

# **Report of the Special Committee on Organization of Public Health Boards to the 2017 Kansas Legislature**

**CHAIRPERSON:** Representative Daniel Hawkins

**VICE-CHAIRPERSON:** Senator Elaine Bowers

**OTHER MEMBERS:** Senators Steve Fitzgerald, David Haley, and Michael O'Donnell; and Representatives John Barker, Gail Finney, Kyle Hoffman, and John Whitmer

## **STUDY TOPIC**

### **Combining Certain Health Boards**

- Consider the combination of the Board of Nursing and the State Board of Healing Arts under one administrative entity for the purpose of potential reduction of administrative costs and increased efficiency over time.

# Special Committee on Organization of Public Health Boards

## REPORT

### Conclusions and Recommendations

The Committee makes the following recommendations:

- The Board of Nursing and the State Board of Healing Arts not be consolidated at this time; and
- The House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare review and consider combining the Board of Examiners in Fitting and Dispensing of Hearing Instruments with the Kansas Department for Aging and Disability Services.

**Proposed Legislation:** None.

### BACKGROUND

The Legislative Coordinating Council (LCC) in 2016 appointed a Special Committee on the Organization of Public Health Boards, composed of nine members. The LCC tasked the Committee with considering the combination of the Board of Nursing (KSNB) and the State Board of Healing Arts (BHA) under one administrative entity for the purpose of potential reduction of administrative costs and increased efficiency over time.

Interest in considering the combination of public health boards arose from one of the numerous recommendations made in the *Kansas Statewide Efficiency Review* commissioned by the Legislature and conducted by Alvarez & Marsal (A&M Study). The A&M Study recommended creating an umbrella board, the Public Health Board, with the following boards consolidated under this umbrella board: Behavioral Sciences Regulatory Board (BSRB), Kansas Dental Board (KDB), BHA, Board of Examiners in Fitting and Dispensing of Hearing Instruments (KBHAE), KSNB, and the State Board of Pharmacy (KBP). The A&M Study noted other states (such as Utah,

Iowa, and Virginia) align boards and commissions thematically in order to optimize resources and prevent needless redundancies in services. This consideration provided a starting point for the Committee discussion.

The Chairperson indicated one consideration for the consolidation that has been discussed would create an umbrella board with 12 to 14 public health boards under the umbrella board. Fees still would be submitted to the individual boards, which would operate much as they do currently. However, employees would perform cross-functions for each of the boards, such as licensing teams, legal teams, and others. An executive director would manage all the shared services for all the boards, such as personnel functions.

As a result of the A&M Study recommendation, other public health boards contacted the Chairperson inquiring about the charge of the Committee. The Chairperson invited the additional health boards to present testimony to the Committee on how each board operates and their views on the key aspects for a successful reorganization of public health boards.

The Committee was granted two meeting days by the LCC and met on December 6 and 14, 2016, at the Statehouse.

## COMMITTEE ACTIVITIES

The Committee held all-day meetings on December 6 and 14, 2016, at the Statehouse. In addition to the KSBN and the BHA, the Committee received testimony from additional public health boards.

### December 6, 2016, Committee Meeting

#### *Presentation from Governor's Office*

The Policy Director from the Office of the Governor discussed the role of the Governor, as tasked by the Legislature, in appointing some members of public health boards and councils across state government. An appointments director, two support staff, and, occasionally, interns from universities focus primarily on the appointments. The Policy Director's testimony contained information on the state public health boards in existence, including the boards' authorizing statutes, the activities regulated, the fee schedules, and the licensing requirements. He stated the Administration believes these boards serve a dual purpose of public safety and health and create an economic benefit, making access to the professions easier for Kansans.

#### *Public Health Boards' Presentations*

**Board of Examiners in Optometry.** The Vice President of the Board of Examiners in Optometry (Optometry Board), stated the activities of the Optometry Board to protect the public included annually reviewing and updating the licensing examination (Kansas is one of ten states that administers a test), reviewing all continuing education classes, and acknowledging complaints by the public within one week.

The Vice President of the Optometry Board stated the most important aspect of an umbrella board structure is that the same level of service is maintained. He noted the Optometry Board feels it provides a high level of service, and the umbrella

structure may make it difficult to maintain current standards, as each board has its own volume of rules and regulations. He said the public, licensees, and companies seeking to do business in Kansas rely on the Optometry Board for answers.

In response to questions, the Vice President of the Optometry Board noted the Optometry Board has only one employee and gave an example of increased efficiency gained by changing from annual licensing and auditing to biennial. In 2017, staff will propose going to an online program for continuing education classes.

**Emergency Medical Services Board.** The Executive Director of the Emergency Medical Services (EMS) Board testified the EMS Board oversees all aspects of EMS services in Kansas. Its purpose is public safety first, to protect and promote the welfare of Kansans through efficient and effective regulation of EMS, and to ensure quality out-of-hospital care is available statewide. The activities of the EMS Board include certifying EMS providers, licensing ambulances, permitting entities to provide ambulance service, and approving EMS education. EMS providers include all who respond to a 911 call; some are full-time EMS employees and others are volunteers.

The Executive Director noted the EMS Board sets the standards for EMS education and the EMS communication system. Two grants are offered for assistance to local EMS services. The EMS Board also researches, develops, and maintains a database on pre-hospital patient care, which is used to make recommendations on clinical guidelines for patient care specific to different entities.

With regard to the A&M Study recommendation, the Executive Director stated the EMS Board supports efforts to improve efficiency. However, the EMS Board strongly believes a specialized agency to administer EMS as an industry is beneficial to and necessary for the protection of Kansans. He stated employees wear many hats within the agency, with 14 employees already sharing services. The EMS Board believes it has already created an umbrella organization structure within the agency.

