

Committee Reports to the 2021 Kansas Legislature

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Supplement

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**Special Committees;
Joint Committees;
Other Committees,
Commissions, and
Task Forces**

Special Committee on Foster Care Oversight

Robert G. (Bob) Bethell Joint Committee on Home and Community Based
Services and KanCare Oversight

Joint Committee on Information Technology

Legislative Budget Committee

Joint Committee on State Building Construction

Capitol Preservation Committee



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Foreword

This publication is the supplement to the *Committee Reports to the 2021 Legislature*. It contains the reports of the following committees: Special Committee on Foster Care Oversight, Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight, Joint Committee on Information Technology, Legislative Budget Committee, Joint Committee on State Building Construction, and Capitol Preservation Committee.

This publication is available in electronic format at <http://www.kslegresearch.org/>.

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Summary of Conclusions and Recommendations

Special Committee on Foster Care Oversight

The Committee recommended the Legislature establish a statutory joint committee on child welfare oversight to meet quarterly, consisting of legislative members from the Senate and House of Representatives, with both parties represented, and appointed by leadership.

The Committee noted the joint committee, if established, should:

- Consider the establishment of an Office of the Child Advocate or independent oversight of foster care;
- Look further into the Community Collaborator pilot program;
- Continue discussion and increase understanding of the establishment of a Health Information Specialist Unit;
- Reconsider the use of hair shaft testing for the presence of illegal substances in the child welfare system;
- Hold an informational hearing on Medicaid expansion and lifetime restrictions on Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program and their impact on the foster care population; and
- Determine if potential conflicts of interest or incentives exist for the foster care contractors and grantees that affect the decisions that should be based on the best interest of the child.

If a statutory joint committee on child welfare oversight is not established or the newly established committee does not pursue the aforementioned recommendations, the Committee recommends the Legislature and any appropriate committee consider those recommendations.

Additionally, the Committee urged the Chairperson of the Joint Committee on Corrections and Juvenile Justice to consider the contents of 2020 HB 2744 relating to crossover youth and noted its support for:

- Legislation to codify and continue reimbursement of health services delivered through televideo and telephone;
- Reintroduction of prior legislation (2018 SB 319) allowing for the use of the Department for Children and Families (DCF) or local child welfare contractor or grantee address to expedite school enrollment for a foster child who has been moved from the school of origin and for whom foster care or permanent family placement has not been determined, and

- The introduction of legislation to prohibit an employer from dismissing an employee who is meeting court-ordered requirements for purposes of reunification with their child who is in the custody of the State.

The Committee made the following recommendations for DCF:

- Work with the Department of Administration to explore the use of Coronavirus Aid, Relief, and Economic Security (CARES) Act funding for technology support to improve safety monitoring, coordination, and efficiency within the child welfare system;
- Provide a comparison of the benefits under the original Grandparents as Caregivers legislation (2006 SB 62) and current TANF benefits to grandparents caring for their grandchildren;
- Work with universities to explore the use of Title IV-E funding to support education and promote a professional track for the child welfare workforce;
- Provide foster parents with information on continuous training opportunities;
- Develop a plan of action to address the delay in obtaining school records and transferring medical records for children and youth in foster care;
- Demonstrate transparency in communicating the scope of special needs and behaviors of children placed with a foster family and appropriate funding based on the children's needs;
- Develop a checklist or similar document provided to the birth family immediately following a court hearing identifying all court-ordered expectations to be met to achieve reunification with their child in the custody of the State;
- Provide information on the use of psychotropic medications used to subdue behaviors of children and youth in foster care and report to the currently proposed joint committee on child welfare oversight or the appropriate legislative standing committee;
- Consider mandatory training for foster parents regarding cultural competence to include the special needs of children of color and LGBTQ children;
- Consider development of post-foster care housing for youth who age out of the foster care system;
- Work with the Kansas State Department of Education to explore ways to transfer funding from a public school to an alternative education program for children and youth who have been expelled; and
- Work with the Kansas Legislative Research Department to research how to develop and expand a two-year certificate program for behavioral health technicians and guardians *ad litem*, through community colleges and or technical schools, and how

such a program would fit into the child welfare system and how it might impact funding.

Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight

The Committee recommended:

- The House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare hold informational hearings within the first 60 days of the 2021 Legislative Session on the 340B Drug Pricing Program and the efforts of Oral Health Kansas;
- The Legislature review how other states estimate human services consensus caseloads;
- The K-TRACS prescription drug monitoring program be funded through the State General Fund;
- Nursing facilities be given the same immunity from civil liability provided to health care providers in 2020 Special Session HB 2016;
- The Legislature address the systemwide health care workforce issues, such as: safety, shortages, pay, education, licensure, and training;
- The Legislature work on integrated care and coordinating general and behavioral health, which includes mental health, substance abuse, and primary care;
- The Legislature monitor the financial stability of long-term care facilities in Kansas;
- The Legislature monitor and report the increase in Home and Community Based Services (HCBS) waiver services provided to school-aged children in remote settings;
- The Legislature support expansion of the federal Excellence in Mental Health Act and then pursue participation. If participation in the Excellence in Mental Health Act is not possible, pursue a state plan amendment or change to the Section 1115 Waiver to allow interested providers to gain access to the Certified Community Behavioral Health Clinic model.
- The Legislature consider adding the Program of All-Inclusive Care for the Elderly (PACE) to the consensus caseload process;
- Regarding telehealth, the Legislature should:
 - Develop standards to ensure high-quality telehealth services are provided;
 - Maintain reimbursement codes added during the public health emergency for tele-behavioral health services and consider options to prevent loss of facility fees;

- Establish coverage of telehealth for crisis services to allow for the use of telehealth with law enforcement and mobile crisis services and explore virtual co-responder models for law enforcement to aid police departments and other law enforcement agencies as they respond to mental health crisis in rural and frontier communities;
- Address the following items to ensure individuals receive, and providers offer, telehealth in the most appropriate locations: adopt a broad definition of originating site, consistent with the Kansas Telemedicine Act; allow staff to provide services from homes or other non-clinical sites, if patient privacy and safety standards can be met; and examine issues related to providers practicing, and patients receiving, services across state lines, such as by exploring participation in interstate licensure compacts; and
- Utilize telehealth to maintain service and provider continuity as children, particularly foster children, move around the state and consider how the unique needs of parents of children in the child welfare system can be met *via* telehealth; and
- Study and consider adjusting PACE rates annually, similar to the KanCare managed care organizations.

The Committee expressed concern and suggested the Legislature look at the charges nursing facilities incur when temporary staff must be used to meet workforce needs.

The Committee requested introduction of a Committee bill containing the language of 2020 HB 2550, as amended by the House Committee on Social Services Budget, to increase reimbursement rates for providers of HCBS under the Intellectual and Developmental Disability waiver.

Joint Committee on Information Technology

The Committee made recommendations to the 2021 Legislature related to the adoption of rules, procedures, and processes for conducting legislative proceedings with video conferencing and remote participation technologies. The Committee also made recommendations related to participation in executive session by legislators and relevant agency staff. Finally, the Committee noted the importance of the security of information technology for governmental entities.

Legislative Budget Committee

The Committee recommended six transfers from the State General Fund Coronavirus Relief Account to various agencies for programs, revenue replacement, and other items.

The Committee requested the Kansas Department of Agriculture, Kansas Department for Aging and Disability Services, Kansas Department of Health and Environment, Kansas Department of Revenue, and Board of Indigents' Defense Services each provide a report or information to certain legislative committees.

The Committee made further recommendations regarding the Certified Community Behavioral

Health Clinic model, the availability of a database of records related to violations of the Kansas Law Enforcement Training Act, the Kansas Department of Agriculture price verification inspection process, the Legislative Compensation Commission, and information technology projects of state agencies.

The Committee also strongly recommended the 2021 Legislature make a decision regarding the renovation of the Docking State Office Building.

Additionally, the Committee expressed its displeasure concerning how the COVID-19 testing strategy was implemented by the Kansas Department of Health and Environment.

Joint Committee on State Building Construction

All five-year capital improvement plans and leases were recommended by the Committee.

Capitol Preservation Committee

The Capitol Preservation Committee was not convened during the 2020 Interim.

Report of the Special Committee on Foster Care Oversight to the 2021 Kansas Legislature

CHAIRPERSON: Representative Susan Concannon

VICE-CHAIRPERSON: Senator Molly Baumgardner

OTHER MEMBERS: Senators Ed Berger, Bud Estes, Oletha Faust-Goudeau, and Richard Hilderbrand; Representatives Suzi Carlson, Gail Finney, Nick Hoheisel, Susan Humphries, Jarrod Ousley, John Resman, and Susan Ruiz

STUDY TOPIC

The Committee is directed to:

- Receive input from families, social workers, and other stakeholders on progress and shortfalls in the State's child welfare system, including quality of care for children in foster care, access to health and mental health services, trends in contributing factors, program outcomes from the federal Family First Prevention Services Act, and barriers to sharing information across stakeholders; and make recommendations to the Legislature on additional improvements and oversight needed to improve the State's child welfare system.

Special Committee on Foster Care Oversight

REPORT

Conclusions and Recommendations

The Special Committee on Foster Care Oversight makes the following recommendations and requests:

- The Committee agreed the work of the Special Committee on Foster Care Oversight should continue. The Committee recommends the Legislature establish a statutory joint committee on child welfare oversight, structured like the statutory Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight. The Committee recommends members of such new committee be legislators from the Senate and House of Representatives, with both parties represented, appointed by leadership, and the new committee meet quarterly.

If such joint oversight committee is established by the Legislature, the Committee recommends the new joint oversight committee pursue the following further recommendations:

- Consider the establishment of an Office of the Child Advocate or independent oversight of foster care to provide independent advocacy for persons involved in the child welfare system;
- Look further into the Community Collaborator pilot program;
- Continue discussion and increased understanding of the establishment of a Health Information Specialist Unit in the appropriate agency, with staff trained in reading medical records and able to coordinate health care for children and youth in the foster care system, and request review and input from Department for Children and Families (DCF) on establishing such a unit in Kansas;
- Reconsider the use of hair shaft testing for the presence of illegal substances in biological parents of children involved in the child welfare system;
- Hold an informational hearing on Medicaid expansion and the lifetime restrictions imposed on families qualifying for Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP) and the impact of such restrictions on the foster care population; and
- Determine if there are any potential conflicts of interest or incentives for the foster care contractors and grantees that affect decisions that should be made based on the best interest of the child.

If a statutory joint committee on child welfare oversight is not established, or the newly established committee does not pursue the aforementioned recommendations, the Committee recommends:

- The Legislature and any appropriate committee consider the recommendations proposed for future consideration by the joint oversight committee.

The Committee makes the following additional recommendations and requests:

- Urges the Chairperson of the Joint Committee on Corrections and Juvenile Justice Oversight to consider the contents of 2020 HB 2744 and any amendments needed. [*Note:* The legislation would make changes to the Code for the Care of Children and the Juvenile Justice Code as they relate to crossover youth, who are youth involved or potentially involved with both the child welfare and juvenile justice systems.];
- Recommends support for legislation to codify and continue reimbursement for health services, including mental health services, delivered through televideo and telephone;
- Supports the reintroduction of prior legislation (2018 SB 319) to allow the use of DCF or local child welfare contractor or grantee address to expedite enrolling a foster child in school if the child has been moved from the child's school of origin and foster care or permanent family placement has not been determined; and
- Supports the introduction of legislation to prohibit an employer from dismissing or firing an employee who is meeting court-ordered requirements for purposes of reunification with their child or children who are in the custody of the State of Kansas. Court-ordered requirements include, but would not be limited to, court appearances, appointments, visitation, and treatment programs.

The Committee further recommends DCF:

- Work with the Department of Administration to explore the use of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding for technology support for the purpose of improving safety monitoring, coordination, and efficiency within the child welfare system;
- Provide a comparison of the benefits under the original Grandparents as Caregivers legislation (2006 SB 62) and the current benefits provided to grandparents caring for their grandchildren through the TANF program;
- Work with the universities to look into the use of Title IV-E funding to support education and promote a professional track for the child welfare workforce through scholarships available during the last two years of education;
- Provide foster parents with information on continuous training opportunities available;
- Develop a plan of action to address the current delay in obtaining school records and transferring medical records in a timely manner from the school of origin for children and youth in foster care;

- Demonstrate transparency in communicating the scope of the special needs and behaviors of a child or children being placed with a foster family, as well as the appropriate funding based on the needs of the child;
- Develop a checklist or other document to clearly identify all court-ordered expectations a birth family must meet for the purpose of reunification with their child or children in the custody of the State. The document would be given to the birth family immediately following a court hearing;
- Provide information on the use of psychotropic medicines as a method to subdue behaviors of children or youth who are in foster care and report to the currently proposed joint committee on child welfare oversight, to the Legislature, or the appropriate legislative standing committee;
- Consider mandatory training for foster parents regarding cultural competence to include the special needs of children of color and LGBTQ children. DCF is encouraged to contact the Kansas Board of Cosmetology for assistance in developing training and teaching ethnic hair care skills;
- Consider the development of post-foster care housing for youth who age out of the foster care system;
- Work with the Kansas State Department of Education to explore ways to transfer funding from a public school to an alternative educational program for children and youth who have been expelled; and
- Work with the Kansas Legislative Research Department to research how to develop and expand a two-year certificate program for behavioral health technicians and guardians *ad litem*, through community colleges and or technical schools, for the purpose of creating an educational pathway into a career in child welfare. Research should include how such a program would fit into the current child welfare system and how it may impact funding.

Proposed Legislation: None

BACKGROUND

In 2020, the Legislative Coordinating Council (LCC) appointed a Special Committee on Foster Care Oversight, composed of 13 members. The Committee was directed by the LCC to receive input from families, social workers, and other stakeholders on progress and shortfalls in the State's child welfare system, including quality of care for children in foster care, access to health and mental health services, trends in contributing factors, program outcomes from the federal Family First Prevention Services Act (FFPSA), and barriers to sharing information across stakeholders; and make recommendations to the Legislature on additional improvements and

oversight needed to improve the State's child welfare system.

COMMITTEE ACTIVITIES

The LCC approved six meeting days for the Committee in 2020. The Committee met six times in 2020: August 25 and 26, September 22 and 23, and October 20 and 21. All meetings were held *via* in-person and virtual formats. The Committee's work focused on the specific topics described in the following sections.

August 25, 2020, Meeting

Foster Care Orientation

At the August 25, 2020, meeting, the Secretary for Children and Families and Secretary for Aging and Disability Services (Secretary) provided an overview of foster care. The Secretary noted the Department for Children and Families (DCF) operates under three guides: the federal Administration for Children and Families, a division of the U.S. Department of Health and Human Services (HHS); state law and DCF policies; and practice standards, which include evidence-based and best practices. She provided a briefing on the child welfare system, which was privatized in 1997 through a public-private partnership between the State and community providers. The Secretary outlined the components of the child welfare system.

Initial report and investigation. The Kansas Protection Report Center is responsible for taking reports of alleged child abuse and neglect received through phone, fax, or mail 24 hours a day and 7 days a week (24/7). Within half a working day of a report being received, DCF staff determine if the report necessitates investigation. The investigation is either assigned as abuse or neglect, or it is assigned as a family in need of assessment (FINA). FINA has replaced the non-abuse neglect designation. The investigation is conducted within specific time frames. The Secretary noted 57.0 percent of the 66,525 reports received in fiscal year (FY) 2020 were assigned for investigation. Of these reports, 93.1 percent were determined to be unsubstantiated. During an investigation, a family assessment is completed to determine whether a referral to community-based or prevention services would be beneficial.

Prevention services. The Secretary explained there are two forms of prevention services: Family Preservation and the Family First Prevention Services (Family First). Family Preservation has been in place over 20 years, and it has three grantees and two tiers of services. The grantees are DCCCA (Kansas City and Wichita regions), TFI Family Services (TFI) (west region), and Cornerstones of Care (west region). Since 2018, Family First is the new federal program that is a prevention model with a 50/50 funding match with federal partners. There are 18 grantees. All

programs are evidence-based. The areas of service include mental health, substance use disorder, kinship navigation, and parent skill building.

Child in Need of Care determination. Only courts or law enforcement have the authority to remove children or place them in State custody. If DCF determines based on an investigation it is not possible to protect a child with services, it must recommend the county or district attorney file a Child in Need of Care (CINC) petition. After a CINC petition is filed, courts have 72 hours to hold a temporary custody hearing, which includes decisions on the child remaining in the home or coming into DCF custody. Following this hearing, an adjudication hearing to formally find the child in need of care will usually be held within 60 days of filing the CINC petition. Once a child is adjudicated to be a CINC, a disposition hearing is held to determine the case plan goal for the child. Following the disposition hearing, permanency hearings are held at least every 12 months to evaluate progress toward the case plan goals.

Placements. The Secretary described the several types of placements available if a child comes into State care. These include family foster home, a placement with a relative, residential facilities, emergency shelters, qualified residential treatment programs (QRTPs), and staff secure facilities. Placements are reimbursed by DCF based on the type and intensity of care provided. The Secretary noted in FY 2020, 51.8 percent of youth in out-of-home placement were placed in a family foster home, 34.0 percent with a relative, and 8.4 percent in a group or residential home.

Foster Care Management grantees. Four foster care management grantees work to support families, manage individual cases, and achieve case plan goals through an array of services. The grantees are Saint Francis Ministries, KVC Health Systems, Inc. (KVC), TFI, and Cornerstones of Care. The state is divided into eight catchment areas serviced by the four grantees.

Licensure. DCF is responsible for the licensure and regulation of all 24/7 child care facilities, including child placing agencies and family foster homes. The Secretary noted the HHS Office of Inspector General released an audit of 31 Kansas group homes for foster youth with

identified potential health or safety violations. Since January 2019, DCF has issued corrective action plan guidance and completed visits by February 2020 to ensure the homes were in compliance with the corrective action plans.

Service delivery models. The Secretary noted four new practice models had been implemented for service delivery: Family Finding, Team Decision Making, Signs of Safety, and Structured Decision Making. She stated the agency had made it a priority to support older youth as they transition to adulthood and self-sufficiency.

Class action settlement. With regard to the class action settlement reached in July 2020, the Secretary stated DCF is required to address three categories: practice improvements, outcomes, and accountability reporting and implementation. A summary of the requirements under the three categories was provided. The State has three to four years to meet the terms of the settlement. If the terms are not met, monitoring would be extended until the terms are met. She said the terms of the agreement did not include financial penalties for failure to meet the requirements within the designated time frames. The Secretary said no financial enhancement was anticipated to meet the settlement, and any new funds would be used for innovations.

Progress made. The Secretary noted the progress made between FY 2019 and FY 2020 by comparing three measures. In FY 2019, the number of youth in care was 7,578. At the end of FY 2020, it was 7,061. The average length of stay in FY 2019 was 21.4 months, compared to 20.6 months in FY 2020. In FY 2019, the proportion of children in out-of-home placement living with a relative was 32.4 percent, and at the end of FY 2020, it was 34.0 percent.

Overnight stays in contractor offices. The Secretary addressed the topic of children spending the night in contractor offices. By the second half of FY 2020, overnight stays decreased to an average of 6 per month, down from 16 per month in the previous 6 months. She stated when a child spends the night in an office, a process is followed that requires reporting to DCF as part of the critical incidence process. The reporting must include the reason for the overnight stay.

Missing youth. The Secretary stated, as of August 24, 2020, there were 63 youth in care who were unaccounted. Several special response teams are in place across the state to work with the unaccounted youth and those with a history of running away to provide a specified person the youth can contact when issues arise. Incidents of unaccounted youth in the custody of the State must be reported within 24 hours to DCF, law enforcement, and the National Center for Missing and Exploited Children. A daily aggregate report of unaccounted youth is available on the DCF website.

Introduction of Foster Care and Family Preservation Services Contractors

Representatives of KVC, Saint Francis Ministries, Cornerstones of Care, TFI, and DCCCA introduced themselves to the Committee and provided a brief summary of their roles in the child welfare system. The Saint Francis Ministries representative also provided a list of recommendations for the Kansas child welfare and foster care system.

Family First Prevention Services Act

A Kansas Legislative Research Department (KLRD) fiscal analyst reviewed FFPSA, a federal law enacted in 2018. The FFPSA was a major overhaul of child welfare law that authorized states to use Social Security Act funds for prevention services, specifically to prevent children from entering the foster care system and to prioritize placement in family-based settings rather than congregate care. The State is required to submit a five-year state plan to the federal government outlining the child and family eligibility for services and the qualifying services to be provided. Other elements, such as trauma-informed services, must be included in the plan. Federal reimbursements are a dollar-for-dollar match through October 1, 2026. After that date, the federal match will revert to the state's Federal Medical Assistance Percentage (FMAP).

The overhaul created the QRTP designation, *i.e.*, group or congregate care that meets certain requirements. These requirements include using a trauma-informed treatment model; 24/7 access to nursing staff; assessing youth and developing a treatment plan within 30 days of entry; engaging

the family in the treatment plan; including a discharge plan; and 6 months of aftercare. The QRTP must be licensed by the State and accredited by a national accrediting body. Courts must approve stays longer than 60 days.

The KLRD fiscal analyst stated as a result of states reporting barriers to implementation of FFPSA, the federal government enacted the Family First Transition Act (FFTA) to allow states to phase in FFPSA implementation over several years. The FFTA phase-in has three parts: funding for transitional activities, temporary grants, and altered requirements.

In 2019, enacted HB 2103 amended the revised Kansas Code for the Care of Children to enable the State to meet FFPSA requirements, including the responsibilities of courts. DCF provided \$12.6 million in grants to more than a dozen grantees providing both local and statewide services. The Kansas Prevention Plan was approved by HHS in April 2020.

The Division of the Budget had projected, as a result of the COVID-19 pandemic in the spring of 2020, the resources of the State General Fund (SGF) would likely be insufficient to cover the FY 2021 appropriations. The Governor developed an allotment plan to bring the resources of the SGF to a zero ending balance. As part of the allotment plan, DCF was allotted \$5.0 million, all from the SGF, for FY 2021, including \$3.8 million for FFPSA staff and grants. This allotment resulted in the elimination of all funding added to expand FFPSA in Kansas for FY 2021, leaving only the base amount budgeted.

A DCF Deputy Secretary provided the Committee with a detailed report on the FFPSA as implemented by DCF. The funding was intended to keep children and youth out of foster care and was available for children or youth at imminent risk of placement in foster care. The funding covered substance use disorders, parent skill building, mental health, and kinship navigation. In October 2019, DCF awarded \$12.95 million to 17 agencies across the state in Family First Prevention grants for FY 2020. The grant term was October 1, 2019, through June 30, 2020, with an option of up to four one-year renewals. Early outcomes indicated 94.0 percent of the families

referred for these services had maintained their children in the home. A map was provided showing the locations of the QRTPs and the numbers of beds.

