

STATE HUMAN RESOURCES COMMISSION MEETING

**LEARNING AND DEVELOPMENT CENTER, COMMISSION CONFERENCE ROOM
101 WEST PEACE STREET - RALEIGH, NORTH CAROLINA**

MEETING MINUTES – April 4, 2019

Members Present

Members present at the Learning and Development Center for the meeting were: Chair Dekhasta Rozier, Commissioner Ross Beamon, Commissioners Douglas Boyette, II, Commissioner Meredith Benjamin via teleconference, Commissioner John Eller, Commissioner Martin Falls, Commissioner April Page and Commissioner Phillip Strach.

Other Attendees

Other attendees present were: Judy Estevez, Chief Deputy Director, and Tammy Penny, Deputy Director – Programs, Office of State Human Resources; Denise Mazza, State Human Resources Commission Administrator, Office of State Human Resources; Twanetta Lytle, Elaine Darby, Nancy Astrike, Dominick D’Erasmus, Pamela Taylor Shaw, Carl Dean, Scarlette Gardner, Andrea Clinkscales, Joe Marro, Kevin Adcock, and Pam Bowling of the Office of State Human Resources; Dan Ripberger of RSC; Steve Martin, General Counsel with Cardinal Innovations Healthcare; and Zane Stilwell of CIHS.

Opening

The State Human Resources Commission (SHRC) last convened on February 7, 2019. Pursuant to North Carolina General Statutes § 136A and the North Carolina Ethics Act, Chair Dekhasta Becton Rozier asked all Commissioners if there were any conflicts of interest or potential conflicts of interest with respect to any matters coming before the Commission.

Commissioner John Eller informed the Chair that he had spoken to counsel about the potential conflict regarding the LME/MCO CEO/Area Director issue and, as a result, he rescinded his recusal to participate in the matter and would participate on the vote in that matter.

Acknowledging the recusal, the Chair convened the Commission’s open meeting at 9:01 a.m. in the Learning and Development Center Commission Conference Room. There were no adjustments or approvals to the agenda as proposed for the April 4, 2019. meeting.

CONSENT AGENDA ITEMS

Approval of the minutes for the February 7, 2019 State Human Resources Commission Meeting.

Motion: Commissioner Strach made a motion to recommend approval of the Consent Agenda.

Seconded: Commissioner Beamon seconded the motion.

The motion carried.

Diversity and Workforce Services: Presentation of the Annual Settlement Report

Nancy Astrike, Diversity & Workforce Services Division Director, greeted the Chair, Commission and Deputy Director Estevez and presented the Annual Settlement Report pursuant to the requirements of the North Carolina Administrative Code. Details of the 2018 report included:

- The Office of State Human Resources reviewed and approved 38 settlements involving employment issues for agencies (30) and universities (8) in the State of North Carolina.
- The total cost of those settlements that we reviewed and approved is \$927,430. That information was detailed by agencies and universities, and list the settlement amount, attorney fees and the grand total for each agency.
 - A 50% decrease from 2017 in the number of agency settlements and a 65% decrease from 2017 in the number of agency settlement cost.
 - A 14% increase from 2017 in the number of university settlements and a 78% increase in the university settlement costs.
 - Establishing a partnership with the university system to assist with settlements.
 - Overall total of a 43% decrease from 2017 in the number of settlements and a 49% decrease from 2017 in the total settlement costs.
 - Note: Settlements without attorney fee occurred in an internal process before representation or in a mediation process.

See vote on consent agenda items above.

Business Session

Public Comment

Steve Martin, Deputy General Counsel, Cardinal Innovations Healthcare, Inc., was given three minutes to address the Commission regarding the LME/MCO Area Directors/CEO salary study on the agenda. He noted this was his third attendance at the Commission regarding this matter. He informed the Commission that he was aware that currently, for-profit insurance companies operating in the Medicaid marketplace in North Carolina were actively recruiting executive and CEO talent and that the LME/MCOs' need to have the ability to adequately compete for the same talent was hampered by the current salary range. He referenced Cardinal's November 18, 2018 letter which asserted that the State's RSC study was deeply flawed for Cardinal or at least substantially below market - 26% below the 25th percentile. He acknowledged that OSHR consulted with Sullivan Kotter and that Sullivan Kotter had explained to OSHR its concerns

with the RSC study and its understanding of Cardinal's market and the competition that it is in. He closed by noting the less than 2-year time frame for the LME/MCOs to prepare for the managed care Medicaid transformation – such as having to provide physical pharmacy and behavioral health care services – and the LME/MCOs critical need to have the ability to prepare for the transition by being able to retain, attract, and keep talent as they move into whole person care.