In response to questions, the Executive Director noted funding for the EMS Board is through a percentage of fire insurance premiums submitted to the State and not from the State General Fund (SGF). The current agency budget is \$2.1 million with a grant fund of \$900,000.

**Board of Nursing.** The Executive Administrator of KSBN stated the agency was developed by legislative action in 1913. The agency's mission is to assure Kansans receive safe and competent care by nurses and mental health technicians through licensure and regulations. The KSBN meets 4 times a year, and all 11 board members are appointed by the Governor. Six committees assist the workings of the KSBN. The agency is fee funded and receives no SGF moneys. Ten percent of fees, up to \$100,000, and all fines go to the SGF. In FY 2015 and FY 2016, the KSBN transferred \$100,000 each year from the Nursing Fee Fund to the SGF.

The Executive Administrator stated the KSBN is the largest health care fee-funded board with approximately 72,000 active licensees (at a cost of \$33 per year) and only 26 staff. Seven investigators have an average of 321 complaints per year to investigate, and 421 of 2,248 were assigned to the Assistant Attorney General for possible discipline. The agency's budget in FY 2015 was \$2.2 million, compared to the BHA with 27,480 licensees, 58 staff, and a budget slightly over \$5.0 million. The KSBN reduced its fees in 2014 from \$60 to \$55 for every two years due to agency efficiencies that were implemented.

The Executive Administrator said the KSBN was the first health care regulatory board to have real-time online renewals, which were launched in 2001 and won a national award. The online renewals are three to five times faster, and thousands of dollars were saved with paperless renewal cards. She noted the numerous agency efficiencies accomplished.

The Executive Administrator stated the KSBN has participated in Commitment to Ongoing Regulatory Excellence (CORE) since 2000, which benchmarks performance to other boards of nursing with umbrella boards, independent boards, and boards similar to the size of the KSBN. Kansas processes initial exam applications is an

average of 1.6 days compared to other independent boards at 6.2 days, with umbrella boards at 9.1 days and boards of similar size at 3.0 days. She said the CORE report indicates an umbrella board arrangement is not as efficient. The complete report was attached to her testimony.

In summary, the Executive Administrator stated combining the fee-funded boards might negatively impact consumer safety; decrease efficiency in nursing due to loss of the current level of service, allowing unsafe nurses to continue to practice; separate discipline processes would consume staff time and decrease consumer safety; and conflicts of interest between boards could arise. She stated the KSBN has had positive outcomes and is willing to continue to share agency efficiencies and assist other agencies, and that can be done without consolidation. KSBN supports the continuation of an independent agency.

In response to questions, the Executive Administrator stated, of the seven investigators, six are registered nurses and one is a licensed practical nurse. She noted the investigations are timely because the seven investigators know the scope of the nursing practice. An Assistant Attorney General and a Special Assistant Attorney General are housed in the KSBN office, and their salaries are paid by the KSBN.

**State Board of Healing Arts.** The Executive Director of the BHA gave a presentation of the work of the agency. The BHA's mission is public protection and strengthening through education those who practice medical professions under the BHA. The Executive Director noted public protection and economic benefit are key facets of professional regulation. She stated there is a shortage of health care providers, so it is incumbent upon the BHA to license qualified medical professionals efficiently to meet patient needs, without creating overly burdensome regulations that inhibit the practice.

The Executive Director discussed the differences between the BHA and KSBN with regard to agency size, licensing population, budget, and the public protection and safety requirements for the different professions. She noted, as one moves up the continuum of health

care complexity, there is a vast difference on what is necessary and appropriate to ensure the basic mission of public protection. The requirements for licensing and regulating the professions vary significantly.

The Executive Director responded to questions regarding the differences between an umbrella board and an independent board. She stated there are several different regulatory agency structures nationwide. She noted Oklahoma has separate regulatory boards for medical doctors and doctors of osteopathic medicine, each of which have a couple of allied professions. She said Missouri has a regulatory commission with a wide range of professions. The Executive Director noted the agency's experience, from a regulatory perspective with the licensing of multiple professions and some states that have the global regulatory agencies, is that these states struggle with efficiencies, bureaucracy, and "red tape." She stated the BHA has struggled to get verification for someone previously licensed in Illinois or in other states with large regulatory agencies.

The Executive Director provided a brief history of the Kansas Healing Arts Act (Act), noting the Act itself is specific to three professions, but each profession has its own practice act that governs and regulates it. She stated this requires the agency staff to work together to provide a multitude of functions for the different professions, such as processing applications and online renewals, performing intake and reviews, and investigating complaints. The staff perform all these functions for all professions, which vary significantly by profession.

According to the Executive Director, approximately 3,000 new licenses were issued for FY 2016. The agency processes license applications on average within three days, including weekends and holidays, and typically the same day or the next. She noted 95 percent of the renewals are completed online, and the agency has become more efficient in the last few years with the use of technology. The BHA website contains information from 1997 forward on all public documents for licensee actions, and licenses may be verified online.

In regard to the disciplinary investigations, the Executive Director stated individuals investigate their own profession because they best know the standard for their profession. Review committees for specific professions make decisions based on the standards for that profession, and experts in the same field are used to provide an appropriate review. Part of the peer review process is the disciplinary panel, which is a subgroup of board members that reviews cases where standard of care is not met or there is a serious concern. Experts, who may come from out of state, must be hired by the hour to review the complex medical complaints, making these complaints resource intensive. She noted the importance of autonomy in the BHA's multi-professional regulatory environment.

The Executive Director responded to questions regarding software use, stating the BHA has the same software as KSBN. When asked about the potential to use this software for all health agencies, she stated KSBN, BHA, the Board of Technical Professions, the Kansas State Board of Cosmetology (KSBOC), and the Real Estate Board use the same database and platform. The Office of Information Technology Services (OITS) approached BHA because of agency in-house expertise of the software and it was a challenge for OITS to host and maintain for the agencies.