Services for Foster Care Children with Intellectual and Developmental Disability and Mental Health Needs

The Kansas Department for Aging and Disability Services (KDADS) Commissioner of Aging and Disability Services and Programs provided a briefing on the five Home and Community Based Services (HCBS) waiver programs that routinely serve youth in foster care: Autism, Intellectual and Developmental Disability (I/DD), Serious Emotional Disturbance (SED), Technology Assisted (TA), and Brain Injury. She stated there were no differences in services for children with I/DD in foster care and children with I/DD who were not in foster care. She noted there were no foster children with SED or I/DD currently on the waiting list for services. Foster care children were added to the HCBS waivers through an exception.

Access to Psychiatric Residential Treatment Facilities

The KDADS Commissioner of Behavioral Health Services outlined the work of the Youth Services Division of the Commission. The Division works closely with DCF to oversee programming for children and youth in foster care for both inpatient and outpatient services. He also reviewed access to the 8 psychiatric residential treatment facilities (PRTFs) in the state that have a combined total capacity of 336 patients. KDADS anticipated PRTF expansion efforts underway would increase statewide capacity to serve an additional 75 to 100 patients by the end of calendar year 2020. Of the 287 patients being served in PRTFs as of July 31, 2020, 85 were foster children. As of August 3, 2020, 24 foster care children were waiting for placement, and the average wait time was 67 days.

In response to questions, the KDADS Commissioner of Behavioral Health Services explained KDADS licensed the PRTFs. Although individuals up to age 21 may be served in PRTFs, the vast majority were between 14 and 16 years of age. The average stay was 2 to 3 months, with an

average length of stay of 127 days. Private insurance generally does not pay for care in PRTFs, but Medicaid does. The State of Kansas does not pay for the care of out-of-state patients in PRTFs. Most children and youth in PRTFs had high adverse childhood experiences scores and were children with significant psychological issues caused by a variety of factors. Managed care organizations (MCOs) make the referral for a foster care child or youth for PRTF care.

Presentation on the DCF McIntyre Settlement

An Assistant Revisor of Statutes reviewed the DCF *McIntyre v. Howard* settlement agreement. He reviewed the background of the case, the settlement requirements, and the mechanics of fulfilling the requirement of the agreement. No monetary relief was sought in the settlement. If the State believes it has met one of the requirements, the parties are required to negotiate for 14 days to determine if there is agreement the requirement should be dismissed and terminated from the court's jurisdiction. Under the terms of the agreement, there are required time periods to maintain the requirements. If the parties agree a requirement has been fulfilled, the parties would file a proposed order with the court dismissing the provision from the settlement agreement. If the U.S. District Court for the District of Kansas accepts the proposed order, the judge can release that requirement. It was expected the requirements will be met by January 1, 2024, at which time the settlement would be completed.

Overview of Child Welfare System Task Force Activities and Recommendations

A KLRD fiscal analyst provided a brief overview of the current Committee and the Child Welfare System Task Force (CWSTF), describing the mandates and memberships of each and summarizing the CWSTF top recommendations and relevant actions taken. The final report of the CWSTF was presented to the 2019 Legislature and contained 23 recommendations in three tiers. Based on the recommendations, the 2019 Legislature appropriated funding for additional child welfare staff, Family First Prevention Services (Family First) grants and staff, and database modernization. The 2020 Legislature appropriated funding for the new Comprehensive Child Welfare Information System and additional Family First staff and grants.

Implementation of CWSTF Recommendations

The Secretary provided a comprehensive report of the activities being implemented by DCF to address the 23 CWSTF recommendations. Among the list of activities, she highlighted the resources allowing for 80 paid practicums for social work students per year, flexible work schedules that are likely to continue beyond COVID-19, a data sharing system between DCF and providers on available beds statewide, development of a mobile crisis response, an array of relative caregiver rates and support, training for front-end staff, and case plan restructuring. She noted DCF funding was reduced through allotment, and if DCF had additional funding, it would have sent out a request for proposal for additional FFPSA programs.

Foster Care Report Card

A DCF Deputy Secretary presented on the establishment of the annual education report card for students in foster care. The report card was created through Executive Order No. 20-53 to track educational outcomes, including graduation rates, grade level advancement, and test scores. It will also include data on disciplinary actions and participation in early learning and mental health programs. The report card will include data by race and ethnicity to allow DCF to target and address any disparate impacts. The report will be implemented in collaboration with the Kansas State Department of Education (KSDE) and will be issued to the House and Senate education committees by January 15 of each year.

The Deputy Commissioner, Division of Fiscal and Administrative Services, KSDE, presented a sample of what the Foster Care Annual Academic Report Card would likely resemble, including the anticipated format and data to be collected for the report.

Mental Health Pilot Services for Foster Care Children

The Deputy Commissioner, Division of Fiscal and Administrative Services, KSDE, provided a comprehensive report on the Mental Health Intervention Team Program. The goal of the program is to provide greater access to behavioral health services for school-aged students, with an emphasis on youth who are in DCF custody or

receiving services from DCF. The 2020-2021 school year is the third year of the program. In three years, the program has grown from 9 participating school districts to 56, and from 6 participating community mental health centers to 17. In the first year, the program served 1,708 students. An estimated 4,800 students will be served in the 2020-2021 school year. All of the schools that applied for the program were funded. Several small school districts in northwest Kansas worked together to create one program sharing one counselor and social worker. A school district mental health liaison stated her school has lost students to suicide, and this program is saving lives.

Impact of COVID-19 on Foster Care System

The Secretary discussed the impact of the COVID-19 pandemic on the foster care system. DCF service centers closed to the public on March 23 and began opening on June 8, with social distancing and public health guidelines in place. All foster care case management grantees submitted their Continuity of Operations Plans to assure service delivery during the COVID-19 pandemic. Various supports were provided to youth in care and others, guidance documents were issued, and DCF implemented new technologies. DCF implemented the Hero Relief Program in April 2020, using funds from the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act to expand DCF child care assistance subsidies to families of essential workers and provide financial support to child care providers. DCF and grantee front-line staff were eligible for the expanded subsidies. Placements received a rate increase from March 23 to May 15, 2020, due to school closures. Licensed and relative caregivers received an \$8 per day increase, and residential group care homes received a \$39 per day increase. A list of supports provided to older youth and young adults was provided.

The Secretary said the calls to the child abuse hotline declined the first few months of the pandemic, but, as of the August 2020 meeting, calls were increasing.

A representative of Cornerstones of Care testified to the significant financial strain the company experienced due to the COVID-19 pandemic, including unexpected expenses for new

technology to make the transition to work from home and to partner with families using Zoom, FaceTime, and socially distanced visits. The representative noted the lack of internet access for families as a persistent barrier to permanency, causing delays in clinical services, court hearings, and visitations. She noted many placement providers were unable or unwilling to meet the community's needs for placement.

A representative of DCCCA stated the agency was a little more than 60 days into the new Family Preservation contract when the pandemic began. Multiple adaptations were quickly made, including the creation of several pandemic-specific teams, providing personal protective equipment (PPE) and PPE training for families and staff. The decline of expected referrals from DCF caused a significant budget deficit. She noted virtual education was bringing a significant strain for staff regarding their own children, as well as families receiving family preservation services. She noted some foster families were reluctant to take in new foster children, leaving the agency to balance the needs of the child with the abilities of the foster family.

August 26, 2020, Meeting

Introduction of Entities Serving Individuals In or At Risk of Entering the Child Welfare System

At the August 26, 2020, meeting, representatives of the following entities discussed the services each provided in the child welfare system.

Kansas Family Advisory Network. A representative of the Kansas Family Advisory Network (KFAN) stated it helps birth families navigate the case plans and court requirements and provides support when children are reunited with the family. It also works with families who are kinship providers for their grandchildren or other child relatives. The testimony emphasized children experience trauma when removed from the birth family, with trauma remaining after reunification; however, children are less traumatized when safely placed in a kinship home. The representative also provided national data from 2015 showing the disproportionate numbers of African American children in out-of-home care.

Kansas Children's Service League. A representative of the Kansas Children's Service League (KCSL) discussed DCF's adoption programs, Adopt Kansas Kids and the Kansas Post Adoption Resource Center, and the Healthy Families America evidence-based intensive home visitation program. The representative stated 522 children were available for adoption, and the average age is 12 years old. She stated support for a focus on prevention efforts.

Children's Alliance of Kansas. A representative of the Children's Alliance of Kansas stated it is an association of 17 private, nonprofit child welfare agencies. It offers training for potential and current foster families. The Children's Alliance of Kansas also prepares the trainers to conduct Model Approach to Partnerships in Parenting (MAPP) classes, a mandatory 30-hour training for persons interested in becoming licensed foster or adoptive parents. The presenter noted Kansas was one of seven states selected by the federal Children's Bureau to test a three-year training pilot, the National Training and Development Curriculum for Foster and Adoptive Parents (NTDC), to support families providing care to children and youth who have experienced trauma. The pilot is an enhanced MAPP training that will be provided in seven Kansas counties. The training is video-based and has portals where learners and trainers can access additional resources to deepen their learning. Four sections in the training curriculum focus on cultural humility and LGBTQ populations. The first classes were planned to start October 12, 2020. The NTDC training does not include Attachment and Biobehavioral Catch-Up (ABC) intervention training, for which a Committee member urged DCF and the Children's Alliance of Kansas to develop a policy.

Kansas African American Foster Care and Adoption Coalition. A representative of the Kansas African American Foster Care and Adoption Coalition provided an example of a family involved in the foster care system that illustrated the complications when children were placed in care and the parents struggle to reunite with their children. She noted the historic implications of dismantling families, especially African American families involved in the child welfare system. She stated support for the multi-

disciplinary team approach to help families address their struggles and challenges.

Kansas Action for Children. A representative of the Kansas Action for Children (KAC) stated it is a nonprofit, nonpartisan children's advocacy organization focused on supporting policies that improve health, education, and financial outcomes for children and families, especially those who live in poverty. KAC's work involves researching and analyzing data to help inform lawmakers on improving the well-being of children and stability of families. The organization supports early childhood services to potentially prevent later involvement with DCF and foster care.

Safe Families for Children Kansas Chapter. A representative of Safe Families for Children Kansas Chapter shared the origins of the agency, which she described as a faith-based, volunteer-driven, and professionally supported assistance for a family in crisis. It is not licensed. The agency's goal is to intercept families before DCF becomes involved. Parents must contact the agency directly to request assistance. A host family cares for the children until the parent can resume those responsibilities. All of the families helped in Kansas had their children return home. Funding for the program was from a DCF grant, and social work interns were utilized. The DCF grant began in 2019 and ended in June 2020, but it was in the process of renewal at the time of the August Committee meeting.

FosterAdopt Connect. A representative of FosterAdopt Connect said the organization works in Missouri and eastern Kansas supporting children and youth ages 6 to 16, an age group chosen because not much was available in prevention services for this school-aged population. FosterAdopt Connect has several programs to prevent entry into the foster care system and to provide stability and permanency to foster and adopted youth. The newest program, Fostering Prevention, is available to families in Johnson and Wyandotte counties. Staff provide activities that help break the trauma cycles of children. The Fostering Prevention program referrals come from DCF, and the funding was through the FFPSA. All other programs accept self-referrals.

Kansas Appleseed Center for Law and Justice. A representative of the Kansas Appleseed Center for Law and Justice stated it is a nonprofit, nonpartisan organization dedicated to building inclusive and just communities. Kansas Appleseed has been involved in foster care since 2018, and its top priority is the establishment of an Office of the Child Advocate to provide independent oversight of the Kansas foster care system.

Status of Technology in Child Welfare System, Data Collection, and Barriers to Sharing Information Across Stakeholders

A DCF Deputy Secretary explained DCF child welfare programming was supported by 7 systems and platforms and about 15-20 complementary systems. The primary federal reporting system, FACTS, was 1980s mainframe technology developed before the everyday use of the Internet. Data management was complicated due to contractors using their own data systems. The Deputy Secretary stated additional barriers to information sharing included being unable to check a child's eligibility for certain programs, inability to share aggregate data, systems that are not designed to interface together, and the inefficiency of necessary but redundant data entry.

The Deputy Secretary discussed four current initiatives, including Child Welfare Information System (CCWIS) planning. The Legislature provided initial funding for the planning phase in 2018 and 2019 and continued funding in 2020 for development. Federal partners matched the appropriation dollar for dollar for a total of \$4 million. The federal grant for the CCWIS program is renewable, with approved advance planning and meeting the timelines required for continued funding. State funds are required every year to match federal funds. CCWIS development and implementation will occur in phases in FY 2022 through FY 2025. She stated it is likely further funding will be necessary for design, development, and implementation. She noted CCWIS will reduce redundant data entry and consolidate five existing systems into one and help with efficiencies in all aspects of child welfare.

Two board members of the Kansas Chapter of the American Academy of Pediatrics testified before the Committee to share examples of difficulties they faced in obtaining accurate

information on the major medical diagnoses of the patients who were in foster care. The physicians recommended improvements, including having a health information specialist unit within DCF with staff skilled in reading and understanding medical records and involving the MCOs in obtaining accurate medical information. They noted a similar unit was used in Missouri and had improved access to medical records. Another suggestion to increase access to medical records involved uploading the records into a system that could be accessed by physicians. It was acknowledged having three different MCOs complicates obtaining medical records for children and youth in care.

Quality of Legal Representation in Foster Care

DCF. The Secretary stated legal representation is critical to ensure the best outcomes for children and families. The Secretary reviewed the CINC statutes related to legal representation for children and families involved in child welfare proceedings. She noted DCF is usually not a party to CINC cases and it is the court, not DCF, who is responsible for appointing and funding legal representation in CINC cases. She discussed guardians *ad litem*, who are appointed by the court to represent the best interest of the child. The Secretary discussed one initiative to provide legal support for kinship placements, Kinship Interdisciplinary Navigation Technology-Advanced Model (Kin-Tech), funded by the Kinship Navigation grant as part of the FFPSA and awarded to Kansas Legal Services.

Kansas Court Appointed Special Advocates. A representative of the Kansas Court Appointed Special Advocates (CASA) program noted 23 out of 31 judicial districts have a CASA program, which uses volunteers who advocate for the best interest of the child but do not provide legal representation or advice. A CASA volunteer serves a child for the duration of the child's case and is a consistent support in that child's life. Due to the limited availability of funds, CASA programs are not able to serve every child who is adjudicated a CINC and serve 28 percent of CINC cases each year. Barriers to having more CASA services in rural areas included judicial support, finding volunteers, and financial support.

National Association of Counsel for Children. A representative of the National Association of Counsel for Children provided a national perspective about the challenges in foster care and the use of legal advocacy to improve outcomes. She emphasized quality legal representation speeds families to permanency and saves the State money. The National Association of Counsel for Children works to train attorneys and develop multidisciplinary teams with social workers and others for integrated response in child welfare. She discussed the January 2019 U.S. Children’s Bureau policy change that enabled the use of federal Title IV-E funds for quality legal advocacy and support in child welfare. In June 2020, the White House issued Executive Order 13930 on Strengthening the Child Welfare System for America’s Children, elevating legal representation as an integral strategy to overall foster care reform work. The federal Child Abuse Protection and Treatment Act mandates all children, documented or undocumented, must have representation if they are involved in the child welfare system, but does not require a licensed attorney who can advocate for the children. The Executive Order required HHS to provide guidance and conduct data collection on this new strategy. The guidance was issued on July 20, 2020.

In response to Committee member questions, the Secretary stated DCF would not need state legislation to access the Title IV-E funds, including the administrative dollars. She stated the question is what kind of model Kansas wants in terms of legal representation.

Iowa State Public Defender. The Iowa State Public Defender discussed a pilot project in the state of Iowa that involved legal representation prior to the filing of a court action. The pilot program is designed to reduce the number of children coming into foster care through pre-filing representation. He noted there was increasing evidence the trauma caused by removing children or youth from their homes may be more detrimental than the trauma they would potentially suffer by remaining in a home with suspected or founded maltreatment.

Kansas Legal Services. A Kansas Legal Services (KLS) representative noted the organization is a private, not-for-profit providing

legal representation to low-income persons. Information regarding the role of guardians *ad litem* and the rules that establish the standard to which they are held were provided. Ideas for the use of Title IV-E funding for legal representation under the existing state structure also were provided. The Executive Director of the organization discussed the Kin-Tech program, which is designed to provide holistic legal services in all 105 Kansas counties to prevent children from coming into the foster care system and ensure permanency for the child in a kinship family. Kin-Tech cases are all processed before any filing with the court. Kin-Tech is an FFPSA program and is not funded through Title IV-E funds for legal representation. Kin-Tech services end when a child enters DCF custody. The Executive Director noted in 9 months of operation, the Kin-Tech program had 71 referrals from DCF, including 117 children who otherwise would have entered foster care.

A Committee member stated a concern that Kin-Tech does not provide the kin with the financial assistance available under kinship foster care, resulting in an inequity with the Kin-Tech program for those who do not have the socioeconomic means to take advantage of the options available through Kin-Tech. The Executive Director noted the social worker in the Kin-Tech program works with the individuals to find out what assistance may be available to the individual. The assistance may include child support, health insurance through an employer, Temporary Assistance For Needy Families (TANF), and Supplemental Nutrition Assistance Program (SNAP). The Committee member stated the need to ensure all families, regardless of socioeconomic concerns, have the same opportunity to have the options available through the Kin-Tech program. The Executive Director suggested re-enacting a previous program, Grandparents as Caregivers, as it was first enacted, as a way to provide funding at a level higher than TANF to grandparents caring for their grandchildren. The Executive Director noted the program as first enacted did not require involvement in the foster care system.

September 22, 2020, Meeting

Child Welfare System Presentations from Individuals, Providers, and Organizations

Six private citizens provided the following testimony regarding their personal experiences with the child welfare system.

A foster parent stated the family was approved by DCF to adopt a child who had been in their home for three years. DCF then reversed the approval when a half brother appealed the adoption decision. In response to Committee questions, the foster parent stated it was his understanding the biological family could appeal decisions to DCF, but his family's experience has made it difficult to recommend adoption to other families who are interested.

A grandparent stated she pursued adoption of two grandchildren after the parents' rights were terminated. However, after several negative interactions with the child welfare caseworker, the grandchildren were adopted by others. In response to Committee questions, she stated when grandparents receive grandchildren from the foster care system, there is an expectation that they deny the children any contact with the biological parents. This means the grandparent would be denied a relationship with their own adult son or daughter.

A parent stated her five children were removed from her care after allegations of drug use were made against her after a surgery due to a work injury. Ultimately, the parent retained custody of the three oldest children, but her parental rights were terminated for the two youngest children. The parent expressed difficulty in understanding how the older children could remain with her but not the younger ones.

A foster grandparent shared the following recommendations to improve the foster care system: removing financial considerations in decision-making, supporting an independent ombudsman, increasing the number of psychiatric residential treatment facilities, and increasing caseworker compensation and professional development.

A foster and adoptive parent identified the following needs of the child welfare system: giving foster parents a voice about the children in their care and support and training to do the work, shortening the time frame for families to gain back their children, and updating the Trauma Informed Partnering for Safety and Permanence-Model Approach to Partnerships in Parenting (TIPS-MAPP) training, which she described as outdated and lacking clear information about navigating the foster care system.

A grandparent spoke about the death of a grandchild when the foster parents left the child in a hot car. She expressed concern regarding the supervision of foster parents.

A representative of Foster the Cause described the work of his agency, which works with churches to encourage members to become foster parents. He stated the agency is not a child placing agency, but rather works to be a bridge between churches, the State, and state-contracted agencies.

A representative of Susan's Kids, Inc., described her work in placing advertisements on local newscasts and some cable television stations featuring foster children. She suggested many of the children could be placed in adoptive homes if there was sufficient follow through of the dozens of inquiries generated by the advertisements. She identified two problems: a lack of social workers to facilitate the potential adoptions, and at times, the adoption process is started, but not completed, leaving the child without a permanent family placement.

Crossover Youth

Crossover Youth Working Group Final Report

A DCF Deputy Secretary discussed the highlights of the Crossover Youth Working Group Final Report. She stated two working groups were mandated through a budget proviso in 2019 House Sub. for SB 25 to study the impact of 2016 SB 367. The first group, Crossover Youth Services Working Group, met in 2019 and identified themes, challenges, and needed services. The second group, Crossover Youth Working Group, met in July 2019 and January 2020 to study data elements. Sixteen proviso points of data were identified and used to compare the 691 crossover

youth identified by the foster care contractors to the broader juvenile offender population of 2,446 individuals. Key findings and program and practice activity were outlined for each of the 16 proviso points of data. In response to questions, she stated a central challenge across the systems is the lack of central data and information sharing system across DCF, law enforcement, and the Office of Judicial Administration (OJA).

Services for Crossover Youth

The DCF Deputy Secretary provided a document listing an array of services available to crossover youth and others. The programs were identified either as a DCF grantee or a referral description. She highlighted four additional related service supports, including the DCF Independent Living Program, the school-based Mental Health Intervention Team Program, Jobs for America's Graduates-Kansas (JAG-K), and a mentoring program called YouThrive. JAG-K and YouThrive are funded through a DCF TANF fund grantee.

The Deputy Secretary of Juvenile and Adult Community Based Services, Kansas Department of Corrections (KDOC), provided the definition of crossover youth as defined by the Kansas Crossover Youth Practice Model State Policy Team. The definition is based on best practices in working with the crossover youth population. She discussed KDOC's prioritization of the implementation of evidence-based programs and practices for youth who are involved in the juvenile justice system. She discussed the assessment instrument used by KDOC, Youth Level of Services/Case Management Inventory, which is statutorily required prior to court disposition to inform how to proceed with case planning and referrals for needed services. For non-adjudicated youth, services through the juvenile justice system are not accessible and cannot be utilized to help prevent crossover. She stated ways to help prevent crossover are being developed, specially for youth who are already in DCF custody and exhibiting behaviors that may lead to involvement in the juvenile justice system.

In response to a question about how sex offender youth are identified, the KDOC Deputy Secretary stated referrals are received from defense attorneys and foster care contractors. She

indicated the number of these youth is small, although it is increasing.

Regarding questions on data sharing, the KDOC Deputy Secretary stated there is not a system for data or case sharing. She noted OJA is getting a new offender management system, and KDOC has nearly completed its new offender management system. These two systems will allow for additional and improved data sharing. She also noted difficulty in sharing information on justice-involved youth, as there is not a single identifier used for the youth. She stated KDOC, DCF, and OJA are working on a Memorandum of Understanding (MOU) to help in data sharing.

Improving Services and Outcomes for Crossover Youth

A representative of the Center for Juvenile Justice Reform, Georgetown University McCourt School of Public Policy, discussed research findings and practice models for crossover youth. He noted girls, especially Black girls, are more likely to become crossover youth. He suggested working to find out what is propelling girls in the child welfare system to commit acts that result in involvement in the juvenile justice system. He identified several child welfare characteristics that are more common in crossover youth, including abuse during adolescence, neglect, placement in congregate care, and frequent placement changes. Youth involvement in juvenile justice is typically for simple assault and disruption in school. He stated crossover youth are more likely to be involved in the justice system as adults; he said he was not aware of such Kansas data but national data might be available. He stated the Multi-Systems Approach: The Crossover Youth Practice Model (CY Model) has documented a reduction in crossover youth recidivism, improved educational outcomes, pro-social activities, and reunification, among other outcomes.