State Human Resources Director's Report

Chief Deputy Director Judy Estevez provided the Director's Report in Director Barbara Gibson absence.

She started with a quick summary of the HR items included in the Governor's Budget proposal - some of the key elements are related to State employees:

- A 1.5% permanent salary increase or \$500, whichever is greater, for each of the next two years.
- An additional \$500 recurring increase for all certified law enforcement officers as well as an additional \$500 recurring increase for thousands of state employees who work in DPS and DHHS facilities.
- A \$20 million recurring Salary Adjustment Fund to deal with retention and recruitment issues; equity issues including but not limited to race and gender; and dealing with issues of salary compression.
- A one-time, non-recurring adjustment of 2% for retirees.

In addition, Chief Deputy Estevez shared some exceptions Director Gibson had granted:

- Agencies will be allowed increased flexibility regarding salary administration. This will be strictly limited, pending a presentation to the SHRC in the Fall of recommended changes to salary administration policy based on the analysis by Mercer. Broadly, the exceptions will address critical positions for which funding is available and when there is a need to act quickly to hire an applicant or retain a current employee.

She then summarized a few executive orders that were signed by the Governor which were HR related.

- Executive Order 92 made North Carolina an Employment First State for people with disabilities by directing State government to become a leader in recruiting and creating an inclusive job climate for workers with disabilities. OSHR will be responsible for stepping up awareness of employment opportunities among jobseekers with disabilities. The goal is to drive down the high unemployment rate among the 1.3 million North Carolinians who have a disability, increasing their independence. The State stands to benefit not only from their job skills but also their perspective, as well.
- Executive Order 93 prohibits the use of salary history in the State hiring process. Research shows that “relying on salary history during the hiring process may perpetuate gender pay inequities, wrongly assuming prior salary was fair or free from bias.” As such, the State application form will need to be revised. OSHR is currently working with NEOGOV to

address this, especially Legacy applications and continuous postings, and will continue to keep the SHRC posted. Further, in accessing our use of salary history on current employees, it may be necessary to make temporary policy exceptions until the completion of the Mercer study of our salary administration practices. At which time we would be recommending a new salary administration policy to the Commission. More detailed discussion will be provided to you as we continue in the process.

Chief Deputy Estevez closed by providing some staff updates. She shared that OSHR employee Ronnie Condrey was among the 21 state employees from nine agencies who were honored with a Caswell Award. The award is named for Richard Caswell, the first governor of North Carolina, who dedicated his adult life to serve his adopted home of North Carolina. As a native of Rutherford County, Condrey is a born storyteller and passionate historian and you can go to him and he will recall specific and precise circumstances of moments in State government when things happened. Our second piece of good news is that Joe Gilroy has joined OSHR as our new Temporary Solutions Manager. Gilroy comes from DOT's Aviation Division where he held the title of Manager of Finance and Grants. He also worked with the North Carolina Forest Service as an Administrative Services Division Director, and at the Department of Agriculture as an Administrative Officer. He has a master's from N.C. State in English, and a bachelor's from Ohio State University with a concentration in English and Linguistics. He has over 11 years of experience and is well versed in both human resources and finance processes.

Diversity and Workforce Services: Local Government

LME/MCO Area Directors – Vote on SHRC December 6, 2018/February 7, 2019 Tabled Agenda Item: Vote on Results of Consultant's Salary Study

Nancy Astrike, Diversity and Workforce Services Division Director, joined by consultant Dan Ripberger of RSC and Pam Bowling of OSHR, gave a brief recapitulation of the events of this matter:

- On August 28, 2018, the Commission was presented with a recommended range for the LME/MCO area director or CEO (with the maximum of the range up to \$369,071) resulting from a settlement agreement between OSHR and Cardinal Innovations.
- Concurrently, a legislative initiative codified in SB99 directed OSHR to take another independent look at that range thereafter and OSHR contracted with Dan Ripberger of RSC to conduct the same for that salary range for the area director/CEO positions for the 7 LME/MCOs.
- RSC's results were presented at the December 2018 SHRC meeting and a slight adjusted to the range was proposed, approximately 1.6%, changing the maximum of the salary range from \$369,071 to \$375,100. SHRC tabled the vote on that proposed salary range due to a lack of a quorum.
- On February 7, 2019, SHRC considered RSC's proposed range and the report of Sullivan Kotter, Cardinal's independent compensation analysis group that had been retained

concurrently in that December January timeframe and had a different result. In addition, a letter from Mr. Thompson, the Chair of the Cardinal Board, was also provided. As a result, the Commission asked OSHR to engaged with Sullivan Kotter and to provide more information about RSC's methodology and process. RSC was then re-engaged to look at the letter from Mr. Thompson and the Sullivan Kotter study.