In response to a question about the reason for the disparity between KSBN and BHA with regard to the number of licenses, employees, and other areas, the Executive Director replied it hinges on the complexity of the licensed professions.

**State Board of Pharmacy.** The Executive Secretary of the KBP stated KBP's mission is to ensure all persons and entities conducting business relating to the practice of pharmacy in the state are properly licensed and registered. The KBP also strives to assure compliance with pharmacy standards regarding the compounding, manufacturing, and dispensing of prescription drugs, eliminating unlicensed and unqualified practice in Kansas, educating licensees, and setting very high standards for examination and qualification for licensure.

The Executive Secretary stated the KBP licenses qualified individuals to be pharmacists,

students or interns, or technicians, and also evaluates competency and character at the time of licensure and throughout licensure or registration. The agency also registers resident and non-resident pharmacies dispensing drugs to Kansans, as well as durable medical equipment providers, pharmacy drug manufacturers, wholesale distributors, labs, ambulances, research institutions, and clinics. The agency also provides regulatory oversight for canine units required to practice and train with both legal and illegal substances for which KBP monitors compliance.

The Executive Secretary stated the agency regulates the profession by conducting inspections of all registered facilities on an annual basis, audits continuing education compliance, and conducts investigations on all complaints or other suspicious activities reported to the KBP. The KBP manages the unused medication donation program that allows pharmacies to donate unused medications to clinics which then provide them to indigent patients. To date, the program has seen more than \$18.0 million in donated medications in the past five or six years.

The KBP membership, meetings, and terms were described by the Executive Secretary. The KBP has seven members: six are licensed pharmacists from various practices and one is a public member. KBP meetings are held quarterly; however, meetings usually occur five to six times a year, with some meetings by phone conference. The agency has been working to have virtual meetings to decrease costs. The agency is a fee-funded agency, so expenditures are based on grant funding or licensure and registration fees. The KBP appoints an executive secretary and employs five inspectors, three of whom are licensed actively practicing pharmacists and two are pharmacy inspectors. Licensing staff are also employed. The KBP utilizes outside counsel for legal work; however, there is access to several lawyers in the firm who provide counsel to other public health agencies. To decrease costs, the KBP has hired two part-time law students to help facilitate legal matters.

The Executive Secretary stated the KBP licenses just under 6,000 pharmacists and approximately 8,000 technicians and registers 5,600 different kinds of facilities. About one-sixth of registered facilities are pharmacies in Kansas.

KBP also inspects ambulances only to assure proper storage and handling of pharmaceuticals. The agency currently prints licenses, but will stop that process soon and move toward the in-house online verification process.

The Executive Secretary discussed the agency's search for a database to replace an old system. Staff reviewed software used by other agencies, but the KBP needed additional enhancements that would have been costly. The KBP executed a contract with eSoftware Solutions and has been customizing the database system since May 2016. Under the new system, applications are online and licensees are able to print their own renewals. The database will include continuing education. It directly links an internal case management system and has a staff audit monitoring feature that electronically logs all activity.

In reviewing other state reorganization models, the Executive Secretary stated, with the one-size-fits-most models, agencies might be required to use shared resources that fit the needs of most participants, but not all. She noted, although the agencies may perform the same functions, each license type and law is different and unique and requires some specialized knowledge and understanding of the specific profession.

The Executive Secretary answered questions regarding the transferability of functions and whether there are important distinctions requiring preservation of independent boards. She stated specialized knowledge is needed because it is important to have people trained in the profession who can do the job with the necessary skills and ensure compliance. She stated agencies need to know when to waive a rule or make an exception; if they are not familiar with the profession, it is very difficult to know when to make those allowances.

According to the Executive Secretary, consolidation often results in automated services, increased response time, decreased quality, and decreased disciplinary actions. She stated the consolidation process being discussed will not be as efficient as the structure currently in place.

The Executive Secretary added she would like to see more data about the A&M Study analysis to better understand the recommendation. She stated to operate the higher level board like in Texas, most smaller groups under it are contributing money to the upper group to function, and this is costing more money. She stated Texas is several years into its consolidation and has seen some struggles and some benefits, but the consolidation was not as expected. She noted KBP was part of the Kansas Department of Health and Environment (KDHE) and migrated out. She asked the KBP not be placed under an umbrella organization again.

In terms of a cost-benefit analysis of consolidation, the Executive Secretary indicated KBP staff provided the following concerns: increased middle management for additional staff, slow processing time, inconsistency in message with more staff, license verification goes down dramatically, and less training and education for staff. Consideration should be given to multi-lingual services, information technology, human resources, legal support, shared meeting spaces, and collaboration of staff. The Executive Secretary stated the KBP already shares resources. She said when the KBP has needed additional support, KSBN and BHA sent staff to assist. In terms of office space and meeting space, it is difficult for larger departments to locate the entire department in one building.

The Executive Secretary said efficiencies could be realized, and KBP would be willing to review and would want to be a part of the recommendation if the change would work for all agencies involved.

In response to a question, the Executive Secretary reported the agency has 12 employees and 1 part-time pharmacy student. The KBP budget is \$2.4 million. The agency has, in the past, received grant funding upwards of \$300,000 per year. The operating budget for K-TRACS (the prescription monitoring program in Kansas) is \$208,000.

**Behavioral Sciences Regulatory Board.** The Executive Director of the BSRB stated he had an opportunity to review the A&M Study recommendations with the BSRB and provided

background information about the agency to explain in detail its opposition to the recommendations.

The Executive Director said the BSRB is the state licensing agency for the mental health professions and traces its roots back to 1980 when the Social Work Board and the Board of Psychology were combined to form the BSRB. The BSRB licenses the following mental health professionals: licensed psychologists; master level psychologists; clinical psychotherapists; bachelor, master, and specialist clinical level social workers; master and clinical level professional counselors; master and clinical level marriage and family therapists; bachelor, master, and clinical level addiction counselors; and assistant behavior analysts and behavior analysts.