In response to questions, the representative of the Center for Juvenile Justice Reform stated congregate care should be utilized only after exhausting all other placements, including kinship, and congregate care staff must be supported in their work. He discussed the use of temporary respite beds as an alternative option to give the youth a place and time to regain calm during

crises, instead of entering the child welfare system.

The KDOC Director of Community Based Services stated KDOC has contracted with Georgetown University to assist Kansas in the implementation of the CY Model. A state policy team of various professionals formed to develop the program identified a definition of crossover youth to guide the implementation of the program. The definition of crossover youth includes youth ages 10 and older. A child must be at least 10 years old to be adjudicated as a juvenile offender. One rural county, Montgomery, and one urban county, Shawnee, were selected as the pilot locations for the CY Model. She noted KDOC, DCF, and OJA each have specific staff to build the project into the infrastructure of their agency.

The Deputy Director of Juvenile Services, Sedgwick County Department of Corrections, stated Sedgwick County has been working with Georgetown University and became a CY Model site in 2016 for a nine-month data collection project ending in January 2019. He stated data collection was completed in October 2019. However, due to the multiple systems involved and staff furloughs, the data analysis was slowed and it is anticipated conclusions toward evidence-based suggestions will be completed within a few weeks of this Committee's September meeting. The project targeted children and families receiving family preservation services and who had subsequent intake with juvenile justice. He identified nine lessons learned, including a stable living environment is key for youth success, crisis level intervention is vital, dedicated staff is essential, and privatization in Kansas is challenging due to change in contractors and loss of momentum and personnel.

Status of and Barriers to Interagency Communications in Child Welfare

DCF. The DCF Deputy Secretary discussed interagency communications, stating DCF works with multiple organizations and agencies, including courts, KanCare, and those working in the areas of mental health, juvenile justice, education, and others. She stated DCF communicates with multiple groups and provided details of the task forces, councils, work groups, stakeholder groups, advisory groups, committees,

clinical meetings, and more. She stated DCF is currently working on a MOU with KDOC and OJA to improve crossover youth data sharing. Some information sharing needs permission though a release of information document. She said DCF continues to improve interagency communications by addressing disparities in technology and information systems, local level engagement, and collaborating with other organizations when possible.

In response to questions, the DCF Deputy Secretary stated DCF communicates with law enforcement, especially at the local level. The Kansas Bureau of Investigation works closely with DCF for the special response teams that locate missing youth. She stated if a family comes to the attention of both law enforcement and DCF, multidisciplinary teams can share information, co-respond, and coordinate necessary services.

Kansas Department of Health and Environment. The Kansas Department of Health and Environment (KDHE) Division of Health Care Finance Director of Operations/Chief Operating Officer and Deputy Medicaid Director (KDHE Director) provided an update on activities supporting the delivery of health care services to children and youth in foster care. She stated the eligibility for medical assistance through Medicaid for children in foster care has been delegated to DCF to ensure eligibility at the time of placement. Changes to the state eligibility program, Kansas Eligibility Enforcement System, have been made to improve communications between KDHE and DCF with regard to children entering and exiting the foster care system. There are two ongoing Foster Care in KanCare work groups to maintain communications and engagement. The Foster Care in KanCare work group convened and facilitated by KDHE has representatives from DCF, KDADS, KDOC, the foster care contractors, and the MCOs. The state agency-only Foster Care in KanCare work group is for internal discussion of issues and is composed of representatives from KDOC, DCF, KDADS, and KDHE only.

In response to questions, the KDHE Director stated the MCOs are responsible for coordinating care as identified in the child's or youth's treatment plan. Mental health is not considered separately from other health needs. If a foster child stayed with the Medicaid MCO the child was

already with, continuity of care would be ensured, and if reintegration occurs, there would be no need to change the MCO. She stated it would be possible to have a MCO who serves only children and youth who are in foster care, but it would take research and transition guidelines to allow for such a change.

A request was made for a list of the utilization and prescriptions prescribed to children in the foster care system that cause more-subdued behavior.

KDADS. The KDADS Commissioner of Behavioral Health Services provided an overview of the activities involving KDADS and foster care communications. The Youth Services Division oversees programming for children and youth in foster care, including outpatient and inpatient services. Other KDADS activities include assisting foster care children in accessing needed services, reviewing and drafting regulations and licensure requirement of facilities providing psychiatric care, promoting suicide prevention activities, and meeting with stakeholder groups, including identifying barriers and addressing system gaps. His testimony included information about the role of KDADS in the foster care settlement.

In response to questions, the KDADS Commissioner stated, under the KanCare program, KDADS is responsible for behavioral health policy, which covers mental health and substance abuse. KDADS works closely with KDHE on the behavioral health policy. He stated contracts between the State and community mental health centers (CMHCs) are formed on an annual basis. He said delays in mental health treatment are not cost effective, and it takes the collaboration of multiple systems to increase access to care. In addition, funding for services such as mental health has not been as robust as needed and has impacted the ability to access services. As of the September Committee meeting, once a CMHC was contacted, a child or youth entering foster care waited up to two weeks for a mental health assessment and six weeks for an appointment with a therapist.

KSDE. A KSDE Deputy Commissioner stated he contacted several superintendents for their perspectives on improving success in school for

children who are in the foster care system. He stated four issues emerged: a lack of school records when the child or youth arrives to the school, some children are subsequently transferred to another school before the records arrive, foster parents do not always know the problems facing the foster child, and foster care contractors do not communicate with each other. In response to questions, he stated it is the responsibility of the child's or youth's original school to release the records to DCF so the records are with the child when the child arrives at the new school. The records assist the school in knowing the correct academic level and placement of the student.

KDOC. The KDOC Director of Community Based Services shared the progress on communications across agencies and systems that serve youth and families. She stated 2016 SB 367 created the Juvenile Justice Oversight Committee as a bipartisan, multidisciplinary, multi-agency committee tasked with monitoring juvenile justice reform. Members include KDOC, DCF, OJA, community members, and service providers. The CY Model is another opportunity for collaboration among KDOC, OJA, and DCF. She stated the three agencies were completing a MOU, with the two-fold purpose of measuring and calculating recidivism and allowing the sharing of identifying information between these agencies to measure and analyze data on crossover youth.

OJA. The OJA Director of Trial Court Programs stated OJA provides support to all judicial districts in the areas of child welfare, CASAs, Citizen Review Boards (CRBs), alternative dispute resolution, child support guidelines, and court service officers. She stated she and her staff serve on a variety of committees, including the Juvenile Justice Oversight Committee. Serving on this and other committees has helped develop strong communication that allows for stronger collaboration to help improve services for Kansas families.

In response to questions, the OJA Director of Trial Court Programs stated court service officers supervise juvenile offenders who are on probation. In some districts, the court service officers will also assist families who are involved with DCF but whose children are not in the custody of DCF. Information can be shared between the court service office and DCF. The Trial Court Programs

Department works to not overlap services provided by KDOC. OJA and KDOC are in close communication to handle challenges as they arise. Regarding other OJA activities, she stated OJA is responsible for the training of guardians *ad litem*. The Supreme Court Task Force on Permanency Planning is funded by the federal Court Improvement Grant, which requires a committee to oversee the funds and develop projects. Projects include developing the Best Practices in Kansas Child Welfare Law training and updating the CINC Code book and the Juvenile Offender Code book.

September 23, 2020, Meeting

Youth Aging Out of Foster Care

Services available. The DCF Deputy Director of Youth Programs stated transition planning for self-sufficiency for youth in foster care begins as early as 14 years of age using My Plan for Successful Adulthood, a guide that consists of nine domains to consider when making transition plans. She stated the Independent Living program is funded by the federal Chafee Foster Care Program for Successful Transition to Adulthood, and it provides services and supports for youth who age out of the foster care system. Turning 18 years old in foster care is considered aging out of the system. In FY 2020, 392 youth aged out of foster care. Independent Living Coordinators work with youth 18 to 26 years old. Eligibility for the program is determined by age, length of stay, and placement type in the custody of DCF, KDOC-Juvenile Services, or Tribal Authority. Participants work toward education and employment goals. Supports include tuition waivers for post-secondary education, health coverage through KanCare, education and training vouchers, subsidy, start-up funds, and vehicle maintenance and repair. Possible legislative initiatives include assisting youth in obtaining driver's licenses and Individual Development Accounts through the Department of Commerce for help with match for start-up for household goods and for a vehicle.

In response to questions, the DCF Deputy Director of Youth Programs stated the Independent Living Program is voluntary, and youth up to 21 years of age may access the available services. Postsecondary education supports continue to age 26. A self-sufficiency matrix is used to determine the youth's readiness. For youth who are likely to

age out of the system, an Independent Living Coordinator will participate in their case plans. Once the youth has aged out and is part of the Independent Living program, the coordinator is to have monthly contact with the youth, often by text messaging and phone calls.

Improving services. A representative of Casey Family Programs, the nation's largest operating foundation focused on safely preventing the need for foster care and building communities of hope for children and families, testified before the Committee. He discussed research suggesting child welfare should be about ensuring the safety and well-being of children in their families, the effectiveness of early intervention, if possible, avoiding emotional distress and trauma by not removing children from their families, and working to provide community services and supports to safely maintain children with their families. He stated research shows youth who age out of the child welfare system are disproportionately diagnosed with mental health disorders, have difficult employment and financial situations, experience homelessness, and more than a third have incomes below the poverty level and lack health insurance. He concluded by noting child welfare is a part of the larger community of family supports, such as health, mental health, domestic violence prevention, substance abuse services, law enforcement, and education. He provided a handout with Kansas data on five key child welfare outcomes: increasing the exits-to-entries ratio, decreasing the recurrence of maltreatment, decreasing child maltreatment fatalities, increasing permanency within two years, and increasing permanency for long stayers.

In response to questions, the Casey Family Programs representative stated the benefit of non-stigmatizing programs, such as home visiting programs that are available to all parents of a newborn. He provided the example of a San Francisco general family resource center that is available to all families and encourages seeking help before situations escalate into a crisis. He stated the Families First program for prevention programming may also be less stigmatizing than other programs. He also described the difference between poverty and neglect, stating poverty is about the lack of provision for the basic needs of children and neglect is the inability or unwillingness to provide for those needs. The

inability or unwillingness to provide for children can be confused with a lack of resources for those who live in poverty. He stated it would be more effective to help a family who is poor to be able to provide for their child or children, rather than placing a child in foster care.

“A Day In the Life of” Presentations

Presentations were made at the meeting to hear the perspectives of the following persons involved in the child welfare system: a child, a parent with a child in the child welfare system, and a social worker/case worker. Additionally, presentations on a day in the life of a foster parent and a day in the life of a practice model were made at the October 20, 2020, meeting.

Child in the child welfare system. A former foster youth shared his experience in foster care. He stated he had close to 30 caseworkers and described his placement in multiple homes, staying overnight in foster care offices, being placed in a kinship home with abuse like that of his family home, and being placed in various congregate settings. He expressed that congregate care was not a place to raise youth and said, for him, it was brutal, trauma-inducing, and a “trial of endurance.” He shared his positive involvement with Independent Living services, including becoming involved in the Youth Advisory Board, which helped him build positive outcomes through the program. He said he was one of the success stories, having obtained a college degree and current employment with the U.S. Children’s Bureau. He suggested the Independent Living program focus on what others have achieved to help current foster care youth see how they can be successful. He recommended congregate care staff receive better training.

Parent with a child in the child welfare system. A representative of KFAN shared a chart she prepared to illustrate what it is like for parents with a child or children in the foster care system. Her chart identified events such as being reported to Child Protective Services, court appearances, evaluations, case manager turnover, appointments, reviews, and termination of parental rights. She suggested trauma training would help the foster families understand what the child is going through and help the birth parents break the cycle

of violence or circumstances leading to trauma for the family.

In response to questions, the KFAN representative said, since KFAN is not a child placing agency, birth families tend to feel more comfortable seeking help from them rather than the foster care contractors or DCF. Regarding termination of parental rights, she stated once parental rights are terminated by the court, the rights are lost. If a parent relinquishes his or her parental rights and can later show how he or she has changed, the parent may be able to get custody back. She also stated KFAN is partnering with OJA to make the Parent Ally Orientation training available again to parents going through the child welfare system. Responding to additional Committee member questions, the KFAN representative stated drug tests using hair follicles may not result in an accurate reading, especially for Black persons due to their hair type and slow hair growth. She also shared concerns regarding respite care providers who are outside the foster care system and who gain guardianship over children. She said these providers target minorities and young women in poverty and make it difficult for the birth parents to get their children back.

Social Worker/Caseworker. A representative of Saint Francis Ministries highlighted several specific challenges her team faces when working with youth in the foster care system. She discussed the stress and secondhand trauma workers face when working with youth who can make risky choices that can result in tragic accidents, drug overdoses, sex trafficking situations, and mental health crises. Another challenge is working with the education system because enrollment requirements and restrictions for youth who have multiple moves or placements outside the school boundaries make it difficult to motivate the youth to engage in school. A third challenge is missing youth. She stated, prior to 2016 SB 367, her staff were able to hold a youth for up to 24 hours, giving time to request a Secure Care hearing. A 24-hour hold is no longer allowed. She said staff work to identify a relative placement or foster placement, only to have the youth leave again within hours of placement. A fourth challenge is helping youth transition to services through the intellectual/developmental disability waiver system, including the need to locate a guardian and funding and navigate the child welfare system

and intellectual/developmental disability waiver. Her suggestions for improvement included increased funding for more case workers so caseloads could be reduced and burnout prevented, review of how 2016 SB 367 affects missing youth and their safety, funding liaison positions between the education and child welfare systems, and fair and reasonable decisions regarding funding and placements of youth through the intellectual/developmental disability waiver system.

In response to Committee questions, the Saint Francis Ministries representative described the first day a child comes into DCF custody and the work necessary to find placement and obtain medical and educational records. She stated recommendations to address changes made by 2016 SB 367 should include a review with front-line workers, judges, and guardians *ad litem*. She explained the intellectual/developmental disability waiver limits the number of children with high medical needs that may be placed in one home, making it difficult to find a foster care home with experience in meeting the medical needs. Exceptions to the limit on the number of children with high medical needs allowed in one home may be granted, but the case worker must meet with the foster parent every month and continually show there is not another foster family available that can provide the care needed.

Kansas Strong for Children and Families

A representative of the University of Kansas School of Social Welfare discussed the Kansas Strong for Children and Families project. It is a public-private collaboration intended to improve safety, permanency, and well-being outcomes by enhancing agency and court and legal practices, as well as reducing systemic barriers. She shared a handout outlining the strategies, rationales, state rankings, benchmarks, activities, advisory board purpose, and evaluation plans. The project is federally funded by the federal Administration for Children and Families Children's Bureau for five years from 2018 to 2023.

Role of the Guardian ad litem

The Managing Attorney with KLS-Topeka addressed the role of the guardian *ad litem* (GAL) in the foster care system. She discussed the Child

Advocacy Resource Center, which provides technical assistance, legal advice, and resource referrals for individuals involved with the foster care system. She stated successful legal representation helps with permanency. She explained the GAL, guided by Kansas Supreme Court rules, advocates for the best interests of the child. If the child has a different position than the GAL, the GAL must inform the court. She stated challenges include child welfare staff turnover, a lack of foster homes, a lack of mental health care, high caseloads for GALs, and communication difficulties if the child moves. She acknowledged GALs sometimes discuss the child's situation only immediately before a court appearance. Her recommendations to improve the GAL program included reasonable caseloads and compensation, staff support, training, and commitment to address issues, as well as understanding the system. She suggested one way to improve the necessary legal representation for children and youth in foster care is to consider the various funding streams that may be available and continue to address worker turnover in child welfare.

Family Finding

A representative of the Center for Family Finding and Youth Connectedness noted longitudinal evidence of reduced health and mental health for those persons who had been involved in foster care placement or institutional placements and better life-long outcomes for children who stayed with their parents or other relatives. He offered three broad recommendations for consideration: implement a Kin First program, reduce institutional placements, and improve access to restorative health and behavioral health care. Family finding and Kin First involve an urgent search for parents or relatives before a removal and foster care placement of a child. This included supporting the staff to identify and locate possible relative placements.

In response to a question regarding having a single MCO provide services for children and youth in foster care, the representative of the Center for Family Finding and Youth Connectedness responded a single Medicaid MCO would decrease the systemic fragmentation and discontinuity of care. Multiple MCOs offer leverage to negotiate rates, but also increase the health disparities of children in foster care. He also

responded the contracts with providers would be less complicated with one MCO providing services for children and youth in foster care.

Child Welfare System Workforce

Workforce status. A DCF Deputy Secretary stated DCF has worked to amplify existing supports and find new innovations to ensure DCF staff are supported and can do their work efficiently. In FY 2019, 26 front line positions were added, with 3 of the positions going to the implementation of the FFPSA. In FY 2020, 16 regional front-line staff were added, and in FY 2021, 10 positions were added to lower the supervisor-to- worker ratio to about 1 supervisor to 5.6 front-line staff. The agency has dedicated \$400,000 to recruitment and retention activities. As of September 20, 2020, the vacancy for child protection staff was 5.0 percent, representing a decrease from the 8.0 percent vacancy in November 2019. Turnover for Protection Specialists decreased from 33.3 percent in calendar year 2018 to 17.5 percent for calendar year 2020, as of the Committee's September meeting date. She stated the National Child Welfare Workforce Institute recommends an annual workforce turnover rate at or below 10 to 15 percent for the state child welfare workforce. The annual turnover rate at DCF is 17.0 percent. Regarding caseload ratios, she stated the Council on Accreditation recommends a caseload of 10 to 15 cases per worker, with more experienced workers holding the higher number of cases. Workforce supports in place include working from home, which expanded with the COVID-19 pandemic, six weeks of paid parental leave, the option to bring an infant to work for up to six months, and student loan forgiveness options. Staff may also take up to four hours of administrative leave each week for education. DCF has up to 80 paid practicum positions, with 51 students in the fall 2020 semester in these positions.

Responding to questions, the Deputy Secretary stated DCF does not currently take advantage of federal Title IV-E funding, which would pay for the full-time salary of DCF staff pursuing a master's degree in social work. Instead, DCF has the paid practicums \$8.00 an hour. She stated the paid practicums using other funds are more flexible than the Title IV-E funding requirements

would be. Although it would be possible to have both the Title IV-E training and the paid practicums, DCF only opted to have the latter. She said DCF staff received pandemic bonus compensation for work taking place in the two-week period when the State was not operating, for in-person protective services, and for staffing the non-congregate emergency housing.

Addressing workforce needs.

The Kansas Chapter of the National Association of Social Workers (NASW-KS) representative stated there was a steady increase in the number of students pursuing a degree in social work. Within the state, there are eight baccalaureate programs, two additional schools awaiting accreditation, and five master's programs. Fort Hays State University has four cohort programs, which are arrangements with community colleges to support local students pursuing a bachelor's degree in social work. The cohort programs are in Garden City, Dodge City, Colby, and Liberal. The cohort programs are drawing students who are bilingual and are more likely to stay in their communities. In response to the Child Welfare System Task Force focus on workforce, schools are adding child welfare training. She also stated the changes in law in 2019 regarding requirements for clinical specialists have allowed persons coming from other states to more easily qualify for the licensed clinical specialist social work license. The changes in the clinical supervision requirement have also made it easier for Kansas licensed social workers to achieve the clinical specialist level.

The NASW-KS representative suggested, to keep graduates in Kansas, some recruitment and retention incentives for the child welfare workforce could include paid practicums, tuition reimbursement, Rural Opportunity Zones (ROZ) student loan repayment, payment of licensure and examination fees, supporting continuing education, addressing compassion fatigue and secondary traumatic stress, and creating a career path within the child welfare system. Responding to a question regarding ROZ loan forgiveness, she stated its use has been limited because many counties do not participate. She supported the continuation of the ROZ program as a recruitment tool, but stated the Legislature should make it more effective.

Responding to a question regarding the State's non-participation in the federal Title IV-E program that would pay a salary for DCF employees pursuing a master's degree in social work, the NASW-KS representative stated the non-participation for years was due to the bureaucracy of the program. A Committee member noted neighboring states have participated in the program, cited the amount of the federally allowed stipends for those pursuing a bachelor's or master's degree in social work, and stated the need to explore Title IV-E funds.

A representative of the Association of Community Mental Health Centers of Kansas (ACMHCKS), identified the increasing and expanding competition for behavioral health staff. He noted neighboring states have attracted medical and clinically trained individuals with higher paying jobs, making it difficult for Kansas providers to compete. He offered several Medicaid-based suggestions, including allowing therapy to be billed without the patient present, continuing reimbursement of telephone and televideo treatment, increasing Medicaid reimbursement rates, and expanding Medicaid to provide coverage and access to care for currently uninsured persons.

In response to questions, the ACMHCKS representative stated the mental health pilot programs in the schools were trying to work through the challenges of the COVID-19 pandemic. Regarding what could be done to help the foster care system, he stated support for the following: implementing a consolidated health and human services agency similar to what the State of Nebraska created a few years ago, which allows persons working with similar population groups in the same room to discuss concerns among all related agency staff, taking advantage of federal funding streams for mental health services through the Certified Community Behavioral Health Clinic (CCBHC) Initiative, approving Medicaid expansion, and increasing Medicaid rates. Additionally, he stated the need to address the loss of staff to other states that offer a higher rate of pay.

In response to questions regarding the CCBHC Initiative, the ACMHCKS representative stated Missouri and Oklahoma had chosen to participate in the federally funded initiative but

Kansas had not. He explained the federal Excellence in Mental Health Act created a demonstration project with the state mental health authority and Medicaid authority to expand access to community-based mental health and addiction care through CCBHCs and establish a Medicaid payment rate that supports the costs of such services. He stated that six years ago, Kansas was considering the CCBHC Initiative. KDADS (the mental health authority) signed off on the demonstration project, but KDHE (the Medicaid authority) did not, so the demonstration project did not happen. An option is now available to start this model to increase access to crisis services but with reduced funding compared to those states that participated in the earlier initiative. He stated he believed the demonstration could be accomplished through a state plan amendment or through a Medicaid waiver.

A representative of the Children's Alliance of Kansas shared recent recommendations from different government task forces, committees, or councils emphasizing workforce issues, including recruitment, retention, compensation, and development. She stated if the workforce is underfunded, undertrained, or unavailable, the child welfare system will continue to struggle to achieve child safety, permanency, and child well-being. She suggested initiating a workforce development task force to make long-term, comprehensive child welfare workforce recommendations.

A representative of DCCCA stated her agency had been actively supporting their staff in engagement activities to increase retention. Even with specific retention strategies, workforce issues continue due to 24/7 on-call responsibilities, evening work that strains the workers' own family, burnout due to the crisis nature of the work, compensation that is not competitive, and the lack of resources for families and youth in crisis.

A representative of KVC Health Systems, Inc. (KVC), stated high staff turnover affects the outcomes for families, children, and youth in foster care. Each time a caseworker leaves, the cost can be 30 to 200 percent of the exiting employee's salary. She stated job stability is a problem due to four-year contracts with the State, which impacts health insurance and other work-related supports, resulting in many caseworkers

moving to agencies and jobs without such disruptions. She stated for professionals required to have a bachelor's degree and, for some, a state license, the compensation is very low. In response to questions, she suggested foster care contracts could require contractors to pay a living wage.

