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# Kansas Legislator Briefing Book 2017

## Health and Social Services

### F-6 Update on State Hospitals' Issues 2015-2016

The Kansas Department for Aging and Disability Services (KDADS) is responsible for the administration of Larned State Hospital (LSH) and Osawatomie State Hospital (OSH) for Kansans suffering from mental illness and for the Kansas Neurological Institute (KNI) and Parsons State Hospital and Training Center (PSH) for individuals with intellectual and developmental disabilities. An overview of issues regarding OSH and LSH that came to the attention of the Legislature during the 2015 and 2016 sessions and an overview of state hospital financing is provided. Unless otherwise noted, the information provided came from testimony and reports provided by KDADS and from the KDADS website.

#### Osawatomie State Hospital

OSH was established in 1855 and provides services to adults diagnosed with psychiatric disorders regardless of ability to pay or legal status. OSH is licensed by the Kansas Department of Health and Environment (KDHE) to serve 206 patients and serves individuals from 44 counties in Kansas in collaboration with 12 Community Mental Health Centers. These centers refer individuals to the hospital through a screening process; however, a moratorium on admissions was issued in mid-2015.

In addition to being licensed by KDHE, OSH receives oversight and certification from The Joint Commission and Centers for Medicare and Medicaid Services (CMS). CMS issues Medicare and Medicaid Disproportionate Share for Hospital (DSH) programs payments to OSH. In December 2015, CMS decertified OSH and subsequently suspended Medicare and DSH payments.

**Centers for Medicare and Medicaid Services Oversight.** In 2014, OSH began having issues with maintaining census. OSH was over-census for 9 months from March 3 through December 6, 2014. The number of patients at OSH reached an overall 10-year high on August 23, 2014, with a weekly average of 251 patients. (OSH began maintaining census on December 13, 2014.) The increased census during this 9-month period triggered a CMS survey of OSH. On December 5, 2014, CMS sent a letter citing issues with the physical environment at OSH that had to be remediated to maintain certification. Renovations to complete a Plan of Correction for CMS began in Spring 2015. In May 2015, 60 beds were removed from use to complete the CMS mandated construction. Approximately \$3.45 million from the Legislature in the FY 2016 Governor's Budget Amendment to support individuals and communities

impacted by the OSH reduced census during renovation.

On November 3, 2015, CMS conducted another survey at OSH amid concerns the nursing service requirements were not being met. On November 24, 2015, CMS released its survey findings stating, among other things, various nursing security protocols were not being followed. On December 21, 2015, CMS decertified OSH, citing the facility for issues related to patient health and safety. The main impact on funding was through the loss of DSH and Medicare reimbursements for any patients who would have been eligible during their treatment at OSH. (OSH is still taking patients in accordance with the moratorium; CMS decertification pertains to billing rather than admissions.) KDADS estimates that during the period the hospital is decertified, the loss in combined revenue is roughly \$1.0 million per month, starting January 2016, until the hospital is recertified. As of October 24, 2016, OSH has not been recertified.

**Moratorium.** The Secretary for Aging and Disability Services declared a moratorium on OSH admissions on June 21, 2015, to control census during construction. OSH did not close nor stop admitting new patients, rather the census was capped at 146 and a waiting list was created. KSA 59-2968 authorizes the Secretary for Aging and Disability Services to notify the Supreme Court of the State of Kansas and each district court with jurisdiction over all or part of the catchment area served by a state psychiatric hospital, the census of a particular treatment program of that state psychiatric hospital has reached capacity and no more patients may be admitted. Following notification that a state psychiatric hospital program has reached its capacity and no more patients may be admitted, any district court with jurisdiction over all or part of the catchment area served by that state psychiatric hospital, and any participating mental health center that serves all or part of that same catchment area, may request that patients needing that treatment program be placed on a waiting list maintained by that state psychiatric hospital. Patients are admitted in chronological order. As of January 2016, 719 patients had been admitted since the moratorium

was declared; there was an average wait time of 24.2 hours to be admitted.

## Larned State Hospital

LSH, located in south-central Kansas, is the largest psychiatric facility in the state and serves the western two-thirds of the state. The hospital serves adults with serious and persistent mental illnesses, most of whom have been deemed a danger to themselves or others. LSH has a Sexual Predator Treatment Program (SPTP) to treat offenders who have completed their prison sentences but have been involuntarily committed because a judge or jury found they were “sexually violent predators,” which means they have a “mental abnormality or personality disorder” that makes it likely they will engage in sexual violence again if not treated. LSH is accredited by The Joint Commission and certified by CMS ([www.kdads.ks.gov](http://www.kdads.ks.gov)).

The SPTP, established by statute in 1994, provides for the civil commitment of persons identified by the law as sexually violent predators. KDADS states the program’s two missions are to provide for the safety of Kansas citizens by establishing a secure environment in which persons identified as sexually violent predators can reside and to offer treatment with the aim of reducing their risk for re-offending while allowing motivated persons who complete treatment to return to society. The program serves adult male patients from the state who have been adjudicated through Kansas sexually violent predator treatment laws and are committed for treatment under civil statutes. According to an update on OSH, Inpatient Community Crisis Centers and the SPTP provided by KDADS Interim Secretary Tim Keck, as of January 26, 2016, there were 232 residents on the LSH campus and 25 in reintegration facilities.

**Legislative Post Audits.** The Legislative Division of Post Audit completed two recent performance audits on the SPTP. The first, published in September 2013, looked at whether the program was appropriately managed to ensure the safety and well-being of program staff and offenders. Included in the audit findings was that a significant number of direct care staff positions were vacant; program staff worked a significant amount of

overtime to provide safety, security, and treatment; and even with significant overtime, the program failed to meet its internal minimum staffing goals.