The Executive Director stated there are 12 members on the BSRB, 4 of whom are members of the public. The BSRB meets every other month, and teleconferences are scheduled if a special activity needs to be discussed. During the months the BSRB does not meet, the Complaint Review Committee meets and determines if the activity in question violates the law. The BSRB can revoke, suspend, limit, condition, refuse to license or refuse to renew a license, assess a penalty up to \$1,000, and can take further disciplinary action if the activity is criminal in nature. There also is an advisory committee for each profession that is chaired by a member of that profession who serves on the BSRB and provides input to the BSRB from each profession's perspective.

The Executive Director noted the total number of licenses effective June 1, 2016, was 12,630; a breakdown by licensed professional was provided in the testimony. Examinations to meet licensure requirements are given through the national associations as part of the membership fee.

According to the Executive Director, the budget for FY 2017 is \$734,909 and \$754,454 for FY 2018. About 74 percent of the budget is for personnel. The agency is exclusively funded with licensure fees, and receives no SGF, federal funds, or grants. Ten percent of the fees collected is deposited into the SGF before the agency receives the remaining 90 percent.

The Executive Director stated the BSRB is one of the largest consolidated mental health regulatory boards in North America. The BSRB strives for efficiency by cross-training the other eight staff members to enable them to perform multiple jobs and to have the needed expertise to license many different mental health professionals.

The Executive Director stated representation from all professions would be a key consideration if the health boards were to consolidate. Increased managerial layers could potentially decrease efficiency. Managerial expertise is needed to monitor and assist the staff, and this could add an additional layer of managers of the umbrella agency. He noted the more layers that exist, the more removed the board is from constituents. He said it is difficult to obtain information on licensure by reciprocity from the State of Illinois, which is one example of a consolidated system.

In considering administrative costs such as fiscal services, human resources, information technology, and legal services, the Executive Director stated the agency does not have specific employees in the agency to perform those tasks. Legal representation is provided by two attorneys from the Kansas Attorney General's Office (AG's Office) who handle all legal matters. The BSRB contracts with the Division of Personnel Services for \$1,200 a year for all Human Resources matters. The BSRB utilizes OITS for all technology services and the Small Agency Accounting Center for fiscal work.

In response to questions from the Committee regarding the BSRB funding and expenditures, the Executive Director stated the cost for personnel services is \$100 a month. There is no payment made directly to the AG's Office or the Small Agency Accounting Center. If additional information technology expertise is required from OITS, there is an hourly rate charge.

The Executive Director asked whether additional human relations and legal staff would need to be hired in a larger consolidated agency, thus adding to the budget, to replace the cost-effective shared services now used by the BSRB and other agencies. He also stated the investigations are becoming more complex and time consuming. He said the BSRB expects fiscal

oversight by the Legislature, but there will be no savings to the SGF if consolidation of regulatory boards occurs.

The Executive Director said regardless of the Committee's decision, the BSRB would work with the Legislature and stand ready to assist in any way.

**State Board of Mortuary Arts.** The Chairperson noted it was uncertain if the State Board of Mortuary Arts (SBMA) would be included should the Committee recommend consolidation, but believed the Executive Secretary of the SBMA should be invited to present to the Committee. The Executive Secretary stated the SBMA does not believe it needs to be merged with other agencies to become more efficient, although the agency understands the charge of the Committee.

The Executive Secretary stated the mission of the SBMA is to ensure licensees perform their professional services in a manner providing maximum protection for the health, safety, and welfare of Kansans; inform the public of the laws available to them when using the services of a licensed funeral professional; and provide additional support whenever possible.

The Executive Secretary said the SBMA and staff believe consumers and licensees deserve knowledgeable representatives who can be contacted about situations occurring within the funeral profession and the area of licensure and regulation. He stated this is a most vulnerable time for their consumers and they need to be able to timely speak to a professional who can guide them when dealing with the loss of a loved one.

The Executive Secretary stated there are three full-time staff consisting of an inspector, an office manager, and an executive secretary. The agency licenses embalmers, funeral directors, assistant funeral directors, crematories, crematory operators, funeral establishments, and branch establishments. The agency also pre-registers and registers students in mortuary college and registers both apprentice embalmers and apprentice funeral directors. Quarterly examinations are administered to funeral directors and monthly examinations are administered to assistant funeral directors. The

SBMA works with approximately 1,000 non-licensee contacts annually, and more than twice that many contacts on subjects dealing with the funeral profession.

The Executive Secretary explained OITS provides technology services for a fee when it cannot be handled in-house. The AG's Office provides legal services of two attorneys. The agency functions on licensee fees, and 90 percent of the fees go to the Mortuary Arts Fee Fund and 10 percent goes to the SGF.

The Executive Secretary concluded by saying the SBMA and staff believe the current system is working and excels, and the agency should be allowed to continue performing its mission in its current manner.

**Kansas Dental Board.** The Executive Director of the KDB stated the KDB has nine members consisting of six dentists, two hygienists, and one public member. The KDB has three staff members consisting of an executive director, paralegal, and a licensing specialist. The chief role of the KDB is to license and regulate dentists and dental hygienists across the state, which number 2,200 and 3,000 respectively. He explained the KDB also performs disciplinary investigations, on which it spends most of its time and resources.

The Executive Director explained the KDB's budget is \$400,000 each fiscal year. Unlike all of the other state agencies, the agency hires independent contractors. One licensed dentist is hired who performs 360 annual inspections of dental offices across the state. He noted there is tremendous value in having a dentist perform the inspection of a dental office. This dentist also serves as an expert witness in trials and works through an in-depth quantity contract. An attorney also is contracted on an in-depth quantity contract. If additional funds are needed, they are requested through the permission of the Budget Director through an investigation reserve fund. The agency receives no SGF moneys, but exists on licensee fees; 90 percent of those fees are deposited in the agency fee fund, while 10 percent is paid to the SGF. He stated the fee split is more valuable to the KDB than a sweep of its funds because it is faster and a guaranteed income. The 10 percent fee split

is intended for accounting, budgeting, payroll, and any incidental costs.