Discussion and Proposal of Recommendations on Meeting Topics

At the end of each of the August and September two-day Committee meetings, discussion occurred regarding possible recommendations on the topics discussed during each meeting. Requests for further information, future presentations, and discussions also were made at that time. Approval of final recommendations was not considered until the October 21, 2020, meeting date.

October 20, 2020, Meeting

Law Enforcement Perspective on the Foster Care/CINC System

The Sedgwick County Sheriff stated he has seen communications improve between law enforcement and DCF through a DCF grant creating a position for a Community Collaborator to work with law enforcement. The Community Collaborator is a social worker who is called upon when law enforcement is responding to a child in a family situation that does not rise to the level of abuse or the child needing to be placed in protective custody, but the family is still in need of support services. He stated if the services are provided, the children may be diverted from the foster care system. As of the October 20 meeting date, 146 children in Sedgwick County have been helped through the use of the Community Collaborator, and DCF is formally involved with 31 of the children.

In response to questions, the Sheriff further explained the Community Collaborator is called upon for situations of domestic violence, welfare checks, and possible CINC circumstances. The Community Collaborator will keep in contact with families who need services until the services are no longer needed. Common service needs are for mental health, food banks, assistance with utilities, and finding jobs. On occasion, DCF may be called in if families do not follow through. DCF will take the lead if the situation indicates possible abuse of

a child. The Community Collaborator is not DCF staff but a Sedgwick County employee employed through a grant provided by DCF to the Sedgwick County Sheriff's Office. The DCF grant is a three-year grant and, at the end of the grant period, it is expected the law enforcement agency will continue the position with its own funding. He stated the Community Collaborator frees up law enforcement to perform policing duties.

Judicial Perspective on Entry into the Foster Care/CINC System and Improved Outcomes for Children

The Honorable Kellie Hogan, Sedgwick County District Court Judge, shared her experience as a GAL and representing families in court for over 20 years. She has served as a district court judge for about six months and has presided over 321 CINC cases and 150 juvenile cases. She discussed the Supreme Court Task Force on Permanency Planning (Task Force), which was established in 1987 through Kansas Supreme Court Rule 1601. The purpose of the Task Force is to demonstrate meaningful, ongoing collaboration among the district courts, DCF, and Indian tribes in the state. Collaboration is documented through the development and implementation of strategic plans, with progress monitored by the Task Force. The Task Force also provides oversight to three federal Court Improvement Grants administered through OJA.

Judge Hogan defined "neglect" related to CINC cases, per KSA 38-2202(t), as acts or omissions by a parent, guardian, or others responsible for the care of a child or youth resulting in harm or potential harm to the child or youth, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. She provided examples of situations constituting neglect. She stated the *U.S. Constitution* gives parents a fundamental right to raise their children, but it does not require parents to be the best possible parents or provide the best possible home environment. Rather, they must provide adequate care for their child or youth. She stated a judge must protect the rights of parents while ensuring the best interests of the child. Judges have broad discretion in CINC cases but are directed to construe the CINC Code to carry out the policy of the State referenced in KSA 38-2201.

Judge Hogan noted best practice dictates the requirements for parents in CINC cases be specifically tied to the issues that resulted in the child being adjudicated as a CINC. The parents or other responsible adults are expected to sever ties with people who may pose a danger to the child or youth. This poses a difficult situation when it involves multiple generations in the family. She noted KSA 32-2286 allows for substantial consideration of grandparents for placement. In her opinion, drug addiction, unmet mental health needs, domestic violence, and family abuse are important factors resulting in the placement of children in foster care. She noted frustration among many judges at the lack of inpatient psychiatric services for the most challenged youth and foster home placements for teenagers.

In response to questions regarding comments that GALs do not interact with the child, Judge Hogan stated, in her court, two GALs are responsible for 321 CINC cases. Regarding removal of children when a parent tests positive for marijuana use, she indicated she had not signed an *ex parte* order for removal of a child with a positive marijuana test. She stated when parents test positive for marijuana use, they often refer to a recent visit to a jurisdiction where recreational marijuana is legal. Regarding the impact of long-past criminal convictions on a grandparent's ability to gain placement of a grandchild, she noted federal regulations must be adhered to. Some offenses, regardless of how old, are prohibited offenses and, unless expunged, will prohibit placement. She supported the emphasis on more primary preventative support services for families and additional support for grandparents caring for grandchildren. Regarding ongoing barriers in the child welfare system, Judge Hogan cited the lack of secure beds for youth, a lack of PRTFs that results in waiting lists, lack of intense mental health inpatient services, and a lack of foster homes for teenagers.

The Honorable Kevin M. Smith, a Sedgwick County District Court Judge, stated Sedgwick County has the highest number of CINC cases in the state. At any time, he has between 350 and 400 open CINC cases. He stated, in his court, children were not removed from their homes unless there was reason to believe the children's lives were at risk and the children would be better off in DCF custody. Judge Smith noted it was common for

social worker caseloads to range up to 78 cases, when 20 cases is the ideal. The high caseloads have driven caseworkers to obtain different jobs with less stress and better pay. Judge Smith stated his strong support for CASAs and his efforts to recruit CASA volunteers. He stated a coalition of churches, civic groups, and others has formed and is working to support foster children and foster families. Judge Smith emphasized the need to retain caseworkers in child welfare, maintain their passion for their career, and help them avoid becoming overworked, which leads to them burning out and leaving for other opportunities.

Judge Smith stated there are not enough foster homes and noted according to the DCF website, there are 2,700 homes and about 7,600 children in state custody. Fewer homes mean many children are placed out of county, losing school friendships and impacting regular contact with their family. He stated Kansas averages more than 9 placements per child over a 1,000 day case length, and if there are 5 or more placements, there is a 90 percent chance of criminal involvement during a child's lifetime. High school graduation or equivalency for Kansas foster children, before the pandemic, was at 39 percent, which is well below the national average of 50 percent for foster children. He stated low graduation rates may be due to children losing ground after transferring schools for a new placement.

Regarding his thoughts on improving the adoption process, Judge Smith stated the child is in the custody of DCF, and it is the responsibility of DCF to determine placement and final decisions on adoptions. The recommendation for final adoption is made at a Best Interest Staffing meeting attended by DCF, the GAL, a representative of the District Attorney's Office, and other parties. He discussed a court procedure in which a motion can be filed by foster families with the court asking for a "direct placement" of a child, but noted such a situation means an adoptive family would lose resources available to them. He was not in favor of overruling a DCF decision on adoption placement.

Judge Smith stated since child welfare court appearances are civil actions, there are not likely any protections from employers firing a parent who is required to attend court. He stated issuing subpoenas, as a way to offer protections for the

parent, would likely be untenable for court clerks to implement and would create a substantial burden on the State and courts.

Impact of Substance Use in Foster Care

A representative of the Johnson County Mental Health Center's Adolescent Center for Treatment (ACT) testified ACT is the only residential drug use program for youth ages 12-18 in the state, and admission requires a primary diagnosis of substance use disorder. About 70 percent of the patients have a co-occurring mental health diagnosis. In 2019, 64 foster care youth were served through the program. Of these, 75 percent completed the program. It is difficult to establish outpatient follow-up services since the youth's placement after treatment may be unknown. Due to the COVID-19 pandemic, double-occupancy rooms at ACT were converted to single-occupancy, so the number served as of the meeting date was only 26 foster youth. He said 85 percent of the 26 youth completed the ACT program. He confirmed about 30 percent of ACT patients are foster care youth. Referrals to ACT may come from outpatient drug and alcohol services or be court ordered.

The ACT representative explained the ACT program is 28 days long and includes individual, family, and group counseling, life skills training, psychosocial groups, recovery counseling, and relapse prevention. The ACT program is voluntary, requiring youth to sign themselves in. The youth attend school for three hours a day. The ACT youth meet with a nurse practitioner weekly using telehealth. Depression and anxiety are often underlying the substance abuse behaviors, but often have not been diagnosed before entering ACT. Many youth have experienced trauma in their lives, and ACT works to be trauma-informed so as not to re-traumatize youth. The ACT representative discussed a Greenbush survey indicating foster youth in the ACT program self-report earlier use of cigarettes and alcohol than other youth.

The ACT representative discussed the increased use of cannabis, attributing this to legalization in Colorado and, more recently, Missouri. He explained the tetrahydrocannabinol levels in marijuana are higher today than in the 1960s and 1970s, resulting in increased potency.

He described the different ways youth are consuming cannabis, including through e-cigarettes and vaporizing devices. These devices enable youth to inhale through the day, in classrooms, unnoticed. He clarified the materials from the devices is not vapor, but aerosol, which is a composition of many chemicals with higher potency for which the long-term effect is unknown.

The ACT representative also identified other substances of concern being used by youth, including over-the-counter medications and prescription medications. In response to why youth start using and abusing substances, he suggested it has to do with depression, mental health issues, and past trauma.

Written-only information was provided by KDHE in response to a September Committee request for information on the number of children in foster care, the number of children in foster care prescribed drugs, and the total number of claims. A KLRD memorandum on recent legislation on the use and monitoring of psychotropic medication in the foster care system was provided to the Committee.

Child Welfare/CINC-related Continuing Legal Education for Judges

An OJA representative discussed the continuing legal education opportunities for judges and magistrate judges across the state. The Kansas Supreme Court's Judicial Education Committee reviews and evaluates suggestions from judges, legal topics, and changes in the law to help decide which subjects to cover. She mentioned the different training opportunities for judges and a "Best Practices in Child Welfare Law" training held semi-annually for judges and other child welfare stakeholders. She showed updated CINC Code and Juvenile Justice Code booklets distributed to justices and CASA volunteers. She also showed the laminated bench cards with updated information on statutes related to CINC, which are distributed to judges, magistrate judges, prosecutors, and others in child welfare.

Toxicology Testing in CINC Cases

The OJA representative discussed drug testing in general. For children and youth in custody of

DCF, the foster care contractor is responsible for the drug testing. In most districts, the Court Service Officer (CSO) is not involved. The exceptions are Sedgwick and Wyandotte counties. Each month, the CSOs conduct over 150 urinalyses in CINC cases at a cost of \$20 each, not including staff time. No hair follicle testing is conducted by CSOs.

A representative of Kelly Compliance, Inc., testified before the Committee, stating the company serves all Kansas counties and other states by providing a full range of drug and alcohol testing services. He noted the most common types of drug testing are urinalysis and hair shaft testing, also referred to as hair follicle testing. He stated urinalysis is highly accurate with results in excess of 99 percent accuracy, if testing is completed by federally certified and audited laboratories. The hair shaft testing is newer, has a longer look-back time line than urinalysis (*i.e.*, it can detect substance use from a longer period of time), and is referred to as the “gold standard” due to its resistance to alteration. The Kelly Compliance, Inc., representative acknowledged the early claims of racial bias of this type of testing, which he said are likely due to studies using small data sets. He stated at this time, there is general acceptance that neither hair color nor race is a significant factor in hair analysis. He outlined the extensive and detailed steps in the chain of custody procedures, the time it takes for the testing procedure, and the two-day process to confirm the results if the test is positive.

In response to questions, the Kelly Compliance, Inc., representative stated a hair test has about a three month look-back period, and the urinalysis has a 48 hour look-back period. Laboratories keep part of the original sample in the event a donor asks for an appeal of the drug testing results. A different laboratory would conduct the test in such an appeal. He explained the laboratories that conduct the testing are accredited and certified, and calibration of testing machines is done hourly. Testing procedures are read in multiple stations through robotic means.

Written-only testimony regarding drug testing policies and procedures was submitted to the Committee by Cornerstones of Care, KVC Kansas, Saint Francis Ministries, and TFI Family Services.

Licensure of Foster Parents

The DCF Director of Permanency described the process of obtaining and maintaining licensure for foster parents. Individuals interested in becoming a Family Foster Home (FFH) must select a Child Placing Agency (CPA) to sponsor them through the process. They can make the contact with a CPA directly or contact the Children’s Alliance of Kansas or DCF to connect with participating CPAs. The next steps include an orientation and pre-licensure training that includes the TIPS-MAPP or Deciding Together (DT), medication administration, first aid, and universal precautions. The CPA will complete a home visit to assure compliance with the regulations and conduct family assessment interviews. Additional tasks required are obtaining fingerprints, immunization records, and pet vaccination records, and conducting health assessments and tuberculin tests. The completed packet is submitted to DCF to complete background checks and obtain fingerprint results. The average time to issue a license is three days after the DCF verification of compliance is completed. During the COVID-19 pandemic, a temporary license may be issued, with the on-site visit occurring within 90 days. Once a license is issued, children may be placed with the family. All foster families must complete eight hours of training each year, and an annual on-site visit by DCF licensing surveyor staff must be completed. A foster family who completes all the annual requirements continues their licensure as foster parents. He discussed the process of submitting complaints against an FFH and ways a complaint is addressed, including surprise visits.

The DCF representative stated FFH Non-Related Kinship (NRKIN) is a type of placement with individuals identified as having a relationship with the child or the child’s family. Licensing procedures are the same, except the child may be placed in the home prior to the license being issued. The TIPS-MAPP or DT training can be completed after the child is placed in the home. The DT training, which is required training for NRKIN placements, includes training on trauma-informed care. A temporary permit can be issued for 90 days, and a second permit can be issued for an additional 90 days. These families have up to 180 days to complete all requirements and become licensed. He stated exceptions to licensure are

made if it is in the best interest of a foster care child and the exception does not violate statutory requirements.

The DCF representative explained relatives serving as placements are not required to be licensed, but may choose licensure. He stated DCF and agency partners are shifting to a Kin-First perspective with the goal of having half of the foster care placements with kin. DCF wants to streamline the licensing process for relatives and increase supports and subsidies to help relatives providing care.

The DCF representative stated foster care regulations allow for up to 24 hours of short-term respite placement for foster parents who need a break. The DCF Deputy Director of Foster Care Licensing responded to questions regarding respite placement by clarifying a respite placement must be in a licensed foster home. At times, the case planning team of the contractors may make respite arrangements for a specific child in the home of a relative. In that case, a license is not required.

With regard to the required monthly caseworker visits with a child or youth in foster care, the DCF representative stated a combination of virtual and in-person meetings are used to meet the requirement. CPAs must ask for an exception to use a virtual platform, and phone-call-only is not approved.

Responding to discussion regarding hair care for children and youth who are Black, the DCF Deputy Director of Foster Care Licensing stated placements must meet the federal Multi-Ethnic Placement Act. A representative of the Children's Alliance of Kansas responded she is aware of the importance of ethnic hair care skills and will make an effort for ethnic hair care training to be required as part of the DT and TIPS-MAPP training.

“A Day in the Life of” Presentations

Two additional “A Day in the Life of” presentations were made to provide the perspective of a foster parent and as viewed through the Kansas Practice Model (KPM).

Foster Parent. A current foster parent couple shared their experiences and how the licensure training helped them learn more about fostering,

including parenting children who have been traumatized. One of their goals as foster parents is to give children in their care a sense of belonging to help the child gain a sense of permanency, which, in most cases, included returning to the child's birth family. Both parents supported breaking the generational dependence on foster care through ample preventative services for families, and to work closely with the birth family for the benefit of the foster child.

Practice Model. A Child Protection Specialist for DCF described the KPM as a model utilizing family finding, team decision-making, and the child protection network, and said it is a technique used in a child protection investigation. Family finding involves locating kin family for placement. The team decision-making is a facilitated family meeting that takes place before a child is removed from the home. The goal of the meeting is to determine if measures can be put in place to meet safety or to remove the child, and to make the decisions with the parents and DCF that result in the strongest plan for the safety of the child. The child protection network involves elements from multiple sources to create a balanced assessment of strengths and existing safety of the child. She shared the assessment and planning tools used in her work, which are given to the foster care contractors.

Regarding training for child protection specialists, the DCF representative stated some of the child protection specialists do not have a license, and their preparation involves training, exercises, and accompanying a specialist for a few weeks. She stated the number of supervisors to front-line workers varies by region, but there is constant supervision. The front-line workers will help families find resources and, if necessary, make referrals for services.

Acceleration of Adoption Process and Improving Outcomes

A DCF Deputy Secretary presented testimony on the process of adoption. If reunification with the biological family is not possible, a parent's rights are terminated and the child becomes available for adoption. The majority of adoptions are by relatives or foster parents. Adoptions have been increasing, and in FY 2020, there were 998 completed adoptions. In the adoption process, a

Best Interest Staffing meeting is conducted to discuss the adoptive resources of a child or youth. Some children have an adoptive resource identified, and others need to have an adoption recruitment plan in place to identify a potential adoptive family. As of August 2020, 532 youth were on the Adopt Kansas Kids statewide adoption resource exchange. The average age of these youth is 12, and about 40 percent are in a sibling group. Adoption assistance for adoptive parents may include healthcare, monthly stipend, special needs cost, and one-time expenses.

The DCF Deputy Secretary stated in 2017, Casey Family Programs introduced DCF and case management agencies to Rapid Permanency Reviews (RPR), a concentrated review process being implemented nationally, focused on setting action plans to help reduce specific barriers to legal permanency for the group of children with the longest wait to permanency. The RPRs led to an increase in adoptions in 2019. In 2019, federal adoption incentive funding enabled five non-case carrying, Adoption Accelerator positions to assure adoptions progress with no technical delays. In FY 2020, 43.5 percent of children were adopted within 12 months of becoming legally free for adoption. The national performance measure is 45.8 percent. The Deputy Secretary provided information on other innovations to increase adoptions.

A KLRD memorandum on streamlining the adoption process was provided.

Title IV-E Funding

Calculation of funding. The DCF Chief Financial Officer (CFO) explained Title IV-E of the Social Security Act, administered by the U.S. Children's Bureau, within the HHS, entitles states to claim partial federal reimbursement for the cost of providing foster care, adoption assistance, and kinship guardianship assistance to children who meet certain federal eligibility criteria, which is based on 1996 Aid to Families with Dependent Children program criteria. He noted not all foster children are eligible for Title IV-E funding. Title IV-E is an entitlement program, and states are responsible for matching funds at different percents, depending on the type of costs. For administrative services, the maximum match is 50 percent federal and 50 percent state. For eligible

foster care maintenance, which are the costs associated with maintaining a child in an out-of-home placement, the maximum match is the same as the state's Federal Medical Assistance Percentage (FMAP) of approximately 60 percent federal and 40 percent state. For training, including the cost of training individuals who work with the child (e.g. training for social workers, foster parents, and administrators), the maximum match is 75 percent federal and 25 percent state.

The CFO noted there are two types of eligibility for the Title IV-E funding: Basic Eligibility and Payment Eligibility, each with different requirements. Basic Eligibility is determined at the time a child is removed from his or her home and must meet legal and judicial requirements. Basic Eligibility requires a child's household of origin to have been eligible for federal financial assistance if the child had remained in the home. A child determined not to meet Basic Eligibility requirements upon entering care will be ineligible for the duration of his or her custody. A child must first be determined Title IV-E Basic eligible to be determined IV-E Payment eligible. Payment Eligibility requires a child's placement meet Title IV-E funding requirements, including placement in a foster care setting licensed by DCF according to Title IV-E standards and a court determination the State has made reasonable efforts to prevent removal and create a permanency plan. Basic Eligibility qualifies the State to obtain Title IV-E funding for administrative and training costs. Payment Eligibility qualifies the State to obtain Title IV-E funding for maintenance costs associated with the child.

The CFO described another criterion affecting Title IV-E reimbursement: the ratio of IV-E eligible children to IV-E non-eligible children in the custody of the Secretary for Children and Families, commonly referred to as the IV-E penetration rate. The federal government does not reimburse 100 percent of IV-E eligible expenses. The federal reimbursement is equal to the penetration rate times the maximum federal match rate for each of the administrative, training, and maintenance costs. He stated in FY 2020, \$260 million was spent on a monthly average of 7,300 children in care. Of the \$260 million, \$189 million, or 73 percent, was from the SGF, 11

percent was from TANF, 8 percent was from Title IV-E, 6 percent was from the Social Services Block Grant, and 2 percent was from Social Security Disability and other funds.

Funding through Social Work Education Consortium. The CFO testified Kansas administered a Title IV-E program to assist students completing a Bachelor's or Master's degree in Social Work through a Social Work Education Consortium until 2006. He explained the participant was required to work for the then-Department of Social and Rehabilitation Services (SRS) for twice the amount of time they were supported by the program. SRS provided the Title IV-E reimbursement funds for training costs, and universities provided the state match. Audit concerns were raised when the Title IV-E ratio/penetration rate fell, and universities were responsible for providing increased matching funds. He stated determining if the program would be feasible again would require DCF to engage the schools of social work to discuss funding availability, eligibility requirements, specialized curricula, and payback and service requirements.

Funding for legal assistance. The CFO noted the new Title IV-E option available to states provides legal representation to families involved in the child welfare system. At this time, based on the State's current ratio/penetration rate, the reimbursement would be about nine percent of the legal representation costs. Kansas is not yet pursuing Title IV-E funding for legal representation.

DCF Response to September Committee Requests

DCF provided written-only responses to the following information previously requested by Committee members: foster care rates for licensed provider level of care and unlicensed relative and kin, kinship spending versus foster care spending, relocations and length of stay, average months in care by exit reason, COVID-19 bonus formula, length of employment for DCF front-line Child Protective Services staff, inter-agency communications, and the Crossover Youth Working Group Final Report.

October 21, 2020, Meeting

Overview of 2020 HB 2744

An Assistant Revisor of Statutes discussed 2020 HB 2744, which would make changes throughout the Revised Kansas Code for the Care of Children and the Revised Kansas Juvenile Justice Code related to crossover youth. The bill was referred to the House Committee on Judiciary just as the COVID-19 pandemic emerged and the Legislature recessed. She stated new Section 1 would require the Secretary for Children and Families and the Secretary of Corrections to enter into a memorandum of understanding to coordinate administering a risk and needs assessment to children exhibiting behaviors that could lead to offending behavior during the course of a CINC proceeding, including the use of evidence-based community programs offered by KDOC. Other amendments would include requiring collaboration between DCF and KDOC to provide services to children eligible for services from multiple agencies, allowing the extension of a juvenile offender's case length to allow completion of an evidence-based program while the juvenile offender is on probation, requiring KDOC to facilitate sharing of confidential data between all parts of the juvenile justice system, authorizing expanded uses of moneys from the evidence-based programs account of the SGF to provide services for youth identified as needing such services, and requiring KDOC to develop a grant program to implement evidence-based community programs for juveniles throughout the state.

Responding to questions, the Assistant Revisor stated the grant program, as authorized by the bill, would be reviewed by the Secretary of Corrections and would be used to prevent CINC youth from becoming crossover youth. The bill does not have a yearly cap on funds. Rather, funding would be based on the juvenile needed services. She stated the bill was created to address gaps identified from 2016 SB 367, including prevention of risky behaviors that would lead to offending behaviors. The bill would enable those children or youth to receive services to prevent becoming a crossover youth. Currently, those services are only available to those who commit offending behaviors.

