would be funded.
 - iii. Scenario 3 would be to fund all programs at the FY18 levels, again except the ones that requested lower levels or were cut, and then we recommend that Division of Public Health programs that were switch funded from general funds to tobacco funds in FY18 would be moved back to general funds.
- Secretary Walker said that she does think it’s important to begin the deliberation work with an understanding, at least at a high level, of which scenario is more in line with the committee’s thinking. However, again due to lack of quorum, no votes can

take place today, and she also wants to give the committee time to fully review the requests and scenarios. Additionally, there will be a DPAP discussion at the next meeting. The Secretary then said that Scenario 2 does still leave a shortfall between program costs and available funds, while Scenario 3 would not have a shortfall, because the overall costs would be \$22 million, compared to \$24 million in projected funds. She then said that the committee should feel free to ask further questions about the scenarios or specific program levels.

- Representative Heffernan spoke up to discuss Scenario 3 and the switch funding issue. She pointed out that some of the recipients of health fund dollars, like the Delaware Tech nursing program, have asked JFC to move them to general fund dollars, but that's hasn't happened to date. This makes it difficult to recommend, and probably not realistic for the committee to go with Scenario 3. Again, JFC has tried to reverse the switch funds, but have been unsuccessful because of ongoing budget challenges. If we start with Scenario 2 and then add back in DPAP, we have even bigger shortage, so she recommended that the starting point could be to look through the applications to identify items that are not core for fund and take those out.
- Dr. Reinhardt then said that he doesn't get involved with funding and financing, but asked the committee if it's realistic to recommend a program when it's unclear that adequate funding will be available. If it's unclear if it will ever be funded, then why would the committee want to make that recommendation?
- Secretary Walker said that she thinks the committee should also consider the impact of underfunding programs. If the committee makes across the board cuts, as has been done previously, does that leave some programs unable to adequately function and deliver the planned services or programs. She said that unfortunately, none of these are easy decisions, but we are fortunate sit in these chairs and that means having to make tough choices.
- Senator McBride asked Representative Heffernan to clarify her earlier comment about Delaware Tech, did she mean that Delaware Tech doesn't want funding from the health fund?
- Representative Heffernan said that Delaware Tech has requested to be funded out of general funds, and not health fund for the last two years running. However, JFC has been unable to honor the request and Delaware Tech has stayed in the health fund because there's an ongoing budget crunch in the state. JFC continues to switch fund programs from general funds in to the health fund because of the budget challenges.
- Dr. Reinhardt said that he sees that the tobacco prevention and control has decreased over the years, but since this the main purpose of the funds, what are the latest figures here in DE in smoking reduction and cessation? Have we hurt those efforts by diverting spending to other programs?

- Secretary Walker asked the Division of Public Health Director, Dr. Karyl Rattay, to field that question and give the committee appropriate context. Dr. Rattay said that tobacco usage remains the number one preventable cause of death in Delaware. Although the state has had success with reducing smoking rates, our prevalence is still around 16%. The state has been level for five years, so the good news is that we're not at 50% where we were several decades ago, but we are not seeing further reductions. Simultaneously, we're seeing very significant increases in tobacco usage, specifically e-cigarettes among youth. 40% say they've tried e-cigarettes, and about 22% say they are regular users of e-cigarettes. Young adults are the highest users of tobacco products. Division of Public health is trying to take a comprehensive approach as best as we can with the available funds.
- Don Fulton then addressed the committee to talk about the creation of an endowment. He said that this has become a crusade for him. Starting 4-5 years ago, he has requested the committee set aside funds in endowment for two reasons. First, the committee should look toward new and innovative programs that they've been unable to fund the last few years, since new programs are not permitted to apply for tobacco funds. Second, the committee should look to address methods in which tobacco companies are introducing nicotine to youth, including combatting e-cigarette use, that aren't part of settlement agreement. Although the committee can recommend funds to combat e-cigarette use, that's not part of the settlement. At the next meeting, he asked to include a discussion of establishing an innovation fund, perhaps using endowment money. He reminded that committee that in last two years, they voted to establish an innovation fund, but JFC and the General Assembly decided not to adopt it. However, he wants to put it on the table for discussion at future meetings.
- Secretary Walker said we can definitely include the creation of an innovation fund in the discussion during future meetings, but said the committee does have tough decisions to make around what we choose not to fund, and those decisions will continue to be challenging. She said that clearly there are reasons the fund was set up, and we want to do our best to fund those programs to the fullest extent, but we need creative solutions because the reality is the that fund will continue to decline and we likely will have ongoing public health needs that require the committee to be flexible.
- Representative Heffernan then asked a question around e-cigarettes and other tobacco products and whether prevention activities around their use are covered by the fund.
- Deputy Attorney General Brown said that the Master Settlement Agreement (MSA) is a settlement with tobacco companies and does not mandate how Delaware spends the money. In 1998, Delaware established the health fund in 16 Delaware code, and within the legislation was a mandate that all MSA moneys are to be placed in Delaware Health Fund and can only be spent on eight statutorily enumerated purposes. DAG Brown went on to say that the tobacco companies are fighting a war