- On March 28, 2019, RSC provided a letter that responded directly to both of those documents to try to explain the differences and approach as to how those studies were conducted.
- On April 3, 2019, OSHR via Director Astrike and Pam Bowling, subject matter expert via her service at the Office of State Human Resources as the Division Director for the Salary and Compensation, discussed the reports with Sullivan Kotter, and all came to the same conclusion - the baseline differences between these two studies – OSHR's study evaluated all 7 LME/MCOs based on how they currently exist today.

Astrike stated that while OSHR is willing to be completely flexible and to adjust and adapt to any changes in the clinical line of services or services that Cardinal provides as the future progresses, it feels appropriate, as a fiduciary responsibility, that LME/MCOs be evaluate as to what they are doing today. The essential difference in the 2 studies is the scope. LME/MCOs are not providing Medicaid services – not the full line –they have a very targeted approach for individuals with significant mental health or substance abuse issues. These are exceptionally important services for the citizens of North Carolina. Smaller geographic areas were also evaluated because the 7 LME/MCOs are located across the State, in different areas and are source providers for those services. All of these issues were taken into account by the RSC study as well as allowing for positive consideration for issues that differentiated them such as reporting to an independent Board and, as such, having the full responsibility for strategic, operational, and other reporting requirements. The result of that study was the recommended maximum salary, the minimum of \$208,400 to the of \$375,100.

RSC's Dan Ripberger briefly stated that RSC had evaluated all the LME/MCOs, comparing the LMEs to other roles in the market broadly with the line of services in the managed care insurance industry and offered to answer any specific questions to help understand that process. Pam Bowling stated that she concluded from the meeting with Sullivan Kotter that the differences between the two studies was in the scope - RSC evaluated all 7 LME/MCOs while Sullivan Kotter just evaluated Cardinal.

Questions from the Commissions included:

What were the key baseline differences between the two studies? RSC stated the key difference was in the scope - RSC had evaluated all LMEs pursuant to legislative action and Sullivan Kotter evaluated Cardinal. RSC noted that had RSC done the same study scope as Sullivan Kotter, that RSC's results would probably have been more similar.

What is the dispute in using covered lives and membership? It is a size piece. Covered lives is how big you are - the number of folks that you serve. RSC used a scope for the geographic size and then the specific service line and that is where they were able to look at the actual volume of people served rather than a whole potential of people that might have Medicaid and might need mental health services not whether they do or don't.

Did the RSC study not look at covered lives? RSC looked at number served. Covered lives in the insurance industry means it is a subscriber - somebody on your plan. Covered lives with respect to Medicaid could be a lot of people – enrolled or in the future to be enrolled depending on how you look at it

Would RSC agree that Cardinal is a bigger entity than the other LMEs? If so, how did RSC account for the size difference in its study? Yes. It was part of the big challenge. They are definitely at the high end. So as they looked at size they made sure to include a range that Cardinal was at the top of but fit within in terms of range.

Pursuant to the RSC's March 28, 2019 letter, did RSC look at comparable entities in terms of covered lives or in terms of membership? RSC used a figure in the insurance industry that is a membership figure.

In entities that you compared the LME/MCOs to, did you use the number the people actually served to evaluate their comparability to the North Carolina LME/MCOs? RSC used the number of members, not the number of people served because all of those come within a competitive environment so it is all a service that can be selected. If it is broader insurance, the people who are selecting that service get the whole service line of medical care including behavior health.

Why did RSC use a 10% discount? It is experiential based on consultation with other organizations as to what percentage is common practice to account for the scope. It was a professional judgment. A premium was added because there were 2 different comparable roles. Based on a large organization model, the market would be the regional executive. Since LME/MCOs are not reporting up the corporate structure but rather to an independent board, RSC applied a premium to that role for the board reporting.

Division Director Astrike directed the Commissioner's attention to page 3 of RSC original report – a table that shows each of the LME/MCOs, the total revenue, the Medicaid eligible of people served and the percentage of Medicaid eligible that are actually served by the entity – noting that each of the percent eligible served ranges from 12% to 30%.

Were there mixtures within the comparable groups of for-profit and non-profit or were all these entities the same? No. They were a combination.

Did RSC take into account any variances that might exist among those 2 groups? RSC did not because there really isn't much of a difference in terms of non-profit and for-profit status until the consideration of something like long term incentives. It also depends on the corporation.

Of these for-profit and non-profit entities that RSC compared, did they provide varying levels of service or were they all just for behavioral health and did any of them provide any integrated care? No, RSC did not consider varying levels or integrated care since the LMEs are only focused on behavior health.