The Executive Director stated the KDB will do what is necessary to move the state forward if the Committee decides consolidation is the best route.

In response to a Committee question regarding the KDB complaint caseload, the Executive Director noted the caseload is variable, averaging 125 complaints the last couple of years. Previously, the average was 150. He noted, although the number of cases has diminished, the complexity has increased tremendously.

**Kansas State Board of Cosmetology.** The Chairperson noted the Executive Director of KSBOC was invited to provide a presentation, but the agency probably fits in an area other than under an umbrella public health board. The Executive Director clarified there is some separation between the public health boards and the KSBOC, but the latter includes aspects with regulations and operations that cross over into the health industry. The KSBOC's main focus is the beauty industry, regulating the multiple beauty industry professions that provide hair, skin, and nail services, as well as body art (tattooing, piercing, and permanent cosmetics) and tanning facilities.

The Executive Director stated the KSBOC has an eight-member board. The agency regulates, licenses, and also provides information to the professions to help them comply with the law. The agency can take disciplinary action on those in violation of rules and regulations. The goal has been to work the agency out of the revenue arising from disciplinary measures through the use of the education process. About four years ago, the agency began with a \$130,000 revenue stream from disciplinary actions taken and were down to \$59,000 last year from revenue for fines.

The Executive Director explained there are 14 full-time staff members and 1 part-time person. The KSBOC budget is just under \$1 million. The agency is comprised of three sub-programs: administration, licensing, and enforcement. The enforcement program does a good job of inspecting 4,000 facilities statewide. The facility

inspections are completed annually, but the statutory requirement is every two years. An effort is made to inspect every facility at least once a year. There are approximately 30,000 to 32,000 licensees including schools, facilities, and licensees. The number of schools has become very fluid, as many corporate-owned schools have closed nationwide.

The Executive Director noted centralization of board regulatory agencies is not something new. Many states have umbrella agencies. However, all of the agencies presenting before the Committee are fee funded, do not draw from the SGF, and all contribute 10 percent of their revenue stream to the SGF. The KSBOD also utilizes those services paid through the contribution to the SGF for technology through OITS. The agency also contracts with the Department of Personnel Services for \$100 a month.

A question was raised about a previous hearing that included much debate about folding the Kansas Board of Barbering into the KSBOD. The Executive Director noted barbers want to maintain autonomy.

**Kansas Board of Examiners in Fitting and Dispensing of Hearing Instruments.** The Executive Officer of the KBHAE provided testimony to the Committee. He noted the mission of the KBHAE is to establish and enforce standards to ensure Kansans receive competent and ethical hearing aid care. The agency regulates hearing instrument specialists and audiologists.

The Executive Officer stated the KBHAE is a fee-funded agency consisting of one part-time executive officer. Statutorily, there are five board members. Two licensure exams are administered annually, and some of the examiners are also board members. There are two KBHAE meetings annually, and teleconference calls are held as needed. He noted, although this agency is smaller, it is of great importance to Kansas consumers. Like other agencies, 90 percent of the revenue is deposited in the fee fund and the remaining 10 percent goes to the SGF. Revenue is generated through licensure, application, exam, and other regulated fees. In addition, the KBHAE processes consumer and provider complaints.

The Executive Officer stated the opinion of the KBHAE is the State will not benefit from placing the KBHAE under the umbrella board of the public health agencies. The KBHAE is not funded by the State, and all revenue is from licensing fees. The main concern is that the KBHAE retain authority over the licensure and examination process and the discipline of those licensed by the KBHAE. Being self-sustaining, it does not appear there would be a benefit in making administrative changes to a board that has competently and efficiently served Kansans with hearing impairments for nearly 50 years.

### **December 14, 2016, Committee Meeting**

**Kansas Board of Veterinary Examiners.** The Executive Director of Kansas Board of Veterinary Examiners (KBVE) provided testimony to the Committee. He discussed the development and mission of the KBVE, the composition of membership and staff, and meetings of the KBVE.

The Executive Director stated the agency recently completed a two-year trial merger with the Kansas Department of Agriculture that had negative outcomes, including non-communication, disruption and downgrade of services, loss of control, overturning of decisions, dilution of authority, undermining of mission, potential legal liabilities, disorganization of meetings, and lack of needed board member orientation and training.

The Executive Director stated the American Association of Veterinary State Boards surveys veterinary state boards and holds national meetings where information and ideas are exchanged with other states, and has not found any benchmark lines indicating the larger merged agencies are any more efficient than the stand-alone agencies.

The Executive Director added the KBVE is very efficient. The annual fee for licensure for veterinarians is \$95; however, the average across the nation is \$140. In theory, he added, there might be some positives for forming a multi-agency group, but the agencies must be like-minded. In consolidating, some services might be viewed as redundant, but should be reviewed carefully. He noted the fee fund balance changed dramatically from the time of the merger until July 1, 2016. The

KBVE began FY 2017 as a stand-alone regulatory agency.

In response to a question from the Committee, the Executive Director stated he works an average of 16 hours a week, which currently serves the public well, but strategic planning needs to happen going forward that will require more hours.

A Committee member stated he believed the merger between the Kansas Department of Agriculture and the KBVE is not a good example of the potential with mergers.

**Kansas Board of Barbering.** The Kansas Board of Barbering (KBB) submitted written-only testimony for the December 6, 2016, meeting. Members of the KBB presented testimony at the December 14, 2016, meeting on behalf of the KBB and for the Kansas Barbers for Legislative Action (KBLA). One member stated he understands there is significant pressure to reduce state spending and lessen the current deficit, but KBLA is opposed to the changes recommended by the A&M Study. He indicated the changes recommended would be of little benefit to Kansas consumers.

