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### Health and Social Services

#### F-7 State Hospitals

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&TC) for individuals with intellectual and developmental disabilities. An overview of issues related to the state hospitals, summaries of recent legislation, and an overview of state hospital financing are provided in this article.

#### Osawatomie State Hospital

OSH, established in 1855, 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 a maximum of 206 patients and currently serves 146 individuals from 44 counties in Kansas in collaboration with 12 Community Mental Health Centers. These centers refer individuals to OSH through a screening process; however, a moratorium on voluntary admissions and a limit on involuntary admissions was issued in June 2015.

In addition to being licensed by KDHE, OSH receives oversight and certification from the federal 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.

**Decertification.** 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 at its licensed capacity 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 \$3.5 million was added in a 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. (As of October 2017, OSH is still taking patients in accordance with the moratorium; CMS decertification pertains to billing rather than admissions.) The Kansas Department for Aging and Disability Services (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.

On May 8th, 2017, federal CMS surveyors conducted a full recertification survey for the 60 beds of Adair Acute Care (AAC) at OSH. On June 9, 2017, CMS released a report citing OSH for sanitation issues related to the kitchen, disease control for patients, and internal policies needing revisions. KDADS took corrective actions and requested CMS to revisit. In August and November 2017, CMS returned to survey issues previously cited at AAC and found no issues with AAC for these limited scope deficiency surveys. In December 2017, CMS notified OSH the 60 beds that comprise AAC were recertified for federal reimbursements and the hospital would begin to receive partial DSH payments.

**Moratorium.** The Secretary for Aging and Disability Services (Secretary) 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, admission of voluntary patients was halted, the census for involuntary patients was capped at 146, and a waiting list was created. KSA 59-2968 authorizes the Secretary to notify the Kansas Supreme Court and each district court with jurisdiction over all or part of the catchment

area served by a state psychiatric hospital that 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. In July 2017, OSH increased its patient census to 158 and at the Legislative Budget Committee (LBC) meeting on October 3, 2018, the Secretary indicated OSH had increased its staffing to accommodate 166 patients. The Secretary informed the LBC that while OSH has the capacity to provide treatment to 166 patients, the patient census had been in the range of 130 for the past fiscal year due in part to regional efforts such as crisis unit beds, and OSH was considering lifting the moratorium on voluntary admissions.

## 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. The psychiatric services program at LSH is certified by CMS.

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 statues. In FY 2018, the average daily census for the SPTP program at the LSH campus totaled 236 patients and the average at the reintegration units totaled 26 patients.

**Legislative Post Audits.** The Legislative Division of Post Audit (LPA) completed two 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. The audit found 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.

In April 2015, the second LPA 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 practices, and what actions could be taken to reduce the number of offenders committed to the SPTP.

The audit found 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/>.

Overtime All Funds Expenditures for the Kansas State Hospitals FY 2017 and FY 2018				
	FY 2017		FY 2018	
KNI	\$	183,719	\$	328,028
LSH		3,976,643		4,585,740
OSH		1,051,507		1,068,535
PSH		370,620		525,377

**Staffing.** 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 the April 18, 2016, Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight (KanCare Oversight Committee) meeting, LSH employees discussed staffing problems at the facility. 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\\_2016/b2015\\_16/committees/ctte\\_it\\_robert\\_g\\_bob\\_bethell\\_joint\\_committee\\_1/documents/?date\\_choice=2016-04-18](http://www.kslegislature.org/li_2016/b2015_16/committees/ctte_it_robert_g_bob_bethell_joint_committee_1/documents/?date_choice=2016-04-18)). Then-Interim Secretary Keck said staffing concerns at LSH were valid, and he had been working to improve employee morale since he took over in December 2015. In April 2017, Secretary Keck reported to the KanCare Oversight Committee staffing vacancies were decreasing and overtime was diminishing. However, in August 2018, Secretary Keck reported to the KanCare Oversight Committee that, despite efforts to improve staffing, recruitment and retention continues to be a problem at LSH.

In April 2016, about 60 mental health inmates were moved between state facilities as a means to alleviate staffing shortages at LSH. The plan moved 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 still received psychiatrist services in the new location. 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.