against our children, spending 10-20-fold of what we do. They are clever and they are under the radar, and he urged people to educate themselves. Cessation programs are probably the most effective to prevent youth smoking, but big companies advertise using video games and the internet to reach kids. While the MSA did limit public advertising, tobacco companies are still targeting people by demographics and where they live to encourage widest number of people to take up and keep smoking. He encouraged the committee to continue to fund programs to keep youth from using tobacco companies. E-cigarettes are the wild west with lots of false advertising, including the portrayal of people smoking vapor, and not particulates. E-cigarettes are not being marketed as a cessation tool, rather as an initiation device. Having our children become exposed to nicotine via e-cigarette flavors and false advertising is very dangerous.

- Senator McBride said that Delaware should be proud of what we've done with our money. In all cases, to his recollection, Delaware has used the money for health-related programs. He then cited cases from other states of where they've used MSA funds for transportation or other non-health related endeavors.
- Secretary Walker then asked if committee members have additionally questions or comments before we move to public comment.
- Paula Roy reminded committee members that they used to go before the Joint Finance Committee (JFC) to present its recommendations. She said that although it's very clear the committee is advisory, she believes it makes a difference for the JFC to see committee members personally presenting their recommendations and explaining the deliberations that allowed them to reach those recommendations. Simply handing over a letter or report is not as powerful. She said that this idea of reinstating the JFC presentation has come up in the past, but it didn't go anywhere. She'd like the committee to consider it again for FY19, perhaps at the next meeting.
- Representative Heffernan said she supports Ms. Roy's idea, and perhaps there could be a short report done as part of DHSS's presentation to JFC in February. She said that JFC may not fully appreciate the work the committee does or understand why the committee continues to be so important.
- Secretary Walker said she appreciates the ideas as well and is happy to figure out how to incorporate a Health Fund Advisory Committee presentation during DHSS's JFC presentation because clearly there are intersecting issues between the tobacco funds and our budget.
- Representative Heffernan said that she wanted to make a final comment about e-cigarettes. She went on to say that the majority of e-cigarettes are marketed and produced by big tobacco companies because they see it as a way to get kids into smoking. They use flavors and marketing to lure kids into using tobacco products, and it is the big tobacco companies doing it. People don't understand the risks associated with all of these different types of tobacco, not just e-cigarettes. With e-

cigarettes, they're inhaling particulates, and the risk isn't only to the person using the device, but also others around them and breathing it in. We've even see third-hand exposure because the particulates from e-cigarettes land on surfaces. This exposure makes sense to prevent, because we see through the use nicotine patches, that nicotine can be absorbed through your skin. Sadly, we've seen cases where children are exposed and poisoned by either access to the e-cigarette liquid or third-hand exposure from the particulates.

- Secretary Walker ended the committee comments by saying that as a new Secretary, she sees first-hand the challenges for our state in our efforts to create a healthier Delaware. Having a health ranking of 31/50, we have more opportunities to address chronic conditions, cancer, and health in our youth. These are really important issues for the state to tackle head on, and she believes the committee needs to prioritize and make recommendations that focus on core issues for the fund. We do have tough decisions ahead. She then opened the meeting up to public comment.

VI. Public Comment

Erin Goldner, Hope Street DE, Inc.:

- Ms. Goldner asked the committee and the state to focus on treating and prioritizing mental health issues because they have a direct impact on physical health. She said that if people can be taught resilience then they are better able to handle situations that do come up in their lives. She said she also does work with the Boys and Girls club, and knows the importance of mentoring, one-on-one with kids. She wasn't sure how that would fit in to the committee's work, but it's still important. Additionally, many people are challenged to eat healthy because they live in areas that are food deserts, where the only place to buy food is a liquor store. However, liquor stores don't carry healthy food options. Additionally, she said the state should prioritize peer mentoring to assist those with Substance Use Disorder.

VII. Meeting adjournment

Charles Reinhart motioned for adjournment, which was seconded by Don Fulton. With no opposition, the meeting was adjourned at 11:04am.

VIII. Next Public Meetings:

Monday, November 6, 2017

12:00 PM – 2:00 PM

Chapel, DHSS Campus, 1901 N DuPont Highway, New Castle, DE 19720

Wednesday, November 29, 2017

10:00 AM – 12:00 PM

Chapel, DHSS Campus, 1901 N DuPont Highway, New Castle, DE 19720