It Takes A Village Program

Two representatives of It Takes a Village, Inc., provided information regarding the program, which began in 2015 with the goal to provide single family homes for teens to help prepare them for life and independence after foster care. The organization has 7 homes for 13 boys and 12 girls, for a total of 25 youth in foster care. The program is funded by DCF and has two steps: transitional living program homes that are staffed 24/7 and independent living homes for those who pass the transitional living program. The independent living homes have no staff on the premises but have daily staff checks and continued services. One of the representatives stated there is need for post-foster care housing for teens who age out of foster care but do not have the necessary skills to succeed independently. It was suggested a safety net be developed for these youth, specifically to allow them to reenter foster care until they reach the age of 25, with evidence-based programs and supports that include rules, housing, adult support, financial literacy, sexual health, and more.

Youth with High Needs

Foster and adoptive parent. A foster and adoptive mother of children with high needs provided information on the children's needs when they came into her home. She experienced the following challenges: the high turnover of workforce made it difficult to document reasonable efforts to reunite a child with the biological family, which is necessary prior to being released for adoption; workers tend to be young and unaware of what is necessary to care for a child who is medically fragile or has intellectual or developmental disabilities; the lack of information provided to foster parents about the needs of a child; MCOs acting as a gatekeeper complicates the process for appropriate services; intellectual and developmental disabilities and mental health needs are separated into silos rather than integrated; and not enough collaboration occurs among agencies providing services for a high-needs child or youth.

The foster and adoptive parent offered several suggestions for improvement, including developing specialized teams within each contractor to ensure continuity of services; developing inter-agency decision-makers from DCF, KDADS, KDHE, and MCOs to collaborate

on meeting the needs of high-risk youth; developing a licensing structure for medical group homes; reestablishing continuum of care for children with intellectual or developmental disabilities and behavioral needs; reestablishing community mental health centers as the gatekeepers to perform screenings for psychiatric residential treatment facility (PRTF) placements; developing or reestablishing professional foster homes for children with intellectual or developmental disabilities and behavioral health needs; and convening a group of foster families who specialize in high-needs children to offer recommendations for improvement.

In response to questions, the foster and adoptive parent stated a child or youth with complex medical needs may be approved for medical services, but the services are not necessarily available due to low rates of pay for the medical personnel. She also stated she sees a conflict with the MCOs serving as gatekeepers to PRTF placements because they are approving services that they are also responsible for paying.

KSDE. A representative of KSDE discussed special education relating to foster children. He stated there is nothing in state or federal law regarding the provision of special education services for children who are in foster care. Rather, a child with a disability who has an Individualized Education Program (IEP) and is in foster care has the same right as any child with a disability to receive special education services. He stated a foster parent must be appointed by the Kansas State Board of Education as the foster child's education advocate in order to make any educational decisions about the foster child in the foster parent's care. Nothing that comes from school records, such as IEPs, can be discussed with the foster parent unless they are appointed as the education advocate. He noted IEP services must be implemented even during the COVID-19 pandemic, and compensatory services are an alternate if regular IEP services cannot be provided. He stated Families Together is a nonprofit agency providing family information on special education, including coordinating the process to become an education advocate.

TLC for Children and Families. A representative of TLC for Children and Families discussed the agency's PRTF and its focus. He

stated 8 to 10 percent of the PRTF population consists of children who are currently in the foster care system. In the last year, the agency has served 30 youth in DCF custody. He stated his agency has experienced a rise in the severity of behaviors in the last three years in its general population. He noted there has been a 124 percent increase in workers' compensation claims since 2016 due to staff injuries sustained directly from a client or from safety control holds. Annual staff turnover is 61 percent among residential care workers, with exit interviews indicating many staff are leaving because of injury, trauma, or because the work is too difficult. He spoke in support of the focus on prevention and remediation of the Families First Act.

Association of Community Mental Health Centers of Kansas (ACMHCKS). A representative of ACMHCKS provided testimony regarding workforce issues relating to the CMHC network and his experience working with the child welfare system. He provided a brief history of the 1990s when CMHCs assessed children entering the foster care system and referred them for services. He noted during the time CMHCs were gatekeepers for PRTFs, there were no waiting lists for care. He stated the change from the 1990s may have been due to the onset of privatization of the child welfare system or budget constraints. For purposes of workforce development, he expressed support for a two-year behavioral health technician certificate program through community or technical colleges. He stated this could create a career path toward seeking bachelor's or master's degrees in psychology, social work, criminal justice, and related fields.

Spring River Mental Health and Wellness. A representative of Spring River Mental Health and Wellness, Inc. (SRMHW), the CMHC serving Cherokee County in southeast Kansas, testified about the ways SMRHW collaborates with the child welfare system. Collaborations include providing mental health and substance use services for children in out-of-home placements and their parents and assisting foster parents in supporting and/or stabilizing a youth's placement. She discussed the use of cool/calm rooms as a last resort when other methods of intervention or de-escalation have been exhausted to continue providing child and adolescent psychosocial rehabilitation services.

Wyandot Behavioral Health Network.

A representative of Wyandot Behavioral Health Network expressed the need to approve Medicaid code 90846, noting the code is not, nor has ever been, reimbursable through the Kansas Medicaid program. The code allows for reimbursement of family therapy with parents and foster parents to address the mental health needs of the child, without the presence of the child. He cited the need for foster parents and the child's therapist to have candid conversations regarding the child's behaviors and how to intervene and respond to the child. He said, at one time, the Wyandot Behavioral Health Network had an evidence-based multi-systemic program allowing the therapist to work with the parent without the child present, but such evidenced-based parenting programs cannot be provided unless they are grant funded. In response to a question, he stated if the Medicaid code was permitted, it would become an additional intervention tool for the therapist. The limited clinician workforce would continue to be a challenge.

Prevention Strategies to Divert Children from Foster Care

A representative of DCCCA presented testimony on primary prevention of child abuse and neglect. She provided information on the frequency of child abuse or neglect nationwide and noted the increased risks for mental health issues, alcohol or drug use, suicide, violence, and truancy as a result of the subsequent trauma of abuse or neglect. She stated a Substance Abuse and Mental Health Services Administration analysis indicated for every dollar spent in prevention, there is an \$18 savings in deeper end services. She suggested examining intervention and treatment programs and aligning them to available TANF funding, identifying leverage points to serve crossover youth and address unintended duplication, and expanding or creating a referral system for parents to connect to services. She suggested DCF review Family First programming with the goal of maximizing programming that could be funded using other funding streams to allow the shifting of Family First to fund primary prevention.

Kin Support

A representative of DCCCA stated kinship placements should be the expectation for

placement instead of the exception. She stated kinship placements tend to minimize the trauma of removal, increase continued connection with family and community, improve the child's well-being, and keep foster care homes available to children and youth who do not have kinship relationships. She stated a disincentive exists for kinship family placement because kinship families are not required to be licensed and also do not receive the same services, training, or support as foster families supported by a Child Placing Agency. She said she supported kin equity with foster parents in the areas of support, resources, and training. Responding to a question, she stated Title IV-E requirements and federal law do not allow a state to have two processes for foster home licensure. To ease the barriers for kinship families to become licensed as foster parents, she suggested there be one foster care home licensing system with waivers for kinship families to become licensed as foster parents, and that licensure for kinship families remain an option rather than a requirement. In response to a comment regarding the difference in the foster care rate for a licensed foster home versus the payment for kinship placement, she stated kinship placements have even fewer supports than regular licensed foster parents .

Education and Foster Care

A DCF Deputy Secretary discussed school records and the transition between schools for children and youth in foster care and noted two specific federal laws that provide guidance regarding access to those records. The Family Education Rights and Privacy Act, amended in January 2013 by the Uninterrupted Scholars Act, allows child welfare agencies, without parental consent, to access the school records of students in foster care as needed to ensure the provision of early intervention of educational services. The personally identifiable information in the school record may be disclosed to an agency caseworker or other representative of DCF, including a case management grantee. The Every Student Succeeds Act was passed in 2015, replacing No Child Left Behind, and requires a child or youth in foster care remain in their current school whenever possible. An exception can be made if a Best Interest Determination recommends the child would benefit from a change. When a move is necessary, it is the responsibility of the case management

grantee (contractor) to notify the former school and the new school for the transfer of records. She stated there are policies and procedures in place for the streamlined transfer of records, but it is not working at the local level. To that end, five DCF contacts have been identified for schools to contact directly regarding school records. She mentioned the Education Stability for Children in Foster Care Workgroup that meets regularly and noted its membership composition. In response to a question, she stated mechanisms in place track the transfer of school records, but schools are not receiving the records. DCF will investigate the discrepancy.

A representative of JAG-K stated KSDE has documented the graduation rate for foster care youth is decreasing. She stated JAG-K is mostly funded by TANF funding and is an evidence-based program that achieves high positive outcomes for students facing barriers. For the years 2014 through 2019, the foster care youth served by JAG-K had a 95 percent graduation rate. She described the difficulties a foster youth faces when transferring schools where the new school, based on local control, does not necessarily recognize the completed coursework in meeting the new school's graduation requirements. She noted this situation creates a lack of motivation for a foster youth to graduate, especially if they turn 18 before the graduation occurs. She suggested helping foster youth achieve high school graduation through some type of incentive program for those youth.

In response to a question regarding local control of graduation requirements, the JAG-K representative suggested a Plan of Study could be developed, which would follow the student and could satisfy local control graduation requirements. She stated such an idea would need Kansas State Board of Education approval so it would carry weight for the student moving from one school to another. Such a plan could also assist in preparing for technical education.

A representative of McAdams Academy, (Academy) shared his perspective on educating youth in foster care. He explained the Academy was created in 2012 and currently offers private education for middle and high school students who have been expelled, suspended in Sedgwick County, or are foster youth without a permanent

placement. He explained the Academy's three programs: Homeroom, which allows teens expelled from Sedgwick County public school alternative education programs to earn high school credits that transfer to their transcripts; Extended Learning, which allows teens no longer eligible for Homeroom because their expulsion has ended to continue to receive assistance with social skills, behavior, and job skills; and Day School, which is for youth suspended from school who are involved in the juvenile justice system and foster children without placements. He reported observing more intense behaviors among the foster care youth than the other teens at the Academy, including more hopelessness, anger, aggressiveness, tendency to self-harm, and substance abuse. He noted the challenge in obtaining transcripts and other documents needed to attend the Academy. The Academy serves foster youth in several ways. Some foster youth are enrolled in public school and are tutored by the Academy. Other foster youth are given the opportunity to pursue their GED online, while the Academy addresses their behavior problems. His testimony included multiple suggestions to improve the foster care system.

Responding to questions, the Academy representative stated the Academy does not receive support from the Sedgwick County school district when accepting a student who has been expelled by a district school. It is funded by a grant from the Sedgwick County Community Crime Prevention Fund, other grants, and private donors.

Closing Comments from DCF

The Secretary for Children and Families stated the importance of placement stability, education, and mental health for children and youth in foster care. She stated when she began her tenure as Secretary in January 2019, the child welfare system was in crisis, with too many children in foster care, contractors struggling with an overwhelmed system, placement instability resulting in children in State custody spending nights in child welfare offices, and few options to support families. She stated much progress has been achieved, including the number of children in foster care decreasing by 10 percent to 6,800, increased placement options, and added resources to accelerate adoptions. She stated with the new federal Family First program to keep children in

their families, 94 percent of families served have been diverted from foster care. Other prevention activity includes developing a mental health crisis response mobile unit. The Secretary suggested the State should consider a goal of a Family Well-Being System, which would include such supports as practice models, kin placements, prevention, crisis and mental health supports, supports for older youth, and supporting a strong and skilled workforce. She said over the next several years DCF will focus on meeting the practice improvements and outcomes in placement stability and access to mental health supports as part of the child welfare class action lawsuit settlement.

The Secretary responded to a question stating DCF was working on many of the recommendations suggested during the Committee meetings, although there may be differences in the implementation of those ideas. She said some of the recommendations could be managed or changed through policy, while others might require more funding.

The need for consideration of attachment in determining a child's placement was noted in presentations on kinship placement, reintegration, and by foster parents. A DCF representative stated the agency and agency partners are shifting to a Kin-First perspective with the goal of having half of the foster care placements with kin. In light of this testimony, the Committee requested KLRD staff research the general understanding of the science of attachment in early childhood development and how it is applied as a factor judges should consider, including information on other states that reference attachment in their children's code.

CONCLUSIONS AND RECOMMENDATIONS

The Special Committee on Foster Care Oversight adopted the following recommendations and requests. The list of recommendations is divided into Potential Legislation and Recommendations for DCF and other State Agencies:

Potential Legislation

The Committee agreed the work of the Special Committee on Foster Care Oversight should

continue. The Committee recommends the following:

- The Legislature should establish a statutory joint committee on child welfare oversight, structured like the statutory Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight. The Committee recommends members of such new committee be legislators from the Senate and House of Representatives, with both parties represented, and appointed by leadership, and the new committee meet quarterly.

If such joint oversight committee is established by the Legislature, the Committee recommends the new joint oversight committee pursue the following further recommendations:

- Consider the establishment of an Office of the Child Advocate or independent oversight of foster care to provide independent advocacy for persons involved in the child welfare system;
- Look further into the Community Collaborator pilot program;
- Continue discussion and increased understanding of the establishment of a Health Information Specialist Unit in the appropriate agency, with staff trained in reading medical records and able to coordinate healthcare for children and youth in the foster care system, and request review and input from the DCF on establishing such a unit in Kansas;
- Reconsider the use of hair shaft testing for the presence of illegal substances in biological parents of children involved in the child welfare system;
- Hold an informational hearing on Medicaid expansion and the lifetime restrictions imposed on families qualifying for TANF and SNAP and the impact of such restrictions on the foster care population; and

- Determine if there are any potential conflicts of interest or incentives for the foster care contractors and grantees that affect decisions that should be made based on the best interest of the child.

If a statutory joint committee on child welfare oversight is not established, or the newly established committee does not pursue the aforementioned recommendations, the Committee recommends:

- The Legislature and any appropriate committee consider the recommendations proposed for future consideration by the joint oversight committee.

The Committee makes the following additional recommendations and requests:

- Urges the Chairperson of the Joint Committee on Corrections and Juvenile Justice Oversight to consider the contents of 2020 HB 2744 and any amendments needed. [*Note: The legislation would make changes to the Code for the Care of Children and the Juvenile Justice Code as they relate to crossover youth, who are youth involved or potentially involved with both the child welfare and juvenile justice systems.*];
- Recommends support for legislation to codify and continue reimbursement for health services, including mental health services, delivered through televideo and telephone;
- Supports the reintroduction of prior legislation (2018 SB 319) to allow the use of DCF or local child welfare contractor or grantee address to expedite enrolling a foster child in school if the child has been moved from the child's school of origin and foster care or permanent family placement has not been determined; and
- Supports the introduction of legislation to prohibit an employer from dismissing or firing an employee who is meeting court-ordered requirements for purposes of

reunification with their child or children who are in the custody of the State of Kansas. Court-ordered requirements include, but would not be limited to, court appearances, appointments, visitation, and treatment programs.

Recommendations for DCF and Other State Agencies

The Committee further recommends DCF:

- Work with the Department of Administration to explore the use of the Coronavirus Aid, Relief, and Economic Security (CARES) Act funding for technology support for the purpose of improving safety monitoring, coordination, and efficiency within the child welfare system;
- Provide a comparison of the benefits under the original Grandparents as Caregivers legislation (2006 SB 62) and the current benefits provided to grandparents caring for their grandchildren through the TANF program;
- Work with the universities to look into the use of Title IV-E funding to support education and promote a professional track for the child welfare workforce through scholarships available during the last two years of education;
- Provide foster parents with information on continuous training opportunities available;
- Develop a plan of action to address the current delay in obtaining school records and transferring medical records in a timely manner from the school of origin for children and youth in foster care;
- Demonstrate transparency in communicating the scope of the special needs and behaviors of a child or children being placed with a foster family, as well as the appropriate funding based on the needs of the child;
- Develop a checklist or other document to clearly identify all court-ordered expectations a birth family must meet for the purpose of reunification with their child or children in the custody of the State. The document would be given to the birth family immediately following a court hearing;
- Provide information on the use of psychotropic medicines as a method to subdue behaviors of children or youth who are in foster care and report to the currently recommended joint committee on child welfare oversight, to the Legislature, or the appropriate legislative standing committee;
- Consider mandatory training for foster parents regarding cultural competence to include the special needs of children of color and LGBTQ children. DCF is encouraged to contact the Kansas Board of Cosmetology for assistance in developing training and teaching ethnic hair care skills;
- Consider the development of post-foster care housing for youth who age out of the foster care system;
- Work with KSDE to explore ways to transfer funding from a public school to an alternative educational program for children and youth who have been expelled; and
- Work with the KLRD to research how to develop and expand a two-year certificate program for behavioral health technicians and guardians *ad litem*, through community colleges and/or technical schools for the purpose of creating an educational pathway into a career in child welfare. Research should include how such a program would fit into the current child welfare system and how it may impact funding.

Report of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight to the 2021 Kansas Legislature

CHAIRPERSON: Representative Brenda Landwehr

VICE-CHAIRPERSON: Senator Gene Suellentrop

OTHER MEMBERS: Senators Ed Berger, Bud Estes, Richard Hilderbrand, and Pat Pettey; Representatives Barbara Ballard, John Barker, Will Carpenter, Susan Concannon, and Monica Murnan

CHARGE

- KSA 2020 Supp. 39-7,160 directs the Committee to oversee long-term care services, including home and community based services (HCBS). The Committee is to oversee the savings resulting from the transfer of individuals from state or private institutions to HCBS and to ensure that any proceeds resulting from the successful transfer be applied to the system for the provision of services for long-term care. Further, the Committee is to oversee the Children's Health Insurance Program (CHIP), the Program for All-Inclusive Care for the Elderly (PACE), and the state Medicaid program (KanCare), and monitor and study the implementation and operations of these programs including, but not limited to, access to and quality of services provided and any financial information and budgetary issues.

Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight

ANNUAL REPORT

Conclusions and Recommendations

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight recommends:

- The House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare hold informational hearings within the first 60 days of the 2021 Legislative Session on the 340B Drug Pricing Program;
- The House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare hold informational hearings within the first 60 days of the 2021 Legislative Session regarding the efforts of Oral Health Kansas;
- The Legislature review how other states estimate human services consensus caseloads;
- The K-TRACS prescription drug monitoring program be funded through the State General Fund;
- Nursing facilities be given the same immunity from civil liability provided to health care providers in 2020 Special Session HB 2016;
- The Legislature address the systemwide health care workforce issues, such as: safety, shortages, pay, education, licensure, and training (e.g., virtual training of certified nurse aides by nursing facilities);
- The Legislature work on integrated care and coordinating general and behavioral health, which includes mental health, substance abuse, and primary care;
- The Legislature monitor the financial stability of long-term care facilities in Kansas;
- The Legislature monitor and report the increase in Home and Community Based Services (HCBS) waiver services provided to school-aged children in remote settings;
- The Legislature support expansion of the federal Excellence in Mental Health Act and then pursue participation. If participation in the Excellence in Mental Health Act is not possible, pursue a state plan amendment or change to the Section 1115 Waiver to allow interested providers to gain access to the Certified Community Behavioral Health Clinic (CCBHC) model. [*Note: This recommendation mirrors Recommendation 2.1 of the Special Committee on Mental Health Modernization and Reform working groups' report to the Special Committee, Strategic Framework for Modernizing the Kansas Behavioral Health System.*];

- The Legislature consider adding the Program of All-Inclusive Care for the Elderly (PACE) to the consensus caseload process;
- Regarding telehealth, the Legislature should:
 - Develop standards to ensure high-quality telehealth services are provided. This includes: establishing consistent guidelines and measures for telehealth in collaboration with licensing and regulatory agencies, requiring standard provider education and training, ensuring patient privacy, educating patients on privacy-related issues, allowing telehealth supervision hours to be consistently counted toward licensure requirements, and allowing services to be provided flexibly when broadband access is limited;
 - Maintain reimbursement codes added during the COVID-19 public health emergency for behavioral telehealth services and consider options to prevent loss of facility fees so that providers are not losing revenue by delivering telehealth services;
 - Establish coverage of telehealth for crisis services to allow for the use of telehealth with law enforcement and mobile crisis services and explore virtual co-responder models for law enforcement to aid police departments and other law enforcement agencies as they respond to mental health crises in rural and frontier communities;
 - Address the following items to ensure individuals receive, and providers offer, telehealth in the most appropriate locations: adopt a broad definition of originating site, consistent with the Kansas Telemedicine Act; allow staff to provide services from homes or other non-clinical sites, if patient privacy and safety standards can be met; and examine issues related to providers practicing, and patients receiving, services across state lines, such as by exploring participation in interstate licensure compacts; and
 - Utilize telehealth to maintain service and provider continuity as children, particularly foster children, move around the state and consider how the unique needs of parents of children in the child welfare system can be met *via* telehealth. [*Note: The telehealth recommendations mirror Recommendations 10.1 through 10.5 of the Special Committee on Mental Health Modernization and Reform working groups' report to the Special Committee, Strategic Framework for Modernizing the Kansas Behavioral Health System.*]; and
- The Legislature study and consider adjusting PACE rates annually, similar to the KanCare managed care organizations.

The Committee expresses concern and suggests the Legislature look at the charges nursing facilities incur when temporary staff must be used to meet workforce needs.

Proposed Legislation: The Committee requests a Committee bill be introduced containing the language of 2020 HB 2550, as amended by the House Committee on Social Services Budget, to increase reimbursement rates for providers of HCBS under the Intellectual and Developmental Disability waiver.

BACKGROUND

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services (HCBS)

and KanCare Oversight operates pursuant to KSA 2020 Supp. 39-7,159, *et seq.* The previous Joint Committee on HCBS Oversight was created by the 2008 Legislature in House Sub. for SB 365. In HB 2025, the 2013 Legislature renamed and expanded

the scope of the Joint Committee on HCBS Oversight to add the oversight of KanCare (the State's Medicaid managed care program). The Committee oversees long-term care services, including HCBS, which are to be provided through a comprehensive and coordinated system throughout the state. The system, in part, is designed to emphasize a delivery concept of self-direction, individual choice, services in home and community settings, and privacy. The Committee also oversees the Children's Health Insurance Program (CHIP), the Program for All-Inclusive Care for the Elderly (PACE), and the state Medicaid programs.

The Committee is composed of 11 members: 6 from the House of Representatives and 5 from the Senate. Members are appointed for terms that coincide with their elected or appointed legislative terms. The Committee is statutorily required to meet at least once in January and once in April when the Legislature is in regular session and at least once for two consecutive days during both the third and fourth calendar quarters, at the call of the chairperson. The Committee is not to exceed six total meetings in a calendar year; however, additional meetings may be held at the call of the chairperson when urgent circumstances require such meetings. In its oversight role, the Committee is to oversee the savings resulting from the transfer of individuals from state or private institutions to HCBS and to ensure proceeds resulting from the successful transfer be applied to the system for the provision of services for long-term care and HCBS, as well as to review and study other components of the State's long-term care system. Additionally, the Committee is to monitor and study the implementation and operations of the HCBS programs, CHIP, PACE, and the state Medicaid programs, including, but not limited to, access to and quality of services provided and financial information and budgetary issues.