The April 2015 Legislative Post Audit performance audit report, "Larned State Hospital: Reviewing the Operations of the Sexual Predator Treatment Program, Part 2," considered how Kansas' SPTP compared to similar programs in other states and best practice, and what actions could be taken to reduce the number of offenders committed to the SPTP.

The audit findings comparing Kansas' program to those in other states included: the Kansas program did not adhere to recommended practices for sexual predator programs to emphasize individualized treatment; residents completing the first five phases of the program were not necessarily equipped with the skills to be successful in finding a job or basic life skills; appropriate records and documentation to effectively manage the program were not maintained; and annual reports had not been filed as required by statute.

Additionally, the audit noted an insufficient local labor force will create staffing problems for the SPTP as it grows. The audit considered six options for reducing the resident population. Copies of the full audit reports and the highlights may be accessed at <http://www.kslpa.org/>.

<b>Overtime All Funds Expenditures for the Kansas State Hospitals FY 2015 and FY 2016</b>		
	<b>FY 2015</b>	<b>FY 2016</b>
KNI	\$ 85,147	\$ 104,355
LSH	3,171,378	4,163,911
OSH	1,057,948	833,888
PSH	169,487	270,096

**Staffing and Management.** Staffing shortages have persisted at LSH, resulting in an increase of overtime hours worked by existing staff. KDADS reported the hospital has struggled to recruit staff in a rural area with low unemployment. At an April

18, 2016 Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight meeting, Larned employees discussed staffing problems at LSH. The testimony outlined how mandatory overtime and limited time between shifts were taking a toll on workers and their families. Those testifying spoke as individuals and not as representatives of KDADS or other state agencies ([http://www.kslegislature.org/li/b2015\\_16/committees/ctte\\_jt\\_robert\\_g\\_bob\\_bethell\\_joint\\_committee\\_1/documents/minutes/20160418.pdf](http://www.kslegislature.org/li/b2015_16/committees/ctte_jt_robert_g_bob_bethell_joint_committee_1/documents/minutes/20160418.pdf)). Interim Secretary Keck said staffing concerns at Larned were valid and he has been working to improve employee morale since he took over in December 2015.

In April 2016, about 60 mental health inmates were moved between state facilities as a means to alleviate staffing shortages at LSH. The plan would move dozens of inmates with mental health issues from LSH units to another facility on the same campus run by the Department of Corrections. The inmates would still receive psychiatrist services once moved. Concern was expressed by a Kansas Organization of State Employees representative that some inmates who need psychiatric care would be moved to facilities where corrections staff do not have mental health training.

LSH also has faced management changes in recent years. The superintendent who had been at LSH since 2012 resigned in March 2016. The KDADS Commissioner of Behavioral Health Services served in an interim capacity until an interim superintendent was appointed in April 2016, while a search for a permanent superintendent took place. Bill Rein, former chief counsel for KDADS and most recently KDADS Commissioner of Behavioral Health Services, was named LSH Superintendent in June 2016. In August 2016, the LSH Chief Fiscal Officer (CFO) departed employment with the hospital. The CFO was facing a federal probe related to employment in a previous position. An audit of the hospital's finances was launched.

Additionally, the general counsel who heads the legal department at LSH was transferred to the KDADS central office in Topeka in May 2016. A legal assistant position also was moved. KDADS said the move would allow the agency to use its

legal staff more efficiently by having an employee previously focused on one state hospital to assisting with other KDADS functions. Some OSH legal staff also were moved to the central office.

**Legislation.** Several bills were considered to address the audit findings. In 2016, SB 407 revived a statute in the Sexually Violent Predator Act requiring annual examination and court review of persons in transitional release, providing procedures for hearings on whether such person is safe to be placed in conditional release, and setting the standard for court determination of whether the person is appropriate for conditional release. Another bill proposed was HB 2559, which would have required state agencies to develop minimum safe staffing levels, report whether they met those levels, and implement recruiting and retention plans if they fall below minimum staffing for two months. However, the bill died in Committee.

SB 477 was introduced in 2016 to form a ten-member oversight committee to oversee OSH and LSH. Duties of the committee would have included, among other things, monitoring both hospitals' patient populations and treatment outcomes, staffing issues, and patient and employee safety concerns. The bill died on General Orders in the Senate.

In 2016, the Legislature approved \$17.0 million in extra funds to LSH and OSH. LSH received \$450,000 to raise mental health technician pay—amounting to a 2.5 percent pay raise for mental health technicians, the same increase received by corrections officers.

## State Hospital Financing

The state hospitals are primarily funded through three basic sources. The first is the State General Fund, which consists of money collected through various statewide taxes. The second is each hospital's fee fund, which includes collections from Medicare, private payments, Social Security, and insurance. The third source is federal Title XIX funding, also known as Medicaid. The federal Title XIX funding is transferred to the KDADS central pool and is then redistributed among the four state hospitals in amounts equal to its approved appropriations. State developmental disabilities hospitals (KNI and PSH) are Medicaid certified as intermediate care facilities for persons with mental retardation and nearly all of the people living in the facilities are covered by Medicaid. The state developmental disabilities hospitals submit annual cost reports that establish *per diem* rates they charge to Medicaid for each day a person covered by Medicaid lives in the facility. The state mental health hospitals (LSH and OSH) establish *per diem* rates in much the same way as the state developmental disabilities hospitals, but are classified as institutions for mental disease. The result is, due to federal rules, most state mental health hospital patients are not eligible for standard Medicaid match, but these hospitals are eligible for Medicaid payments through the DSH program. This program assists all acute care hospitals that serve a disproportionately high number of indigent persons.

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