The KBB member stated the KBB consists of five members, four of whom are barbers and one public member-at-large. Three board members have an instructor's license to give exams. The KBB is responsible for testing on live models, including the straight edge shave. He said some of this testing is done inside a maximum security facility, and such exams could not be effectively tasked to another entity.

One KBB member also noted consideration is being given to the KBB administrator being a part-time position, with the office run by one person. He added KBB contributes to the State as a fee-funded agency. He stated barbers are a small group and fear their identity will be lost if merged with the KSBOC. He said a study was conducted of barbers, and about 98 percent do not want to consolidate with the KSBOC. Some respondents said they would drop their license if KSBOC and KBB were consolidated.

The other KBB member added there is also the aspect of public health, and fairly significant diseases can spread in the practice of barbering.

The second KBB member commented the A&M Study gave boards and commissions only two pages in the Study, less than 1 percent of the entire A&M Study. She added Missouri has combined boards and, if you were to call Missouri, the response time and expertise is reduced by the watering down of process resulting from any sort of merger. She stated when she calls the KBB, the staff is attuned to her questions and the applicable statutes. The staff is more efficient and effective and is not overpaid, and no one on the board or its agency is overpaid.

In response to a question, one KBB member indicated there are about 1,600 licensed barbers. When asked whether barbers would lose autonomy and the art of barbering if placed under a bigger agency that handles barbers, cosmetologists, body art licensees, and others, one KBB member noted so many different professions would be handled under one agency. The second KBB member added it is believed the KSBOC is assembled differently than the KBB, and its administrator is appointed by the Governor. The KBB administrator is hired by the KBB.

In response to why the KBB and the KSBOC could not easily be consolidated given their close office locations in Topeka and similar board size, the second KBB member noted the KBB is a fee-funded agency. She said there is no redundancy because the professions are different. Additionally, if licensees are willing to pay to fund their own separate licensing agency, they should have that option.

### ***Stakeholders' Presentations***

**Nursing Professions.** The President of the KBSN gave a presentation on behalf of the KBSN in opposition to the proposal to combine the KBSN and the BHA or any other board. She cited several reasons for opposing consolidation. Nursing is a stand-alone profession, with its own legal standing, own body of knowledge, own professional standards, and own areas of specialization. There are times when nurses work synchronously with other health professions to provide health care to patients, and there are times nursing profession priorities may be in conflict with other health care professionals. She said nurses are the only health care professionals who

provide sustained continual contact and care to patients. Nurses are the coordinators and managers of direct care. She said because nursing is so pervasive and provides such critical care to citizens of Kansas, safety is paramount.

The KBSN President stated, by combining the boards, nursing could potentially become subservient to other boards. She said it is imperative the KBSN continue to be autonomous and oversee the nurses in Kansas to keep the public safe and, to date, KBSN has done that effectively.

The KBSN President stated two factors enable KBSN to deliver services the way it does: a detailed strategic plan and being able to leverage its expertise and experience within the profession to drive its decision making.

With regard to the strategic plan, the KBSN President stated, unlike the other boards in Kansas, KBSN has had a detailed strategic plan for 15 years. It prioritizes KBSN's initiatives and allows for the direction of personnel, board members, and resources to achieve these initiatives. If KBSN were combined with other boards, including BHA, KBSN's ability to strategically plan would be substantially impaired. She asked who would establish priorities among several boards and how resources and personnel would be given to carry out KBSN's initiatives when other boards would have priority.

With regard to the other factor involving the ability to be able to leverage KBSN's expertise and experience within the profession to drive its decision-making, the KBSN President noted, unlike many other boards, the KBSN requires its executive administrator to have both nursing and administrative experience, and that is reflected in how the KBSN is managed and operated.

As an example, the KBSN President noted, at the December 6, 2016, meeting, the Executive Director of BHA said she considers BHA to be a mini-umbrella board. The BHA has number of health care professions under its umbrella. If BHA plans to conduct an investigation, it requires multiple committees, levels of committees, and hiring an expert. The process is long and costly. The BHA processes 700 cases a year. By contrast,

KBSN has expert nurse investigators and expert nurses sitting on one committee. It is a one-step process. KBSN investigators bring data and the committee makes disciplinary decisions because it has expertise in its profession to do so. She said KBSN opens and processes around 2,000 cases a year and does so very cost effectively. By placing KBSN under an umbrella where there are multiple ongoing processes, KBSN's ability to be efficient and effective could be significantly impaired and cost more. In addition, by slowing down those processes, the public is not kept safe, because inferior or unfit nurses would be working for months longer, when KBSN could ordinarily stop licensees from practicing sooner.

The KBSN President noted, at the December 6, 2016, meeting, the Committee heard from many other boards on how they are working independently to streamline processes, handle matters efficiently, and cut costs. Many of the boards collaborate to share innovations and systems or operational perspectives. One example is the KBSN working in collaboration with the KBP and the BHA to develop policy for chronic pain management. These boards work more efficiently and cost effectively together. She said the point is the boards made the decision about priority collaborations, unlike an umbrella board that pits boards against each other in competition for resources, personnel, and priorities. When expert boards driven internally collaborate, they do so in a way that makes sense. She stated the boards show they collaborate and are committed to continuing to do so.

The KBSN President concluded by saying the KBSN has demonstrated its critical need for oversight, demonstrated it has done its job well, and shown it collaborates with other major boards. She respectfully requested the Committee reject the proposal to combine the KBSN with the BHA or any other board.