As required by statute, at the beginning of each regular session, the Committee is to submit a written report to the President of the Senate, the Speaker of the House of Representatives, the House Committee on Health and Human Services, and the Senate Committee on Public Health and Welfare. The report is to include the number of individuals transferred from state or private institutions to HCBS, as certified by the Secretary for Aging and Disability Services, and the current

balance in the HCBS Savings Fund. (See Appendix A for the 2020 report.)

The report also is to include information on the KanCare Program, as follows:

- Quality of care and health outcomes of individuals receiving state Medicaid services under KanCare, as compared to outcomes from the provision of state Medicaid services prior to January 1, 2013;
- Integration and coordination of health care procedures for individuals receiving state Medicaid services under KanCare;
- Availability of information to the public about the provision of state Medicaid services under KanCare, including access to health services, expenditures for health services, extent of consumer satisfaction with health services provided, and grievance procedures, including quantitative case data and summaries of case resolution by the KanCare Ombudsman;
- Provisions for community outreach and efforts to promote public understanding of KanCare;
- Comparison of caseload information for individuals receiving state Medicaid services prior to January 1, 2013, to the caseload information for individuals receiving state Medicaid services under KanCare after January 1, 2013;
- Comparison of the actual Medicaid costs expended in providing state Medicaid services under KanCare after January 1, 2013, to the actual costs expended under the provision of state Medicaid services prior to January 1, 2013, including the manner in which such cost expenditures are calculated;
- Comparison of the estimated costs expended in a managed care system of providing state Medicaid services before

January 1, 2013, to the actual costs expended under KanCare after January 1, 2013; and

- All written testimony provided to the Committee regarding the impact of the provision of state Medicaid services under KanCare upon residents of adult care homes.

All written testimony provided to the Committee is available through Legislative Administrative Services.

In developing the Committee report, the Committee is also required to consider the external quality review reports and quality assessment and performance improvement program plans of each managed care organization (MCO) providing state Medicaid services under KanCare.

The Committee report must be published on the official website of the Kansas Legislative Research Department (KLRD). Additionally, the Kansas Department for Aging and Disability Services (KDADS), in consultation with the Kansas Department of Health and Environment (KDHE), is required to submit an annual report on the long-term care system to the Governor and the Legislature during the first week of each regular session.

COMMITTEE ACTIVITIES

The Committee met once during the 2020 Session (February 28) and four times during the 2020 Interim (June 22–23, September 28, December 9, and December 15). In accordance with its statutory charge, the Committee's work focused on the specific topics described in the following sections.

KDHE KanCare Overview and Update

KDHE staff provided information on the following topics at the Committee meetings: KanCare program updates, including the Aetna Better Health of Kansas (Aetna) corrective action plan; the status of the Section 1115 waiver amendment on the Health Care Access Improvement Program (HCAIP); the status of

amendments to the administrative rules and regulations on the protected income limit (PIL); OneCare Kansas; Technology Assisted (TA) waiver rates; the Disability and Behavioral Health Employment Support Pilot program; updates on the status of Medicaid eligibility applications and the transition of the application processing; KDHE Clearinghouse staffing and the Clearinghouse request for proposal (RFP) for processing Family Medical applications; KanCare COVID-19 update on special authorities and changes to the program; financial review of MCOs; KanCare analytics and performance metrics; stakeholder and legislative engagement efforts; and a KanCare Executive Summary containing data on eligibility and expenditures, financial summaries, the provider network, medical loss ratio, claims, value-added and in-lieu-of services, and grievances, appeals, and fair hearings received and resolved.

At the February 28, 2020, meeting, the Secretary of Health and Environment stated according to the America's Health Rankings, Kansas has had the greatest decline in health rankings of all states in the past 30 years. The decline is not limited to the Medicaid population. He stated the goal is to reverse the this trend and noted several key areas of concern.

At the June 22–23, 2020, meeting, the Secretary of Health and Environment provided a KDHE update, including personnel changes resulting from the departure of the Medicaid Director. The Secretary discussed COVID-19, the continuity of operations within KDHE, the impact on KanCare from the emergency declarations, and the response plan. The Secretary praised the work of the MCOs during the pandemic. He presented a review of purchases and disbursements of personal protective equipment (PPE), the daily rate trend of positive COVID-19 cases, and the reopening plan in regard to the COVID-19 pandemic.

At the September 28, 2020, meeting, the Secretary of Health and Environment noted the hiring of a new Medicaid Director. The Secretary stated KDHE implemented mobile COVID-19 testing in areas with limited capabilities to deal with the disease. The Secretary discussed the expansion of Medicaid codes for telehealth and virtual visits and said they had been extremely important for Kansans to access care during the pandemic. The Secretary stated an additional

major change at KDHE would be hiring a new Medicaid Medical Director, a position that is difficult to fill because the compensation is one-third of that offered by a normal medical practice. He noted after the contractor Conduent assumes operations currently performed by Maximus, the agency would be in standard operation mode.

At the December 9, 2020, meeting, the Secretary of Health and Environment provided an agency update and reviewed the COVID-19 vaccine delivery plan. He said KDHE was using Coronavirus Aid, Relief, and Economic Security (CARES) Act money through the Strengthening People and Revitalizing Kansas (SPARK) Taskforce to expand testing. Information on the collection sites and an overview of the novel therapeutics being used to treat COVID-19 was provided. The Secretary noted there is concern regarding hospital capacity. He then reviewed the Mission Control application used to assist hospitals with patient referral and transfer. He noted the program was particularly useful for rural and critical care hospitals needing to transfer a patient who needs more intensive care than what is available in those settings. The hospital staff can call Mission Control, which then locates a bed to meet the patient's needs and arranges for transportation using local transport options. Mission Control is also being used to repatriate patients to their home hospitals or skilled facilities after completion of the more intensive treatment. A copy of the KanCare Executive Summary was provided.

In response to questions at the December 9, 2020, meeting, the Secretary provided clarification of “pooled” and “un-pooled” COVID-19 testing. With pooled testing, multiple saliva samples are pooled together and tested. If the results come back negative, then all pooled samples are considered negative. Pooled testing makes it easier to test a large number of persons and is more cost effective. If symptoms are present or there might be infected individuals present, individual tests would be conducted instead of pooled tests. The Secretary stated individuals could test positive up to 30 to 60 days after recovering from COVID-19, but would not be infectious. He said it is recommended the previously infected individual not be tested again because of the possibility that residual particles might still be present. Reinfections have occurred, but normally after a

period of some number of months following recovery from the first infection.

Aetna Corrective Action Plan

A KDHE representative reviewed the status of the Corrective Action Plan (CAP) for Aetna at the February 28, 2020, meeting. He said the goal was to partner with Aetna to have the MCO work back into compliance. As of this meeting, KDHE had closed 10 of the 12 CAP items and 2 unofficial items. The representative said Aetna and KDHE remained in constant contact to work through the remaining CAP items quickly. He stated Aetna's responsiveness and communication with the provider community had improved, and KDHE hoped to lift the CAP during fiscal year (FY) 2020 if progress continued and ongoing monitoring would continue. A list of the CAP items was provided.

At the June 22–23, 2020, meeting, a KDHE representative noted Aetna was back in compliance, and the CAP was closed on June 12, 2020. Monitoring and oversight would continue for all MCOs.

HCAIP Provider Assessment

At the February 28, 2020, meeting, a KDHE representative reviewed the proposed changes to the HCAIP. An increase in program funds necessitated amending the Section 1115 waiver to account for the new moneys with regard to budget neutrality. KDHE was working with the federal Centers for Medicare and Medicaid Services (CMS) to gain approval. The new program could not be implemented without CMS approval. The targeted date for implementation was July 1, 2020, pending CMS approval. SB 225 (2020), which would make the changes permanent, remained in committee at the time of this meeting. A proviso in the FY 2020 budget bill granted KDHE authority to continue operating the current program at the current funding levels through the end of FY 2020. The Kansas Hospital Association made a request to add the proviso to the FY 2021 budget bill, similar to the proviso in the FY 2020 budget bill.

At the June 22–23, 2020, meeting, a KDHE representative stated CMS indicated the proposed amendment to the State's Section 1115 waiver to address changes in the HCAIP would be denied.

KDHE would be partnering with the Kansas Hospital Association to arrive at an alternate solution to meet the budget neutrality requirements.

A KDHE representative provided an update on the HCAIP at the September 28, 2020, meeting. She noted during the examination of next steps after CMS indicated it would deny the State's Section 1115 waiver amendment, KDHE identified a technical error in the original CMS budget neutrality calculations and was finalizing a proposal to correct the error. She said KDHE believes CMS made an error by omitting some expenditures the State incurred between 2012 and 2017 when figuring the cost for the State without the expenditure waiver, which resulted in an artificially low budget neutrality cap. She said the error would amount to an additional \$395.0 million increase to the state budget neutrality cap, which is the total amount of federal and state money the State can spend over five years through the Section 1115 waiver. The representative clarified there was no state funding for HCAIP, rather the reference to state money pertained to the amount the State can afford to stay within the budget neutrality cap under the Section 1115 waiver. The State is limited in the total amount it can spend under the waiver and, if the total exceeds the budget neutrality cap, the State must reimburse the federal government from the State General Fund (SGF). The representative noted there was no certainty CMS would approve the request to correct the budget neutrality error, as this decision was within the discretion of CMS.

At the December 9, 2020, meeting, a KDHE representative stated the technical correction on the budget neutrality cap was submitted on September 30, 2020, and KDHE had been notified CMS was reviewing the proposal. If CMS approves the proposal, KDHE would work with the Kansas Hospital Association to determine the provider assessment percentage increase the State could afford while staying within the budget neutrality cap.

Protected Income Limit

At the February 28, 2020, meeting, a KDHE representative discussed the PIL, which increased from \$747 per month to \$1,177 per month on September 1, 2019. This increase allowed 92.0

percent of HCBS members to have no client obligation, with 2.0 percent to have an obligation of less than \$100. The PIL was increased through a proviso in the 2019 budget bill during the 2019 Legislative Session. HB 2549 (2020) would make the PIL change permanent, but the bill remained in the House Committee on Social Services Budget at the time of the meeting. In the House Committee, a motion was made to increase the PIL to 300.0 percent of Supplemental Security Income (SSI), at a cost of \$11.4 million, all funds, and \$4.4 million SGF, but it failed for lack of a second.

At the June 22–23, 2020, meeting, a KDHE representative stated approval was received from CMS for the six amended waivers impacted by the PIL increase. The representative provided the estimated cost of increasing the PIL to 300 percent of SSI. KDHE was preparing amendments to the rules and regulations addressing the PIL.

A KDHE representative provided an update on regulations for the HCBS PIL at the September 28, 2020, meeting. An overview of the regulatory process was also provided. KDHE was on track to publish notice of the public hearing on proposed regulations in early October 2020, with the hearing set for early December 2020. The representative stated after the hearing, assuming no changes were made, the regulation would take effect 15 days after publication in the *Kansas Register*.

At the December 9, 2020, meeting a KDHE representative stated a public hearing was held on December 3, 2020, on proposed amendments to the KDHE administrative rules and regulations to reflect the PIL increase to \$1,177 per month. No changes were made to the proposed amendments. Confirmation was received from the Office of the Secretary of State the regulation would be published in the *Kansas Register* on December 17, 2020, which would set the effective date as January 1, 2021.

OneCare Kansas

A KDHE representative stated at the February 28, 2020, meeting that OneCare Kansas was set to launch on April 1, 2020. As of the meeting date, of the 34 providers who had applied to be OneCare providers, 27 were fully contracted. KDHE staff conducted provider training during February 2020. Seven locations around the state were used to

conduct member education meetings to help members understand the benefits of the program. The representative said the program is intended to coordinate physical and behavioral health care with long-term services and supports for persons with certain chronic conditions. A chart was provided to illustrate medication management for persons with a history of asthma.

At the June 22–23, 2020, meeting, the KDHE representative stated OneCare Kansas was launched on April 1, 2020, with membership education meetings in March 2020.

At the September 28, 2020, meeting, the KDHE representative stated that to date, 37 providers had applied for OneCare Kansas, and 33 had been approved. One additional provider was expected to be fully contracted by October 1, 2020. To date, 412 members were enrolled in the asthma population, and 293 members were enrolled in the Serious Mental Illness population. The representative said KDHE was working with the MCOs to develop and finalize a single, standard audit tool for review of the OneCare providers.

A KDHE representative stated at the December 9, 2020, meeting that as of December 1, 2020, there were almost 900 members enrolled, with 581 members enrolled as part of the asthma population and a little more than 300 members as part of the Serious Mental Illness population. Six-month audits were underway to measure outcomes and effectiveness, as required by 2020 SB 66. The link to the audit tool was provided. The representative said efforts to explore options to increase participation continue.

Disability and Behavioral Health Employment Support Pilot

At the June 22–23, 2020, meeting, a KDHE representative stated the Disability and Behavioral Health Employment Support Pilot (Employment Support Pilot) program, a voluntary program for up to 500 eligible KanCare members, would be operated by KDHE through a Section 1115 demonstration waiver. The program was being designed with guidance from an advisory board and had a proposed implementation date of July 2021.

A KDHE representative provided an update on the Employment Support Pilot program at the September 28, 2020, meeting, stating it would operate during the waiver period of 2019 through 2023, with the possibility of renewal if effective. KDHE received estimates from a contractor to design and build pilot-specific fields and functions; however, the bid was declined due to cost. The plan was to retain a contractor to expedite the implementation plan and to launch the program in July 2021. The representative stated specific reports were mandated to track the health care costs in the Employment Support Pilot program. SGF funding was provided to the Employment Support Pilot program in FY 2020 and FY 2021.

At the December 9, 2020, meeting, a KDHE representative stated KDHE had begun the recruiting process for two benefit specialists and a program manager to support the Employment Support Pilot program. KDHE executed a contract with an expert to provide technical implementation assistance and to write the program manual. The contractor began work in November 2020. The representative said the targeted start date for the program is July 2021.

TA Waiver Rates for Specialized Medical Care

Follow-up information regarding raising private duty nurse Specialized Medical Care (SMC) rates under the TA waiver was provided by a KDHE representative at the February 28, 2020, meeting. Assumptions were provided, and the potential cost offsets were listed. The KDHE representative noted two weeks of care in a person's home must be guaranteed before a patient would be released from the hospital. He noted other considerations, including uncertain provider capacity and the timing of offsets that could be delayed.

At the June 22–23, 2020, meeting, a KDHE representative discussed the fiscal impact of increasing the SMC code rates and the potential offsets associated with the rate increase, noting calculation of the offsets was difficult.

COVID-19-Related Activities

With regard to KDHE's ability to handle any future outbreaks, the Secretary of Health and

Environment stated at the June 22–23, 2020, meeting the key is to rapidly respond with testing to determine whether an individual is positive for COVID-19, identifying individuals who have been exposed through case investigation and contact tracing, and isolating or quarantining accordingly. He said to be prepared for any future outbreak, the State needs enough testing equipment and a PPE pipeline sufficient to keep up with the usage rate throughout the state. The PPE policy has always been to prioritize the allocation of PPE to direct care personnel, emergency providers, and hospitals. An example was provided of the process followed when an individual tested positive for COVID-19 at a correctional facility. The Secretary said the best way for nursing facilities to request PPE was to contact the county emergency managers and work through them. The Secretary stated he was confident in the number of COVID-19 deaths reported, as the information came from death certificates. If a death certificate was received that did not make sense, it was sent back to the attending physician or medical examiner for clarification. He stated he did not believe there was an advantage to listing the cause of death as COVID-19, since such a listing did not increase the payment to the doctor. If a hospital intentionally codes a cause of death incorrectly, it is considered fraud.

At the June 22–23, 2020, meeting, a KDHE representative outlined the special authorities exercised and some of the changes to KanCare to address the COVID-19 pandemic. A COVID-19 Kansas Medical Assistance Program (KMAP) provider information page containing links to a variety of resources was included in the KDHE testimony.

A KDHE representative stated at the September 28, 2020, meeting that partnerships with the MCOs and other agencies had enabled a consistent flow of information during the COVID-19 pandemic. The Secretary of Health and Environment explained the contact tracing and quarantine process when someone tests positive for COVID-19. Responding to the difference between the less strict quarantine process at hospitals as compared to the process KDHE follows, the Secretary stated hospital employees wear medical-grade PPE, but the PPE used in the community is not medical grade. He explained if an individual wearing an N-95 or surgical mask, a

face shield, and eye protection tested positive for COVID-19, no one around that individual would be considered a close contact if they were also wearing medical-grade PPE.

A KDHE representative stated at the September 28, 2020, meeting that on July 30, 2020, the public health emergency was extended through October 22, 2020. The representative reviewed the special authorities exercised across the KanCare program during the COVID-19 pandemic. She reviewed some of the changes to KanCare, such as the delay of annual eligibility reviews, which results in no one being removed from KanCare unless they move out of state or voluntarily withdraw. In response to whether CMS covered the cost due to temporary discontinuance of annual reviews and suspension of terminations in Medicaid, the KDHE representative stated CMS covered the cost at the regular rate, plus an additional 6.2 percent paid on all claims to cover the SGF cost for coverage, not just for those individuals who were ineligible, but the entire Medicaid population. The representative stated the additional 6.2 percent in federal financial participation (FFP) should allow the State to break even on SGF costs.

The KDHE Director of Program Finance and Informatics provided further information at the September 28, 2020, meeting regarding the additional Medicaid federal funds received due to the 6.2 percent FFP increase. He noted approximately \$55.0 million was received for each of the first and second quarters of calendar year 2020. Actual totals would be provided at a later time. A KDHE representative said an additional \$100.0 million total would be received for the last two quarters of calendar year 2020, since the federal emergency declaration was extended into the fourth quarter of calendar year 2020, allowing the State to receive the 6.2 percent FFP rate increase through the fourth calendar quarter.

At the September 28, 2020, meeting, a KDHE representative discussed updates made to the KMAP website to help providers identify important information regarding changes pertaining to COVID-19 that were being implemented by KMAP. Links to COVID-19-related bulletins and online resources were added to the COVID-19 KMAP Providers Information web page.

A KDHE representative stated at the September 28, 2020, meeting that KDHE was seeing about \$40.0 million in SGF savings per quarter as a result of the 6.2 percent increase in the FFP due to the COVID-19 pandemic.

At the December 9, 2020, meeting, a KDHE representative noted KDHE received approval to use SPARK funding to continue providing coverage for CHIP and M-CHIP (for beneficiaries 6 to 18 years of age with a poverty level between 113 percent and 133 percent of the federal poverty level) who age out of the program during the COVID-19 pandemic. She stated COVID-19 testing is covered by Medicaid with an order from a qualified provider, and COVID-19 vaccines will be covered by Medicaid. Kansas will continue to receive the 6.2 percent increased FFP for Medicaid and the 4.3 percent increased FFP for CHIP through March 31, 2021. If the public health emergency is extended, the increased federal participation could continue beyond March 2021.

Special Authorities

At the September 28, 2020, meeting, a KDHE representative discussed the different policy flexibilities allowed for telehealth services. She provided an overview of the 1915(c) HCBS Waiver Appendix K: Emergency Preparedness and Response (Appendix K) and the application KDHE submitted to CMS in June 2020 to access different flexibilities due to the COVID-19 pandemic. In regard to the application to CMS for Additive Appendix K#4 regarding Individual Education Plans (IEPs) and the services proposed to be offered through this waiver, the KDHE representative explained the waiver was envisioned as providing personal care services for individuals who already receive KanCare services and who required this assistance in their IEPs but may not be able to access it due to remote learning during the pandemic.

At the December 9, 2020, meeting, a KDHE representative provided a review of the special authorities that have been exercised across the KanCare program, including approval of the Section 1135 waiver, Appendix K flexibilities, CMS concurrence for eligibility adjustments, disaster relief state plan amendments, and policy flexibility for telehealth. Additional details regarding Appendix K flexibilities were provided

by KDADS and appear in the KDADS section of this report. Presentations specifically addressing the Additive Appendix K#4 flexibility were made by KDADS and Kansas State Department of Education (KSDE) representatives and are summarized later in this report.

KanCare Utilization and Data Analytics

At each meeting, a KDHE representative provided information on analytics and performance metrics. A review of the MCO percent of population and an update of KanCare claims data was provided, including claim totals and claim denials. Charts were provided reflecting the timeliness of claims processed, member grievances, and the appeals process and resolution. A review of the customer service center, including charts comparing the number of calls, the speed of answer, and the call abandonment rate for both members and providers, was presented. Information on the MCOs' profit and loss and a KanCare Executive Summary containing program data was provided at each meeting. The MCOs' profits and losses for the quarter ending June 30, 2020, was included in KDHE's September 28, 2020, testimony.

Telemedicine

At the June 22–23, 2020, meeting, a KDHE representative stated KDHE could extend telemedicine codes approved by CMS to allow coverage for services during the COVID-19 pandemic from June 30, 2020, until the end of the public health emergency or until rescinded. When the public health emergency ends, a formal process will be followed to determine whether to extend or rescind the codes. The CMS decision on telemedicine codes it would continue to allow would determine the codes KDHE could extend.

KanCare Clearinghouse

Medicaid Eligibility

At the February 28, 2020, meeting, a KDHE representative provided information on KanCare eligibility and its status. As of February 18, 2020, there were 8,471 applications in-house. The KDHE representative provided breakdowns on the number of applications over 45 days in active and pending status and the number of applications received by KDHE during the November through

December 2019 federally facilitated marketplace (FFM) open enrollment. There was a 22 percent increase in applications received over the 2018 volume. The increase resulted in a temporary increase in the number of applications over 45 days, including many applications received from the marketplace that were aged by the time KDHE received them. An update on the status of Medicaid eligibility processing at the KDHE Clearinghouse was provided.

At the December 9, 2020, meeting, a KDHE representative reviewed the status of Medicaid eligibility applications. Of 4,546 total Medicaid applications in-house, 89 applications were over the 45-day processing time requirement. Of these 89 applications, 31 applications were in active status and ready to be processed, and 58 applications were in pending status awaiting information from the applicant, a provider, or a financial institution. A review of the applications received during the FFM open enrollment period of November 1 through December 15, 2020, was presented; 9,730 applications were received from the FFM.

Workload Transition from Maximus to KDHE

Information regarding the transition of workload for KanCare programs from Maximus to KDHE was provided at the February 28, 2020, meeting. The transition was completed one month early on December 1, 2019. Communication with stakeholders remained in place. A list of the various programs and the date of transition to KDHE responsibility was provided. An update was provided regarding the release of an RFP for a new KDHE Clearinghouse contract for processing Family Medical applications, with a start date of January 1, 2021. An update on the workload transition was provided at the June 22–23, 2020, meeting.