**Management.** 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 led 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 assisting with other KDADS functions. Some OSH legal staff also were moved to the central office.

### **Parsons State Hospital and Training Center**

PSH&TC is one of two residential treatment, training, and care facilities operated by the State of Kansas to serve individuals with intellectual and developmental disabilities whose circumstances require specialized residential service provisions. PSH&TC was originally opened in 1903 and primarily treats adult patients, though approximately 20 youth also receive treatment and reside at the facility.

In May 2018, an annual survey revealed PSH&TC was out of compliance with guidelines on facility staffing for physical therapy. In July 2018, a complaint survey was conducted, and the hospital was cited for issues with treatment of a patient and was placed in immediate jeopardy. The hospital was informed it must submit an acceptable plan of correction, or a recommendation would be made that its Medicare contract be terminated, which would prohibit the hospital from receiving Medicaid or Medicare reimbursements for patient care. PSH&TC submitted plans of correction for both surveys and was informed in October 2018 that the plans had been accepted, and the hospital was no longer in immediate jeopardy of losing federal funding.

### **Recent Legislative Action**

Several bills were considered during the 2017 and 2018 Legislative Sessions.

#### **2017 Policy**

Senate Sub. for HB 2278 was passed by the 2017 Legislature and exempted the state hospitals and other select entities from a general requirement in law that public buildings have adequate security measures in place before the concealed carry of handguns could be prohibited.

Senate Sub. for HB 2002 was enacted in 2017 and authorized a Mental Health Task Force to meet in the fall of 2017 to study certain topics related to the current status of various mental health programs in Kansas and to provide recommendations to the 2018 Legislature. The Mental Health Task Force was facilitated by the Kansas Health Institute and a report was provided to the 2018 Legislature.

#### **2017 Fiscal**

The 2017 Legislature approved \$11.8 million in FY 2017 and \$6.6 million for FY 2018 as additional operating funding for OSH, primarily because the hospital lost federal funding as a result of decertification. The Legislature also added \$4.7 million for both FY 2018 and FY 2019 to open at

least 20 additional beds for patients at OSH or in the community. The Legislature added language requiring KDADS to complete an engineering survey on the buildings at OSH to determine which buildings could be renovated and which buildings should be demolished, and the costs associated with both options. The Legislature also required KDADS to issue a request for proposal (RFP) for the construction of a 100-bed psychiatric care facility at OSH.

The 2017 Legislature added \$6.5 million in FY 2017, FY 2018, and FY 2019 for LSH to replace federal and other funding lost due to a decrease in the number of patients eligible for Medicaid and Medicare reimbursements and cost recoupment by CMS due to reconciliation of past patient categorizations.

### **2018 Policy**

In 2018, House Sub. for SB 109 was enacted reauthorizing the Mental Health Task Force to meet in the fall of 2018 to study the Kansas mental health delivery system and develop a strategic plan addressing the recommendations of the January 8, 2018, Mental Health Task Force report, including ascertaining the location and total number of psychiatric beds needed to most effectively deliver mental health services in Kansas. The Mental Health Task Force is currently meeting over the 2018 Interim.

### **2018 Fiscal**

The 2018 Legislature added \$8.2 million in FY 2018 and \$16.1 million for FY 2019 for additional operating expenditures at OSH. The Legislature added \$2.5 million in FY 2018 and \$4.2 million for FY 2019 for LSH for expansion of the SPTP. Also, the Legislature added \$559,765 for PSH&TC for FY 2019 to provide funding for 12.0 additional support staff positions as a result of the facility experiencing an increased number of patients requiring one-to-one or two-to-one care for extended periods of time.

## **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 redistributed among the four state hospitals in amounts equal to its approved appropriations.

State developmental disabilities hospitals (KNI and PSH&TC) are Medicaid certified as intermediate care facilities for persons with developmental disabilities, 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. 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. Kansas is currently pursuing a waiver to the federal rule prohibiting a Medicaid match for institutions for mental disease. In addition, Congress is currently considering changes to federal laws that may allow funding for short periods in cases where a mental impairment is combined with a opioid use disorder.

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