A representative of the National Council of State Boards of Nursing (NCSBN) also provided testimony. She noted the national organization provides data, service, and resources to the state boards of nursing to assist in their functions and to help in their role of public protection. A great deal of research is conducted through Project CORE, which gathers data every other year from the boards of nursing to help establish their

performance measurement. The boards can see from the data how their own board is doing in relation to other boards, especially in regard to efficiency. She added her testimony reflected not only that the KSBN is efficient, but it is one of the most efficient boards in the country.

The NCSBN representative presented data comparing KSBN with umbrella boards, independent boards, and three boards with the same number of nurses as Kansas. The data indicated KSBN processes licenses and resolves complaints faster and has the lowest licensure fee per year.

As an example of the complexity of the work by the KSBN staff, the NCBSN representative stated Advanced Practice Registered Nurses (APRNs) have 4 distinct roles and 32 certification exams, but staff needs to know the other exams that exist to ensure they are not approving an exam that is unqualified. Not only does staff need to know Kansas' licensure requirements, but also those across the nation. This does not include the work dealing with licensed mental health technicians the KSBN also oversees.

The NCBSN representative said, from a national perspective, the KSBN is an exemplary board and has the respect of other state boards because of its quality and its dedication to public protection.

The Chairperson of the Legislative Committee of the Kansas State Nurses Association (KSNA) also provided testimony stating KSNA members object to the consolidation of boards because the responsiveness of the KSBN is valued in order to facilitate changes that enhance the ability to be current in practice and education.

The Chairperson said the KSNA Legislative Committee members telephoned states where the board of nursing was in an umbrella structure. KSNA members were unable to speak to someone who could answer questions, and were often transferred numerous times to voice mail. Several times they were on hold for 15 minutes or no one answered the telephone. The Chairperson said Kansas nurses appreciate the respect, consideration, and efficiencies received from the KSBN and the responsiveness to questions and

concerns. She added KSNA is unable to identify any advantages of placing KSBN in a potentially competitive relationship with another agency or having an executive director in a position of possible biases and conflicts of interest. There is concern such an umbrella arrangement would undermine the efficiencies KSBN has established. Additionally, she noted every health board should be concerned that no fiscal analysis supporting an umbrella structure in Kansas has been provided.

**Social Work Profession.** The Executive Director of the Kansas Chapter National Association of Social Workers (KNASW) presented testimony. She noted there are over 7,000 social workers licensed and regulated in Kansas by the BSRB. She stated the BSRB is a consolidated agency and a consolidated regulatory board because they regulate seven different professions.

The Executive Director said KNASW does not believe a consolidated board is efficient for public protection and would promote an independent board for social work if such would be considered in the state. She stated the BSRB, by licensing many different professions, loses the identity of the profession. She also noted social work is grossly under-represented on the BSRB, with only 2 social workers representing 7,400 licensed social workers. There are 2 psychologists representing 900 psychologists.

The Executive Director stated 38 other states have independent boards for social work. The three states mentioned in the A&M Study have independent licensing and regulatory boards for social work, even though they are in an umbrella administrative agency. She noted, if there is an opportunity to make some change, KNASW would strongly advocate for an independent regulatory board for social work.

**Health Care Professions.** A health care consultant presented testimony in which she noted the December 6, 2016, testimony was a loud and clear message there is no real support for consolidation of regulatory boards under an umbrella board, but state agencies would be willing to cooperate if that was the action taken by the Legislature. The common theme was to protect the public. She noted the testimony also identified

complexity and autonomy in doing this work all funded by fees from those they license. No SGF is being expended, unless a task related to their regulatory role has been added to the agency's work, such as tracking prescription orders for scheduled drugs assigned to the KBP. She added she does not support an umbrella board for public health fee-funded agencies in Kansas.

**Speech Language Pathology and Audiology Professions.** The Executive Director of the Kansas Speech-Language-Hearing Association (KSHA) gave a presentation. The KSHA has 1,000 members in the state representing speech language pathologists and audiologists. Audiologists are required to hold a license through the Kansas Department for Aging and Disability Services (KDADS) to practice in the state. Audiologists who also wish to sell hearing aids must have another state license through the KBHAE.

The Executive Director stated KSHA proposes to consolidate the KBHAE with KDADS. The reasons for the proposal include that KDADS is an existing board that already regulates most of the speech and hearing professionals in the state. This would eliminate unnecessary duplication and redundancy. The second reason for this consolidation is consumer protection. At this time, it is very difficult to determine who to file a complaint with if a consumer is dissatisfied with the fit of hearing aids. She stated, by moving the KBHAE under KDADS, it would be much easier for Kansas consumers to determine where the complaints should be filed. She noted KDADS is fully staffed with full-time employees, so complaints will be handled efficiently and promptly. The third reason she cited to advocate for the consolidation of KBHAE with KDADS is professional access. She said she hears from KSHA members that they are unable to get the information they need from the KBHAE or have a difficult time contacting KBHAE. She also received calls from numerous outside agencies wanting to hire a hearing aid professional that ask her for license verification because KBHAE has no website. She indicated KDADS already has an online license verification tool, and there is no reason to build another website.

In summary, the Executive Director stated KSHA supports the idea of streamlining, consolidating, and simplifying the licensing

process, and placing audiologists under one agency, preferably KDADS, because KDADS already licenses audiologists.

A practicing audiologist also gave a presentation. He stated KDADS is a logical agency to regulate hearing aid dispensing because it has licensed audiologists since 2012, and about half of the licensees under the KBHAE are already licensed under KDADS. Consolidation would allow for the efficient licensing of hearing aid specialists in the state and also provide state oversight over KBHAE by being located in Topeka. He noted KDADS can offer services now provided by the KBHAE and do so at a lower cost. KDADS also has a website consumers and professionals can access. The KBHAE does not have a website to assist a consumer with an issue relating to hearing aids or dispensing in Kansas. He also stated KDADS is cost efficient. The cost of a license for an audiologist is \$135 every two years. The KBHAE charges \$100 per year, and has proposed a 25 percent increase in fees beginning in 2017. He asked the Committee to act to move KBHAE to KDADS.