At the September 28, 2020, meeting, a KDHE representative noted Maximus would continue to process Family Medical applications through the end of the contract period, December 31, 2020. A new KDHE Clearinghouse contract was completed and awarded to Conduent in August 2020, and the company would begin processing Family Medical applications on January 1, 2021. The Conduent contract is for up to six years; it begins with a base three years, and then three optional one-year terms

may be added. The cost of the contract is \$136 million over 6 years. Clawback provisions for poor performance are in place in the Conduent contract. Conduent is required to use the Kansas Eligibility Enforcement System (KEES).

At the December 9, 2020, meeting, a KDHE representative provided an update on the transition of workload from Maximus and confirmed Conduent would begin processing Family Medical applications on January 1, 2021. The KDHE representative stated she had been working with Conduent since September and had confidence it would do a good job. There are performance measures in the contract, with metrics to measure its performance.

KDHE Clearinghouse Staffing

At the February 28, 2020, meeting, the status of the KDHE Clearinghouse staffing was reviewed by a KDHE representative, noting the majority of the positions had been filled. Recruiting and training for eligibility staff would continue. An update was provided at the June 22–23, September 28, and December 9, 2020, meetings on the status of the KDHE Clearinghouse staffing.

MCO Credentialing and Contracting Process

A representative of the Kansas Association of Medicaid Health Plans provided testimony at the February 28, 2020, meeting on KanCare credentialing and contracting. A new portal was launched by KDHE to assist in KanCare credentialing. The representative said the portal addressed many of the needs of the providers and significantly improved the process. A description of the processes related to enrollment, credentialing, and contracting was provided. The representative made suggestions to make the process more expedient and efficient.

Discussion of Impact of COVID-19 on KanCare Programs and Populations

KDHE

The KDHE State Epidemiologist provided an update on the COVID-19 pandemic situation at the June 22–23, 2020, meeting. A review of KDHE's statutory authority and regulations related to disease reporting was provided. All diseases on the statutory list must be reported within four hours

once suspected or confirmed. The processes for case notification and investigation were given. The following information was provided: charts regarding disease spread, hospitalizations, and deaths; county total case rates, cases by age and sex groupings, hospitalized and non-hospitalized cases by county, and testing rates; and the number of long-term care (LTC) facilities with outbreaks, the affected counties, and the total number of cases and deaths. The State Epidemiologist described the steps taken by KDHE and the technical supports provided to address an LTC center outbreak.

The National Healthcare Safety Network (NHSN) Long-Term Care Facility COVID-19 Report for Kansas was provided at the June 22–23, 2020, meeting. The State Epidemiologist provided information as to the KDHE response to the report. LTC facilities were required to report cases to the NHSN. She said testing was a major component of the response. A review of reopening requirements for nursing facilities was presented.

KDADS

At the June 22–23, 2020, meeting, the Secretary for Children and Families and Secretary for Aging and Disability Services discussed the impact of COVID-19 on KanCare programs and populations. A total of 53 guidance documents were created and posted on the KDADS COVID-19 Resource Center web page. The need for nutrition and supportive services was addressed, including plans to convert congregate meals to alternative service delivery meals. A list of Appendix K flexibilities for HCBS approved by CMS was provided. With regard to behavioral health, she stated there had been an expansion of telehealth authorities in concert with KDHE. KDADS received \$2.0 million in federal grant funding to support additional behavioral health services to individuals impacted by COVID-19. The Secretary stated KDADS was working with the Kansas Division of Emergency Management (KDEM) on its crisis counseling program and applied to the federal Substance Abuse and Mental Health Services Administration for a suicide prevention and domestic violence COVID-19 response grant. With regard to surveys, certification and credentialing guidance documents were created and, in spite of survey activities initially limited by CMS, numerous surveys had

been conducted. A list of lessons learned to help prepare for the next wave was given, including the hiring of a COVID-19 LTC liaison to work across systems to support facility and community-based LTC.

Department for Children and Families Presentation on Families First

At the February 28, 2020, meeting, a Department for Children and Families (DCF) representative provided information on Families First Prevention Services (Families First). Eligibility for the program is limited to families with children at imminent risk of removal to foster care, and services are limited to 12 months. The program received 55 proposals, and 17 grants were awarded over 4 categories: kinship navigation, mental health, substance use disorder, and parent skill building. All programs must be evidence based. A list of the grantees, the evidence-based practice, the amount awarded, the proposed number of families served, whether the program was new or existing, and a snapshot of the program enhancements was given. DCF is required to evaluate the Families First programs. DCF awarded a RFP to the University of Kansas to perform the robust evaluation required. The University of Kansas School of Social Welfare and the Center for Public Partnership and Research will collaborate to look at specific data indicators, outcomes, and the readiness and reach of providers. The short-term outcomes are well-being and family functioning. The long-term outcome is whether entry into foster care is being prevented. A statewide advisory group and a regional advisory group have been created. DCF hoped to have enough data in summer 2020 to look at outcomes to see whether families whose children started receiving services in November 2019 had come back into care. By November 2020, DCF anticipates some useable data from the Families First programs should be available to shed light on what is happening.

KDADS Overview and Update

A KDADS representative provided information at the February 28, 2020, meeting regarding HCBS, including a summary of the waiver enrollment as of January 2020, Physical Disability (PD) and Frail Elderly (FE) waiver renewals, stakeholder engagement on proposed amendments to current waivers, and work groups

created to evaluate the needs of participants receiving waiver services under the TA, Serious Emotional Disturbance (SED), and Autism waivers. Plans were being made to schedule a day-long meeting to identify key values, purpose, and future direction of Intellectual and Developmental Disability (I/DD) targeted case management (TCM). The KDADS representative noted the new Brain Injury (BI) waiver initially approved by CMS on August 5, 2019, for the adult population was fully expanded to include youth ages birth to 15 years old on December 1, 2019. Activity on the new BI waiver since its approval was provided.

A KDADS document reviewing the history of HCBS and providing an overview of the *Olmstead* decision was presented at the February 28, 2020, meeting. A KDADS representative presented the history and overview at the June 22–23, 2020, meeting.

At the September 28, 2020, meeting, the Secretary for Aging and Disability Services provided a KDADS update. She discussed the issue of visitation in nursing facilities, noting depression and mental health issues were an increasing concern for residents, and family visitation would mitigate the effects of those conditions. She noted CMS issued recommendations for outdoor visitation plans and other options, and facilities had also been directed to develop plans for indoor visits. She indicated the federal regulations for compassionate care visits were being interpreted broadly and not just for end-of-life situations.

At the December 9, 2020, meeting, the Secretary for Aging and Disability Services complimented the KDADS staff for the manner in which they had balanced the management of the COVID-19 pandemic and the ongoing responsibilities of the agency.

Targeted Case Management

At the September 28, 2020, meeting, a KDADS representative stated KDADS had created a TCM work group to establish a common vision for TCM services in the future and to address issues such as conflicts of interest. The 40-member work group met for the first time on September 15 and 16, 2020, and concentrated on goals, core values, practices, and the vision for the service

going forward. The representative stated TCM was a very prescriptive set of services individuals were allowed to receive. She noted TCM could include help with advocacy for the individual's care planning, and KDADS was looking into the sustainability of the TCM service and wanted to save what was best from the system.

Administrative Case Management

At the February 28, 2020, meeting, a KDADS representative provided a brief review of administrative case management (ACM) for the BI, PD, and FE waivers, and PACE. The ACM contract was awarded to the Northwest Kansas Area Agency on Aging (AAA), which would be subcontracting with the other ten AAAs to provide these services.

A review of ACM, a service launched on May 1, 2020, was presented by a KDADS representative at the June 22–23, 2020, meeting. Approximately 101 individuals receive these services. ACM assists individuals who have been found functionally eligible for the BI, PD, or FE waivers and PACE with the completion of the Medicaid enrollment form and helps with the collection of information to be submitted with the application. A chart reflecting ACM activity was provided at the September 28, 2020, meeting. At the December 9, 2020, meeting, a chart of ACM services provided from its launch on May 1, 2020, through October 2020, including the number of people served and the units and hours of service, was outlined.

Disability and Behavioral Health Employment Support Pilot

Information on the Employment Support Pilot program to be operated by KDHE and collaboratively worked on by KDHE and KDADS was provided by a KDADS representative at the February 28, 2020, meeting. The pilot is designed to assist 500 members in obtaining and maintaining employment. Eligibility requirements for the pilot were provided.

PACE

A KDADS representative provided information at the February 28, 2020, meeting on PACE enrollment, counties served, and providers providing services in those counties. Updated

information was provided at the June 22–23, 2020, meeting. A PACE update was provided at the September 28, 2020, meeting, indicating 689 individuals are enrolled in the program. An update was provided at the December 9, 2020, meeting, indicating a total of 696 individuals were enrolled in PACE as of December 1, 2020.

A representative of Midland Care Connection, Inc., provided testimony regarding PACE at the December 15, 2020, meeting. He provided a brief overview of Midland Care Connection. PACE serves individuals ages 55 and older, certified by the State to need nursing home care, be able to live safely in the community at the time of enrollment, and live in a PACE service area. After being admitted to the program, if a PACE enrollee needs nursing home care, PACE pays for it and continues to coordinate the enrollee's care. A list of the available PACE services was provided, including adult day care and clinic services, primary care, hospital and nursing home care when necessary, social services, all necessary prescription drugs, home health and personal care, and medical specialties. The representative stated the cost of care in PACE is 10 to 15 percent less than the cost of caring for a comparable population through Medicaid, including HCBS waiver programs, by providing preventive care. The representative provided the 2021 PACE public policy priorities for Kansas: increasing the PIL to 300 percent of SSI, adjusting PACE rates annually comparable to the annual update and adjustments for KanCare MCOs, and reinserting PACE in the Consensus Caseload estimating process.

The Midland Care Connection representative responded to questions and provided subsequent information regarding the breakdown of the savings under PACE when compared to the state Medicaid program. He described the difficulty in expanding PACE to other areas of the state due to a lack of PACE-eligible persons to allow the program to be viable. He noted there was a cap on PACE enrollment that was lifted when KanCare started. PACE has since grown from 120 to 150 participants to 750. The representative noted 90 percent of PACE participants are dual eligible, 9 percent are Medicaid only, and 1 percent are private pay. PACE participants are not on KanCare.

Quarterly HCBS Report

Written testimony was regularly provided by KDADS on savings on transfers to HCBS; the average monthly caseloads for private intermediate care facilities (ICFs), state I/DD hospitals, and head injury facilities; the number of persons transitioned on the Money Follows the Person program; average monthly caseload for HCBS I/DD, PD, FE, and BI services; monthly average eligibility caseload for nursing facilities; and the daily census for the Kansas Neurological Institute and Parsons State Hospital and Treatment Center. [Note: See Appendix A for the 2020 report.]

HCBS Waiver Renewals and Amendments

A KDADS representative provided information regarding the PD and FE waivers in the renewal process at the time of the June 22–23, 2020, meeting. Once those waivers were approved, KDADS would shift focus to a number of listed amendments to multiple waivers.

At the June 22–23, 2020, meeting, in response to a question regarding the proposed amendment to allow additional telehealth services within the waivers, a KDADS representative stated the additional telehealth services were different than those put in place as a result of the COVID-19 pandemic. Telehealth services are available only on the FE waiver. The KDADS representative noted the similarity in the FE and PD waivers and the interest among stakeholders to allow telehealth services under the PD waiver. The representative stated KDADS believes consideration of adding telehealth to the PD waiver is warranted.

A KDADS representative reviewed the HCBS waiver renewals and proposed amendments at the September 28, 2020, meeting. The PD and FE waivers remain in the CMS waiver renewal process. Once the waivers are approved, the focus would be on a number of amendments to multiple waivers, including unbundling the assistive services, per CMS request. Another proposed amendment was to move the cap on SMC services from a hard cap to a soft cap. A review was also in process to unbundle the I/DD day services and I/DD prevocational employment services, per CMS request. With regard to plans to review the SED waiver, the representative responded KDADS

would be updating the performance measures and revisions to include a plan of care process.

At the December 9, 2020, meeting, a KDADS representative stated the PD and FE waiver renewals were approved by CMS on October 26, 2020. Each is authorized for five years with a retroactive effective date of January 1, 2020. A list of proposed amendments to multiple waivers was provided. The public comment period for proposed amendments, which are described in the September 28, 2020, summary above, ran from October 15 through November 30, 2020.

HCBS Waiting Lists Update

HCBS waiting list updates were provided at each Committee meeting. At the June 22–23, 2020, meeting, a KDADS representative provided a review of the HCBS waiver enrollment as of April 2020. A breakdown by HCBS waiver program of the number of individuals eligible to receive services, on a waiting list, and proposed recipients was presented. There were 4,203 individuals on the I/DD waiting list and 1,298 on the PD waiting list at the time of the meeting.

At the September 28, 2020, meeting, a KDADS representative noted almost half of the I/DD individuals eligible to receive services were on the waiting list. The representative said there had not been much movement on the waiting list. KDADS received 124 requests for crisis services and approved 106 year to date.

A KDADS representative noted at the December 9, 2020, meeting that 6,266 individuals were on the waiting lists, with 4,394 on the I/DD waiting list and 1,972 on the PD waiting list.

HCBS Appendix K Flexibilities

A KDADS representative provided a description of the Appendix K flexibilities for the HCBS waivers at the June 22–23, 2020, meeting. Appendix K includes actions that states can take under existing 1915(c) HCBS waiver authority to respond to an emergency. A list of CMS-approved flexibilities was provided. The items in Appendix K were authorized until January 26, 2021, and are valid for one year. The items do not have to be used, but they are options.

A KDHE representative noted at the June 22–23, 2020, meeting that KDADS had requested approval from CMS for provider retainer payments for habilitation services and personal care services, and work was underway on internal policies to move this option forward. The primary focus of the discussion revolved around the provider retainer payments to maintain the provider network during the COVID-19 pandemic. The representative stated the retainer payments would come from the capitation payments already being paid to the MCOs. The authority KDADS had received from CMS limited the number of days that could be paid to 30 service days. An explanation was provided on how the 30 service days were counted. The retainer payments can be used only for I/DD day and residential services and personal care services that are provided under multiple waivers. The representative stated the initial calculations showed, due to fewer or less costly services being provided in other areas of the KanCare program, any costs of the retainer payments would be offset. The representative said checks and balances were put in place by KDADS to ensure only providers providing services during this time period would be eligible for payments. That determination was based on plans of care and person-centered plans that were in effect on March 1, 2020. Providers who received payments for alternate services provided during this time period would not be eligible for retainer payments. The number of providers that completely closed during this time frame was under 25. The day services were the most impacted. In response to whether the retainer payments could come out of COVID-19-related funds instead of the MCO capitation payments, the representative stated CMS made it clear the direct care payments or retainer payments must go through the MCOs.

At the September 28, 2020, meeting, a KDADS representative provided additional information on the Appendix K flexibilities. CMS-approved flexibilities include expanding telehealth opportunities, permitting provisional employment pending background checks, and providing retainer payments for habilitation services and personal care services. The representative responded to several questions about the Additive Appendix K#4 flexibility for IEP services, stating the flexibility would provide medically necessary support for students doing remote learning. The school districts were accustomed to providing

these services in their buildings, but the services were not available in student homes during remote learning. KDADS was waiting for guidance from CMS. In the meantime, KDADS was allowing students with an IEP indicating the need for medically necessary services and who were in a remote learning setting to receive support. Under normal circumstances, the school districts would pay for these services. Home-based services were paid out of the KDADS budget. The representative explained the only children who would receive these services through this waiver flexibility were ones already being provided HCBS services, and these services were deemed a requirement in their IEPs. Services through the waiver flexibility would only apply to students in remote settings and not when students were present in physical school buildings. The representative stated this waiver had not been approved and was part of a set of waivers applied for in Appendix K. The representative said KDADS was committed to working with KSDE on this issue.

Presentations were made by KDADS and KSDE representatives at the December 9, 2020, meeting to specifically address the Additive Appendix K#4 flexibility. Details on those presentations are outlined later in this report.

HCBS Settings Final Rule

At the June 22–23, 2020, meeting, a KDADS representative reviewed the timeline for the HCBS Settings Final Rule, involving self-assessment of sites, desk review of self-assessments and evidence submitted, remediation in areas of non-compliance, and heightened scrutiny for sites with features that institutionalize or isolate HCBS participants and offered feedback to bring the sites into compliance with the Settings Final Rule. KDADS would work with KDHE and the MCOs to transition individuals receiving services from providers that were noncompliant with the Settings Final Rule by March 2022 to other providers that were compliant.

A KDADS representative provided an overview of the HCBS Settings Final Rule process and where Kansas was in the process at the September 28, 2020, meeting. The representative noted 2,813 HCBS sites had submitted self-assessments and evidence for review for the Settings Final Rule. As of September 25, 2020, all

but one site had been reviewed. At the December 9, 2020, meeting, a review of the timeline for the Settings Final Rule was presented.

Oversight of Long-Term Care Facilities

COVID-19-related Activities

A review of the COVID-19-related actions for nursing facilities and adult care homes implemented by KDADS was provided by a KDADS representative at the June 22–23, 2020, meeting. A timetable of the steps taken was provided. On June 1, 2020, CMS required infection control surveys in all nursing facilities by July 31, 2020, with follow-up surveys within three to five days of a report of a positive COVID-19 test. KDADS issued guidance on June 12, 2020, to allow nursing facilities to reopen to visitors and outside services in cooperation with local health departments. To reopen, nursing facilities were required to have a plan to respond to positive COVID-19 cases. The KDADS testimony included information on the results of on-site investigations, civil monetary penalty grants used for technology devices for the adult care home residents to remain in contact with their relatives, and adult care-related temporary licenses granted due to the COVID-19 pandemic.

At the September 28, 2020, meeting, the Secretary for Aging and Disability Services discussed the usage of the \$10.0 million from the SPARK Taskforce to purchase PPE and presented a review of the COVID-19 status in the four state hospitals. In response to a question regarding the lack of PPE for nursing facilities, the Secretary stated inconsistencies in supply availability and issues with the quality of PPE had contributed to this situation. She stated PPE being provided by the federal government was not medical grade, and KDADS was using SPARK money to eliminate the PPE shortage. The agency was negotiating a contract with a vendor to supply PPE. The Secretary noted at times, KDADS itself had experienced shortages for its hospitals and staff.

In response to a question at the September 28, 2020, meeting about whether surveyors were tested prior to entering nursing facilities or other adult care facilities, the Secretary said KDADS did not have a testing procedure for surveyors. Surveyors were required to wear PPE and were

subjected to the same temperature checks and other safety procedures at facilities. She did not know whether surveyors had to be up-to-date on immunizations and boosters, but would follow-up on this information. With regard to the COVID-19 Adult Care Home Infection Control Survey, a KDADS representative stated 100 percent of the surveys had been completed, 25 immediate jeopardy citations had been issued, and 75 infection control citations had been issued.

A KDADS representative testified at the September 28, 2020, meeting about the guidelines for COVID-19 testing in nursing homes as guided by the Centers for Disease Control and Prevention (CDC), CMS, and KDHE. The frequency of testing depends on the prevalence of COVID-19 in the county, as measured by the positivity rate of testing. State policy allows nursing facilities to use the KDHE state-reported positivity rate. If a nursing facility had exhausted all options in testing efforts, it would not be held accountable for meeting the testing requirements. The U.S. Department of Health and Human Services (HHS) sent testing machines to all nursing homes with a current Clinical Laboratory Improvement Amendment certificate of waiver, and one round of testing kits was included. Additional testing kits needed to be purchased from the manufacturer, but a backlog of testing kits prevented the use of the testing machines. HHS began shipping testing kits to nursing homes in zones with the higher degrees of positivity to support testing of staff. Facilities were to be supplied for several months. A review of KDADS's role in COVID-19 testing was provided. After a positive test result in a nursing facility, KDHE would step in and complete a second test and conduct contact tracing to determine who additionally needed to be tested. Follow-up tests would be conducted two weeks later.

At the September 28, 2020, meeting, a KDADS representative stated new guidelines for visitation in nursing homes were issued September 17, 2020, to improve person-centered needs of residents. Visitation was to be allowed if the community spread was low, and outdoor visitation was highly encouraged. States were authorized to provide \$3,000 grants from the Civil Monetary Penalty (CMP) funds for facilities to purchase equipment to facilitate visitation. CMS visitation guidelines were provided. A chart of the funding

adult care homes have received from the SPARK Taskforce and the federal government was provided.

A KDADS representative stated at the December 9, 2020, meeting that KDADS is performing required on-site surveys of adult care homes when three or more new COVID-19 suspected and confirmed cases occur at a facility or when there is one confirmed resident case in a previously COVID-19-free facility. As of September 23, 2020, all adult care homes had been surveyed for infection control policies, procedures, and practices. He outlined the plan for the return to regular survey activity for nursing facilities and state-licensed-only adult care homes.

With regard to testing supplies, a KDADS representative stated at the December 9, 2020, meeting that, as of November 19, 2020, 319 facilities in Kansas received testing instruments in three waves between July 20 and November 6. The federal government is also providing BinaxNOW rapid tests to nursing homes in counties with the two highest levels of positivity to serve vulnerable populations, including nursing home residents and staff, assisted living facility residents and staff, and home health agency workers. These tests will be supplied to the facilities for several months to address the shortage of supplies for point-of-care testing instruments in nursing facilities. Responding to a question about the reliability of the binary tests, the representative stated a positive rapid test should be confirmed with a polymerase chain reaction (PCR) test. Seven labs across the state are available to LTC facilities to confirm positive results, and lab testing is paid for directly by KDHE.

At the December 9, 2020, meeting, a KDADS representative stated KDADS also used CARES Act funding to purchase telecommunication devices for residents to use to communicate with family. The CMS-issued nursing facility visitation guidance also expanded the definition of compassionate care. On October 19, 2020, KDADS issued visitation guidance for LTC settings indicating adult care homes should allow visitors if the community spread was low, adequate infection control and social distancing guidelines were in place, and visitors followed facility guidelines on visitation. Information on the amount and source of funding (CMP, CARES, and

SPARK) to support visitation in LTC settings was provided for nursing facilities and state-licensed-only facilities. The CMP funds cannot be used for the state-licensed-only facilities.

At the December 9, 2020, meeting, the Adjutant General's Department provided written responses to questions asked at the September 28, 2020, meeting regarding the distribution of PPE. The Department was unable to answer some of the questions due to the sensitive nature of the information. KDEM instituted a stopgap measure while KDADS implemented its plan to provide PPE. KDEM received 297 resource requests from LTC and adult care home facilities because of an outbreak or as a stopgap measure. KDEM delivered 7,604 cases of PPE to these facilities.

At the December 9, 2020, meeting, KDADS provided written responses to questions posed at the September 28, 2020, meeting regarding PPE, including the exact accounting of PPE, sanitation equipment, and testing supplies; supplies the state had not distributed; the recipients of PPE, sanitation equipment, and testing kits KDADS was required to provide per 2020 Special Session HB 2016; those facilities that had and had not received PPE, testing kits, and sanitation equipment; and the timeframe for abiding with 2020 Special Session HB 2016 requirements regarding the provision of PPE, sanitation equipment, and testing kits. Additionally, KDADS provided a report reflecting the distribution of product and funding to address COVID-19, as required by 2020 Special Session HB 2016, to adult day care facilities, assisted living facilities, boarding care homes, health care facilities, home plus facilities, hospital LTC units, ICFs for individuals with developmental disabilities, nursing facilities, nursing facilities for mental health, and residential psychiatric facilities.