Concerning the role managed care is going to have in this new integrated world, when RSC looked at the per members per month for each of these entities served were they all Medicaid recipients or other types of persons that are served? Within the marketplace, it could be other types. RSC was asked to look at the insurance industry broadly.

Motion: Commissioner Strach made a motion to approve the recommended salary range by OSHR with the condition that OSHR study the feasibility of a differentiated or tiered salary range for LME/MCOs based on size and covered lives.

(This motion is based on the statutory language to look at organizations of similar size including covered lives. This motion would look at what the statute ask and consider lives and covered live in terms of changes to the salary range in preparation for the Medicaid transformation.)

Commissioner Beamon asked if the motion was intended to allow for adjustment to the salary range if such is determined at a later date. Commissioner Strach affirmed that intent. Commissioner Strach also confirmed Commissioner Eller's point of clarification that by recommending the staff study a tiered salary range for the LME/MCOs, there was an expectation of a future proposal to the SHRC regarding such.

Second: Commissioner Falls seconded the motion.

Motion carried.

Diversity and Workforce Services: EEO Policy

Nancy Astrike, Diversity and Workforce Services Division Director, presented some modifications and updates to the Equal Employment Opportunity Policy for the State of North Carolina. These changes come as a result of the State of North Carolina competing for talent and its efforts to build a vibrant workforce. To achieve that goal, the State has to deploy all the resources they have to ensure that they serve the diverse population of citizens of the State of North Carolina. This revised EEO Policy is designed to ensure that this State is an open and affirming workplace, supportive of employee moral and performance. OSHR recognized the need to employ competitive HR practices so thirty some of North Carolina's largest employers were reviewed and OSHR found that almost all had similar EEO policies which have been incorporated into this Policy revision. This will continue to give the State at least an advantage or equal the playing field to provide a work environment that is similar. OSHR also recognizes that it historically has low employment in the metro areas and so there is a need to do everything possible to attract, retain, support, and engage current employees. The turnover rate in the State for employees is about 13%; 20% at some agencies. All of this combined together is a sound, solid business reason to change revise Policy. In addition, Executive Order 24 extended similar provisions that were in previous executive orders by different or previous administrations. With somewhat of a history of executive orders covering these topics, it seemed appropriate to codify that in a state-wide policy. Lastly, the Commission on Inclusion – which includes executives

from public, private and academic settings in North Carolina - has reported to the Governor its strong recommendation that policies reflect the broader representation of groups for the citizens of North Carolina. In summary, there is a growing consensus among business leaders, government official and scholars that discrimination is counterproductive and is not a good business practice. The significant classifications that would be added to the EEO Policy are gender identity and expressions, sexual orientation, and National Guard or veteran status. In addition, the Policy reemphases all our harassment prevention process in the State of North Carolina including that acts of retaliation are prohibited. The Policy is an important tool to continue to build and support the State employees in North Carolina who are charged with the responsibility of providing diverse services to its population.

Motion: Commissioner Beamon made a motion to recommend approval of the changes to the Equal Employment Opportunity Policy.

Second: Commissioner Eller seconded the motion.

Motion carried.

Diversity and Workforce Services: EEO/DF Policy

Nancy Astrike, Diversity and Workforce Services Division Director, also presented the EEO/DF Policy to the Commission. The North Carolina General Statutes established a required EEO training program for managers and supervisors. At the time of codification, it was called the Equal Employment Opportunity Institute (EEOI). A couple of years ago the program was updated to make it a blended opportunity training where managers and supervisors now complete 6 prerequisite courses online before they attend 1 day of classroom training as well as a lot of the laws and provisions were updated. The name was also changed from EEOI to Equal Employment Opportunity and Diversity Fundamentals (EEO/DF). The Policy has been revised to address these changes. In addition, some minor technical updates have been made. The most significantly being to incorporate the new blended nature of the training. The other technical revisions are housekeeping issues.

Questions from the Commissions included:

The Policy states that only managers and supervisors hired after July 1 of 1991 are required to take the training while those hired before 1991 are more or less encouraged to take the training. Why the differentiation? The 1991 date is the date the General Statute was ratified. It is a technical date. OSHR certainly does try to make capacity for anybody that is interested in taking the training because we mirror your concerns. We think all management and supervisors should have this training and more frequently refreshers. Director Gibson has given the division a mandate to take a look at that.

Did the statute exempt people, or did it have some language exempting people? I think it says as of that date and so we have always interpreted it as from that date forward and to allow individuals that were hired previous to that date to enroll after. Maybe it is a question for General Counsel Nance.