**Dental Profession.** The Executive Director of the Kansas Dental Association (KDA) presented testimony, noting Kansas dentists have a very good relationship with the KDB. He stated the KDA and KDB work together on peer review and the well being program. He said KDA believes the KDB is very efficient.

The Executive Director stated, because of economies of scale, the KDA understands why the A&M Study suggested placing public health boards under one umbrella agency. However, there is a point where efficiencies actually decrease. He stated perhaps consolidating smaller boards would make more sense as the Committee moves forward.

**Funeral Services Profession.** The Executive Director of the Kansas Funeral Directors Association (KFDA) provided testimony. The KFDA represents approximately 300 funeral homes across Kansas. She said KFDA is opposed to placing the SBMA under an umbrella agency. KFDA is supportive of finding efficiencies within SBMA and in doing so, keeping licensing fees paid by members in check. She noted the SBMA is

extremely streamlined and makes a conscious effort to work with the minimal amount of funding necessary to run operations since it is a fee-funded agency. If more efficiencies are found, there is no fiscal impact to the State, and it only affects licensees.

The Executive Director stated funeral service is a very specialized field and somewhat different from other health-related professions that could be placed in an umbrella agency. She noted it is important to KFSA members that the staff of the agency has funeral service experience, while the staff of an umbrella agency would likely lack expertise in the area of funeral service, which the Executive Director of KFSA believes the member licensees and the public deserve.

The Executive Director noted when contacting other states' consolidated agencies, there is frustration that answers to questions cannot be received because the staff does not have the same level of expertise. Calls are transferred many times, and no one has an answer. In Kansas, a person can always reach someone with expertise, and that holds true for the public and licensees. She said the current method of regulation is working extremely well. A structural change in the regulatory system of fee-funded agencies will likely lower the level of service and regulation provided for the benefit of the public and to licensees.

**APRN Profession.** A representative of the Kansas Advanced Practice Nurses Association (KAPN) provided testimony. In Kansas, there are almost 5,000 advanced practice registered nurses, certified nurse midwives, clinical nurse specialists, and nurse practitioners.

The representative stated the idea to merge public health boards, particularly the KSBN and the BHA, is a proposal to solve a problem that does not exist. The KSBN and the BHA both operate efficiently. There is no data or report that finds such a change to be more efficient. No fiscal note is attached to this proposal and making a change of this magnitude would be costly. She stated there is uncertainty as to how this proposal would be more efficient.

The representative said the KSBN and BHA both operate on the fees generated from licensing professions in the state, and both operate within their own budgets and are financially responsible to maintain those budgets. She added the KSBN has demonstrated efficiency of operations and processes handling 72,000 licensees. Kansas staff have been responsive to questions and concerns. It has also implemented technology for streamlining processes.

The representative stated KSBN has sufficiently demonstrated the value of its work and the efficiency of its staff, and firmly believes governance of nursing belongs with nursing. She stated the KAPN does not support the consolidation proposal.

**Practical Nurse Educators.** The President of the Kansas Council of Practical Nurse Educators (KCPNE) gave testimony on behalf of the Kansas Council of Associate Degree Nurse Educators (KCADNE) and KCPNE. She stated these organizations are concerned consolidation would diminish access and quality of services. She added KCPNE and KCADNE acknowledge the effort to promote cost savings and efficiency to the State; however, including KSBN in this consolidation could result in loss of proficiency, creating more expense, and increase risk of public safety. She stated some boards might benefit from the process, but consolidation would not be an advantage to the KSBN. Consolidation would bring a loss of true peer review to all disciplines involved.

## **Statutory Overview and Research**

At the December 6, 2016, meeting, Kansas Legislative Research Department (KLRD) staff provided the Committee with information regarding public health boards in other states, which was to be reviewed by Committee members prior to the December 14, 2016, meeting.

An Office of Revisor of Statutes staff member, in response to questions that arose at the December 6, 2016, meeting, shared the history of the services provided and the 10 percent fee fund credit statutes. The public health agencies operate on the fees they receive for licensing. He referred to KSA 2015 Supp. 75-3170a (use and purpose of 10 percent charge to fee agencies and when charge

not applicable). The statute provides this credit is to reimburse the SGF for accounting, auditing, budgeting, legal, payroll, personnel, purchasing, and any other government services provided by the State to the fee agencies. The information provided by Revisor staff includes pages relating to a number of health-related fee agencies from the *2016-2017 Kansas Legislature Appropriations Report* prepared by KLRD staff. The information shows expenditures and FTE positions authorized, whether filled or not, and indicates no money is paid to the agencies from the SGF.

The Revisor staff member said a limit of \$100,000 per fiscal year for transfer to SGF was established for the fee-funded agencies. Although originally enacted in 1973, the credit was 20 percent and did not have a cap. In 1975, the Legislature created a \$200,000 cap. This was changed to the current law by the 2011 Legislature with a fee credit of 10 percent and a cap of \$100,000.

There are a number of agencies that transferred \$100,000 per agency to the SGF in FY 2015 and FY 2016: KSBN, BHA, KBP, BSRB, and the EMS Board. KSBOC transferred \$100,000 of fee fund revenue to SGF in FY 2016. All boards

contribute to the SGF as reimbursement for services received from the State.

In response to requests made at the December 6, 2016, meeting, KLRD staff prepared a listing by health agency that includes the number of FTEs and executives, budget, expenditures, amount paid to SGF per statute, and litigation costs. KLRD staff also provided a spreadsheet containing agency board information, including number of board members, frequency of meetings, facility location, and facility space by square footage.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends:

- The KSBN and the BHA not be consolidated at this time; and
- The House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare review and consider combining KBHAE with KDADS.