How does this relate to harassment training? Is the State retooling harassment training to encourage people to treat each other with respect as opposed to some bare legal minimum? Where are we on that? Does that relate to this at all? At the end of 2017, OSHR launched an online harassment prevention training that was a required element for all State employees not just managers and supervisors. It was the first time that we had approached training in that way. That online training is still being assigned to new employees – over 85,000 employees have take it – and is the highest completed training in 2018 that was sponsored by the Office of State Human Resources. In addition, we recently completed pilot training for a program that we are calling Respect In the Workplace. The goal of that training is to talk about harassment and bullying. The second half of that training talks about ways to proactively and positively provide feedback and comments between employees and managers. The extension of that training is moving beyond the illegality of harassment and unprotected factors and blending it into those situations that I think that we would say are bullying situations that are completely inappropriate but not necessarily illegal in the workplace. OSHR HR staff and EEO officers will be trained on that and then it will be put on a platform for all employees for open enrollment.

Motion: Commissioner Strach made a motion to recommend approve the policy.

Second: Commissioner Beamon seconded the motion.

Motion carried.

Classification and Compensation -2 New and 2 Revised Classification Specs for New Class & Compensation System

Joe Marro, Classification and Compensation Manager, presented the 2 new and 2 revised classification specifications to the Commission. He noted that the 2 new classification specifications were the result of a mandate of the legislature which included the title and established the pay grades which is not typically how classification specs are created. The 2 revised classification specification were submitted by the Department of Agriculture for the forestry technician series. Those classifications hadn't been vetted prior to the implication of the new system. To ensure competitive alignment, OSHR did a survey of the regional southeastern states which resulted in minor revisions to the education and experience requirements for the classifications.

Motion: Commissioner Eller made a motion to recommend approval of the 2 new and 2 revised classification specs for the compensation system.

Second: Commissioner Falls seconded the motion.

Motion carried.

Safety & Workers Compensation: Revised N.C.G.S. Chapter 143, Article 63 and NC Administrative Code 25 N.C.A.C. 01N Workplace Environment and Health regarding safety, health, and workers' compensation programs in Executive Branch agencies and the UNC System

Scarlette Gardener, Workers' Compensation Manager, explained that this particular OSHR Policy regards the statutory delegation of authority in North Carolina General Statute Chapter 143, Article 63 which is State Employees Workplace Environment and Health regarding safety, health, and worker's compensation programs and NC Administrative Code 25 N.C.A.C. 01N, "Workplace Environment and Health," which addresses our safety, health and worker's compensation programs in executive branch agencies and the UNC System. The statute and administrative rules provide sufficient details with regard to what OSHR is supposed to do when administrating these programs. The revisions to this Policy delete obsolete and redundant language within the policy itself and update the language so that it is consistent with current OSHR processes and procedures.

Motion: Commissioner Falls made a motion to approve the updated OSHR Policy as written.

Second: Commissioner Beamon seconded the motion.

Motion carried.

Legal, Commission and Policy: Motion to Adopt Rules Pending Before the Rules Review Commission (25 NCAC 01I .1702, .1805, .1902, .1903, .1905, .2003, .2302, .2303, .2304, .2305, .2306, .2307 and .2310, repeal of .2105 and adoption of 25 NCAC 01E .0210, .0704 and .0705)

General Counsel Lars Nance, first addressed Commissioner Strach's question regarding the scope of the statute regarding required EEO training. The original statute stated that "the new managers shall be enrolled within a year." Since it passed in 1991, strict compliance with the statutory mandate might not have been possible. General Counsel Nance stated that most of the agencies actually have accomplished making managers prior to 1991 compliant and he was unaware of anything that would prevent requiring that training.

Addressing the agenda item, General Counsel Nance represented that these rules had been before the Commission initially and had not changed. That their presentation to the Commission at this time was procedural in submitting them for permanent submission.

Motion: Commissioner Strach made a motion to approve the recommendation to submit the rules referenced in the agenda under Local and Safety Compensation for permanent rulemaking to the Rules Review Commission.

Second: Commissioner Falls seconded the motion.

Motion carried.

Commissioner Eller expressed his thanks to staff for the work over the last several months on many of the issues, but particularly the salary study for the LME/MCOs.

Motion: Commissioner Strach made a motion to adjourn the meeting.

Second: Commissioner Falls seconded the motion.

Motion carried.

The meeting was adjourned at 10:13 a.m.

Executive Session

The State Human Resources Commission did not have an executive session at its April 4, 2019 meeting.

Minutes submitted by:

Denise H. Mazza, State Human Resources Commission Administrator