At the December 15, 2020, meeting, a KDADS representative and associations and providers representing LTC facilities provided an update on the requirements and impact of COVID-19 on LTC facilities. These presentations are outlined near the end of the report under the heading of "COVID-19 and LTC Facilities."

Use of Antipsychotic Drugs in Nursing Facilities

At the February 28, 2020, meeting, a KDADS representative provided data reflecting Kansas has had a reduction in the use of antipsychotic drugs in nursing homes, to 37th in the nation in the use of antipsychotic drugs from 51st in the nation in 2011 and 42nd in 2018. As of the second quarter of 2019, the quarterly percent of long-term stay nursing home residents receiving antipsychotic medications was 16.1 percent. The national prevalence is 14.3 percent. The representative said KDADS anticipated continued improvement on the rankings. KDADS is recording and reporting antipsychotic drug usage, and there is an interest in facilities to reduce usage. He stated the use of antipsychotic medication is more prevalent with dementia, and the State needs to be sure it is addressing psychotropic drug use across the care continuum.

At the June 22–23, 2020, meeting, a KDADS representative stated continued improvement in reducing the use of antipsychotic drugs in nursing homes was expected based on the activities undertaken.

A KDADS representative stated at the September 28, 2020, meeting the MCOs created pay-for-performance measures tied to reducing inappropriate antipsychotic drug use in the nursing homes. A list of the initiatives implemented by each MCO was included in the testimony. No new information was provided at the December 9, 2020, meeting.

Adult Care Home Receiverships

A KDADS representative provided an update at the February 28, 2020, meeting on the status of adult care home receiverships. At the June 22–23, 2020, meeting, a KDADS representative provided a review of the 22 adult care homes KDADS took into receivership, noting only 2 remained on the market to be sold. Of the remaining 20, 18 were sold and 2 have been or will be closed.

At the September 28, 2020, meeting, a KDADS representative provided an update on the adult care homes in receivership. Two remain on the market for sale: one in Topeka and one in Great Bend, which has a potential buyer.

A KDADS representative reported at the December 9, 2020, meeting that only one of the facilities in receivership remains on the market, with a sale possible.

Behavioral Health

A KDADS representative provided testimony at the February 28, 2020, meeting regarding behavioral health issues. He provided information on the use of community mental health centers (CMHCs) for diversion and to address the need for children's psychiatric hospitals in western Kansas. It was noted CMHCs were already evaluating youth for acute psychiatric hospital admissions, which allows them to divert youth to outpatient services or other levels of care when the necessity for hospitalization is not met. KDADS is working with the MCOs and CMHCs to connect children and families with SED waiver services before and after hospitalizations or residential treatments. KDADS is also working with stakeholders to develop recommendations for pursuing innovative and integrated solutions to deal with the situation. An update was provided on the United Methodist Health Ministry Fund project to find locations and partnerships in western Kansas for acute psychiatric care for children.

At the June 22–23, 2020, meeting, a KDADS representative noted KDADS had been working closely with KDHE to respond to COVID-19 issues in behavioral health services. KDADS issued guidance to providers to allow expansion of telehealth and verbal consent to facilitate social distancing during treatment service delivery in outpatient settings. Additional infection control measures were implemented to reduce positive COVID-19 cases in residential treatment facilities. The representative stated KDADS had been working at the federal level to advocate for continued telehealth flexibility in CMS regulations for the telehealth delivery of behavioral health services in Medicaid and Medicare. The representative gave an update on the plan for a children's psychiatric hospital in western Kansas and indicated issues were being worked through. KDADS had been working with KDHE on the State Institutional Alternatives (SIA) policies for KanCare and had submitted a State Plan Amendment to CMS for approval.

A KDADS representative stated at the September 28, 2020, meeting that KDADS worked with KDHE on new telehealth policies for KanCare and would continue to work with the federal government for continued flexibility. The representative stated an RFP was being created to open and operate a SIA children's psychiatric hospital in Hays, Kansas. This process would use funds allocated in the FY 2020 budget. The KanCare SIA policies were published by KDHE in summer 2020, and the application forms for hospitals interested in applying for this status were available on the KDADS website. The SIA policy would allow hospitals around the state to serve Kansans closer to home and increase capacity in the system of care to allow for voluntary admissions at Osawatimie State Hospital (OSH).

A KDADS representative discussed the behavioral health COVID-19 response at the December 9, 2020, meeting. He noted KDADS had worked closely with KDHE in establishing telehealth policies for KanCare providers and MCOs that helped mitigate some of the negative financial impact on providers and allowed essential services to continue during the pandemic. KDADS was still working on the RFP for the Hays psychiatric facility for adolescents and hoped to have the RFP review process completed within two weeks and to award a contract in March 2021.

Psychiatric Residential Treatment Facilities

At the February 28, 2020, meeting, a KDADS representative provided a review of psychiatric residential treatment facilities (PRTFs). The PRTF waiting list as of February 24, 2020, was 124, down from 159 individuals in November 2019. Information was provided on the steps being taken to address the waiting list. Twenty additional beds had been added to the KVC Health Systems (KVC) facility in western Kansas since November 2019, for a total of 32 licensed beds. KDADS is trying to get the remaining beds licensed. The KDADS representative noted the KVC facility was relicensed from a combined acute psychiatric hospital and PRTF to solely a PRTF. The number of PRTF beds needed were close to being met, but western Kansas was still missing acute psychiatric care hospitalization beds.

A review of the PRTFs was provided by a KDADS representative at the June 22–23, 2020,

meeting. As of June 1, 2020, the PRTF waiting list had reduced from 124 individuals in February 2020 to 112 individuals. There were 336 licensed PRTF beds in the system of care. The new PRTF beds were in three locations: 25 beds in Olathe, 25 beds in Kansas City, and 16 beds in Newton. KDADS was meeting weekly with the MCOs and DCF to review individual cases on the waiting list. Updated PRTF regulations had been drafted and would soon be available for public comment.

A question was posed at the September 28, 2020, meeting regarding whether the State could offer presumptive eligibility for PRTF services for juveniles on the SED waiver without amending the waiver. A KDADS representative responded she would discuss this question with her counterparts at KDHE.

At the September 28, 2020, meeting, a KDADS representative noted the MCO PRTF waiting list as of September 18, 2020, had 90 individuals listed, down from 112 individuals in June 2020. The representative said meetings continue weekly with the MCOs and DCF to discuss cases involving PRTFs.

A KDADS representative noted at the December 9, 2020, meeting the PRTF waiting list had dropped from 112 in June 2020 to 108. Of those 108 individuals, 14 were in foster care, which was down from 24 in June 2020. An additional 50 PRTF beds were in the system, increasing the total number of PRTF beds from 336 in June 2020 to 386. KDADS hoped the increase in beds would further reduce the PRTF waiting list in a few weeks. The additional 50 PRTF beds are located in the Kansas City area, specifically in Prairie Village in Johnson County; 30 of the 50 additional beds were being utilized by KVC.

State Hospitals

A KDADS representative provided an overview of state hospitals at each Committee meeting. At the December 9, 2020, meeting, a KDADS representative stated there had been active COVID-19 cases among staff and residents at all state hospitals. Larned State Hospital (LSH) lost one staff member to COVID-19, but there were no other deaths. He complimented the state

hospital staff on a “monumental” effort to contain the virus.

Larned State Hospital

A KDADS representative stated at the February 28, 2020, meeting that the high vacancy rates in direct care nursing positions at LSH continue. Efforts being made by the LSH Superintendent to recruit and retain staff were listed. These efforts included providing training for existing LSH staff to allow them to become licensed mental health technicians. This option is available through approval from the Board of Nursing to make LSH an outreach site for the OSH Mental Health Technician Program. The training program would allow LSH to develop its own licensed staff to fill licensed mental health technician positions in the future. A review of the Governor’s Executive Directive 19-510 to raise direct care and nursing staff wages at LSH effective December 1, 2019, was provided. In response to a question regarding salary disparity between the corrections and medical staff at LSH, the representative stated, to avoid salary compression and retain safety and security staff, KDADS used internal resources to fund additional increases for those staff members.

At the June 22–23, 2020, meeting, a KDADS representative provided an update on recruiting and retention at LSH, noting there was overall improvement in both areas. The steps being taken to improve recruitment and retention were provided. The representative noted the number of employees mandated to work a double shift at LSH had been declining in spite of the pandemic.

A KDADS representative stated at the September 28, 2020, meeting that improvement in the overall job vacancy rate at LSH continued, as did the concerted effort to recruit and retain staff. Improvement in the nursing department holdover rate continued.

At the December 9, 2020, meeting, a KDADS representative stated the staffing vacancies continued to decline at LSH. Efforts to recruit and retain staff were presented. The mandatory holdover for the direct care nursing staff had continued a downward trend since March 2020.

Osawatomie State Hospital

A KDADS representative provided information at the February 28, 2020, meeting on the proposed plan to lift the moratorium on voluntary admissions at OSH. A copy of the KDADS testimony before the House Committee on Health and Human Services, the House Committee on Social Services Budget, and the Senate Committee on Public Health and Welfare on February 3, 2020, in response to proviso section 85(r) of House Sub. for SB 25 regarding the plan to lift the moratorium on voluntary admissions at OSH was provided. The representative outlined the FY 2021 Governor's Budget recommendations for KDADS that would expand the number of regional psychiatric hospital beds to serve individuals with mental illness meeting the criteria for state hospital admission, expand the number and scope of community crisis stabilization programs and crisis intervention centers, increase licensed beds at the Adair Building, and renovate the Biddle Building to become a CMS-certified space. KDADS was working on a Census Plan to address the need for services until the planned lifting of the moratorium in May 2021.

In response to questions at the February 28, 2020, meeting regarding the proposed plan to lift the moratorium at OSH, the KDADS representative stated the existing, usable buildings at OSH could be renovated for use effectively, and the proposed plan gets the State to the right place. After a review of capacity, KDADS did not think the State needed a new hospital. The representative said instead, the State needed community beds and crisis intervention centers to fill gaps geographically. These other options would slow the entry into state hospitals by intervening at crisis level in the community, as opposed to increasing state hospital capacity for treatment and then trying to find a way to move the individual out of the state hospital and into community-based services. The representative stated he was not sure the proposed plan was a long-term solution, but it was a reasonable solution to enable voluntary admissions at OSH to resume, which was the goal set. The razing of buildings at OSH would begin in year two of the proposed plan. Although some Committee members agreed KDADS had complied with the request of the Legislature to propose a plan to

reopen OSH for voluntary admissions, there was still a need for a long-term plan. The waiting list for admissions at OSH had ten persons at the time of the February meeting.

An update on the lifting of the moratorium on voluntary admissions at OSH was provided by a KDADS representative at the June 22–23, 2020, meeting. A breakdown of the various activities that would lead to increased bed capacity at OSH and increased community-based capacity for inpatient treatment was given. The representative noted, with additional space at OSH and in communities, KDADS planned to lift the moratorium in May 2021. A review of the repurposing of various units at OSH to respond to COVID-19 was provided. In response to questions, the representative explained the State can collect funds from CMS only for certified beds, not licensed beds. As remodeling occurs, the plan was to certify the beds to allow for the collection of Medicaid and Medicare funds. The representative stated the funding for the remodel of OSH was still on track.

With regard to positive COVID-19 cases at OSH, the KDADS representative stated one staff member tested positive the week before the June 22–23, 2020, meeting. This was the first positive case. No positive cases had occurred among patients. Educational processes used at OSH to ensure patients are informed on COVID-19 were outlined. Acute care patients were moved from double-occupancy rooms to single rooms to create isolation in light of the COVID-19 pandemic. This action used an additional 15 beds and limited admissions, resulting in the OSH waiting list reaching 30 individuals. Due to concerns about the increased number of individuals needing services who were on the waiting list, the use of double-occupancy rooms resumed, and OSH reopened 15 beds. The waiting list as of the meeting day was 16 individuals.

At the September 28, 2020, meeting, a KDADS representative stated KDADS had started interviewing contractors to begin construction projects at OSH related to the approved budget. KDADS continued to plan to lift the moratorium in May 2021.

A KDADS representative stated at the December 9, 2020, meeting that efforts to lift the

moratorium on admissions at OSH continued. The KDADS FY 2021 approved budget includes \$5.0 million to create additional regional beds to be located throughout the state; this funding was not allotted. The date to lift the moratorium remains in May 2021. A review was provided of the repurposing of several buildings at OSH since the end of the 2020 Legislative Session to respond to COVID-19. KDADS was looking at restructuring the direct care duties in the units to better retain and attract new employees to those positions.

Medicaid Inspector General

At the February 28, 2020, meeting, the Medicaid Inspector General provided an update on the Office of the Medicaid Inspector General (OMIG) and summarized the highlights of the 2019 OMIG Annual Report. She stated 2019 was primarily spent rebuilding the OMIG. Three reports were issued in 2019: a review of e-mails sent to an unmonitored KDHE OMIG address to check for missed fraud reports, KDHE's procedures for discontinuing Medicaid eligibility when a Medicaid beneficiary entered prison, and the resources available to fight Medicaid eligibility fraud. In 2019, the OMIG referred nine providers to the Office of the Attorney General's Medicaid Fraud and Abuse Division for possible prosecution, with ongoing criminal investigations opened for two of the nine providers.

The OMIG expanded to three staff members with the addition of a data analyst to assist in the review of Medicaid, CHIP, and MediKan data. From the November 19, 2019, Committee meeting to the February 28, 2020, meeting, the OMIG received 110 complaints, with the majority alleging Medicaid eligibility fraud.

At the February 28, 2020, meeting, the Medicaid Inspector General summarized a review completed of a major KanCare member grievance against the MCOs during the third quarter of 2019, which involved non-emergency medical transportation grievances filed. She also provided a brief primer on the Medicaid Fraud and Abuse Division of the Office of the Attorney General, which is the Medicaid Fraud Control Unit, noting the differences between the Medicaid Fraud Control Unit and the OMIG.

At the June 22–23, 2020, meeting, the Medicaid Inspector General provided the Committee with Report No. 20-03, which compared the HHS Office of Inspector General's List of Excluded Individuals/Entities with the list of personal care attendants classified as active in the State's billing system. Four personal care attendants considered active on the State's list were listed as excluded on the List of Excluded Individuals/Entities. She said this is one of the fundamental criteria that must be met to provide services in the Medicaid system. The HHS Office of Inspector General exclusion database lists specific reasons for exclusions, and exclusions are enumerated in federal statute. She said tracking the federal statute to identify the reasons for exclusion in the database could be difficult for individuals.

The Medicaid Inspector General stated at the June 22–23, 2020, meeting the OMIG was monitoring KDHE's compliance with the Medicaid eligibility provisions of the Families First Coronavirus Response Act and, based on reviews to date, KDHE was in compliance. The OMIG was also monitoring encounter data for COVID-19 testing for any activity suggestive of fraud or a consumer protection violation. The OMIG also received concerns regarding the potential incentive for fraud due to KDADS' temporary suspension of rules prohibiting parents and spouses from being paid personal care attendants and had taken the concerns under advisement. The Medicaid Inspector General reported 112 complaints alleging Medicaid eligibility fraud had been received by the OMIG since the Committee's February meeting.

At the June 22–23, 2020, meeting, the Medicaid Inspector General provided a brief summary of an ongoing investigation by the OMIG regarding the extent to which TA waiver recipients were receiving authorized SMC services and whether there were any trends among the beneficiaries who had difficulty in accessing these services. No standout trends had been identified as of the meeting date.

With the resignation of the Medicaid Inspector General, the Deputy Attorney General and Chief Information Security Officer for the Office of the Attorney General was serving as administrator for the OMIG. He provided testimony regarding the OMIG at the September 28, 2020, meeting. The

administrator stated a recruiting process was in place to find a candidate to fill the Medicaid Inspector General position. Since the Committee's June meeting, the OMIG had received 242 complaints, and the majority alleged beneficiary fraud. Personal care services continue to be a high-risk area for fraud, waste, abuse, and illegal acts regarding Medicaid. In a recent 6-month study by the OMIG, \$49,294.67 was identified in possible improper payments claimed by 30 different personal care attendants while the beneficiary was hospitalized. The cases were referred to the Medicaid Fraud and Abuse Division.

The administrator stated at the September 28, 2020, meeting the OMIG conducted a performance audit on KDHE's processes for discontinuing Medicaid eligibility when a beneficiary enters a state prison and conducted a follow-up review because deficiencies were found. This resulted in the issuance of capitation payments to KanCare MCOs for \$184,997.43 for ineligible persons. The follow-up was to determine if the Appriss notification system was working as intended and if the KDHE Clearinghouse staff was taking appropriate action based on notifications. The follow-up testing revealed KDHE received timely notices of each inmate's incarceration, and the KDHE Clearinghouse staff took prompt action to either sustain or discontinue Medicaid coverage as appropriate based on individual circumstances.

The administrator stated a report regarding TA waiver issues was not completed for the September 28, 2020, meeting due to COVID-19 quarantine issues, but the OMIG hoped to have the report for the December 2020 meeting.

At the December 9, 2020, meeting, the administrator reported the Office of the Attorney General is still in the process of recruiting a Medicaid Inspector General. The initial round of interviews was held the week of November 22, 2020, with the second round to be conducted the week of December 7, 2020. Since the September 2020 meeting, 136 complaints have been received. The OMIG is partnering with KDHE on a process improvement plan to provide more insight to policymakers about the types, amounts, and outcomes of eligibility fraud referrals received. The OMIG continued to monitor encounter data related to COVID-19 testing to identify improper activity. A summary report of the numbers of tests

and the costs per test was provided. A review of monthly capitation payments made after beneficiaries' deaths was provided, with the OMIG having identified approximately \$1.3 million in such capitation payments made on behalf of 25 beneficiaries. The OMIG believed these improper payments were due to delays with the implementation of the KEES. After corrections were made, the improper payments were automatically offset from the three MCOs' monthly capitation payments. The exception was payments made to Amerigroup, whose contract expired at the end of 2018.

KanCare Ombudsman

The KanCare Ombudsman provided updates at each of the Committee meetings on the services provided by the Office of the KanCare Ombudsman (Office).

At the February 28, 2020, meeting, the KanCare Ombudsman provided highlights from the 2019 KanCare Ombudsman Annual Report. She noted outreach and education were trending down due to decreased staff and staff turnover. The Wichita satellite office was trending down due to staff shortages and extra calls being sent to the Topeka office to handle. There was an increase in renewal issues in the HCBS TA waiver, and KDHE researched the issue and corrected it. Medicaid eligibility issues and related categories were trending down. KDHE implemented several strategies due to an upward trend in Medicaid renewal issue contacts, which resulted in a significant decrease in these contacts in the fourth quarter. She also noted the Wichita State University Community Engagement Institute and Ombudsman staff created a brief survey to track satisfaction with the services provided by the Office in the Wichita area, and additional surveys are planned for the Topeka and Olathe offices.

At the June 22–23, 2020, meeting, the KanCare Ombudsman provided an update on the Office, noting all offices have been closed since the second week of March 2020 due to COVID-19. A majority of Office volunteers are over the age of 65 and may have underlying conditions. Individuals working remotely began answering calls on March 30, 2020. The tentative plan was to reopen the Johnson County office in July 2020 and the Wichita Office in late August 2020, depending

on local phasing plans. No face-to-face KanCare application assistance will occur until a vaccine for COVID-19 is available, but application assistance was being provided by phone. The KanCare Ombudsman noted less than five percent of all persons requesting assistance need assistance face-to-face. The Office is limiting face-to-face assistance for the volunteers' protection from COVID-19.

A copy of the first quarter 2020 KanCare Ombudsman Report was provided at the June 22–23, 2020, meeting. The KanCare Ombudsman noted appeals and hearings had doubled during the first quarter and, as requested, would inform the Committee on the cause. With regard to funding for the Office, KDADS assumed the funding for the Ombudsman position when it was one person. As the Office has grown, KDADS continues to fund the Office out of its agency budget. Because the Office addresses only Medicaid, it is partially funded by the federal government; KDADS is able to pull down federal funds. A grant with Wichita State University provides funding for a staff person who helps with the volunteer program.

At the September 28, 2020, meeting, the KanCare Ombudsman stated the Wichita satellite office remained closed, and employees were working remotely. In the Johnson County satellite office, one volunteer had returned to work in person, and the rest of the staff were waiting to return in person due to health concerns. The Office noted a 47 percent decrease in contacts in the second quarter of 2020 compared to the first quarter of 2020. The Office was participating in the Integrated Referral and Intake System to help community-based organizations connect families with community resources.

The KanCare Ombudsman reported at the December 9, 2020, meeting that two volunteers were back in the Johnson County satellite office. Three volunteers in training have begun mentoring training. Staff are still working remotely, except when working with volunteers for training and mentoring purposes. The Office is actively recruiting for a Volunteer Coordinator and two volunteers in Service to America positions. Initial contacts in the third quarter were up from the second quarter, but still lower than the first quarter. The KanCare Ombudsman said she believed the increases may be due to a social

media boost in July and participation in the Integrated Referral Intake System. The Third Quarter report was provided.

Report on Provider Survey on Telemedicine

A United Methodist Health Ministry Fund representative noted at the December 9, 2020, meeting that, due to the COVID-19 pandemic, the federal government and the State of Kansas issued emergency telehealth policy changes to improve access to telehealth and preserve access to care during the pandemic. The United Methodist Health Ministry Fund partnered with provider groups to survey members about their experiences with the delivery of telehealth services. The representative said research from the University of Kansas School of Medicine showed both providers and members benefited from the expanded use of telehealth services during the pandemic. It was stated telehealth is not intended to replace in-person care. The United Methodist Health Ministry Fund representative stated the Legislature needed to explore options to expand telehealth services and set appropriate reimbursement rates that move toward parity in payment.

An Associate Professor at the University of Kansas School of Medicine presented an overview of the telehealth provider survey. She stated “telehealth” is considered more broad than “telemedicine.” The overview included a list of the key takeaways, a review of the geographic distribution of the respondents, a breakdown of the respondents by organization and the types of providers represented, the modalities used to deliver telehealth, and a list of the services provided *via* telehealth. A comparison of pre-COVID-19 and potential post-COVID-19 reimbursement for services was provided. Charts were provided noting the results regarding the overall telehealth experience. The Associate Professor provided a review of the upcoming Phase 2 of the research and responded to questions regarding the details of the survey. With regard to payment parity, the Associate Professor responded that no definition was provided to those participating in the survey. She noted a question needs to be asked about any difference in the cost of one modality over the other and how it effects what is billed.

KanCare Meaningful Measures Collaborative

At the February 28, 2020, meeting, a representative of the KanCare Meaningful Measures Collaborate (KMMC) Executive Committee provided written-only testimony to update the Committee on recent work by the KMMC prior to its March 2, 2020, meeting.

At the June 22–23, 2020, meeting, a UnitedHealthcare Community Plan (UHC) representative reported on KMMC's organization structure, purpose, and the priority areas at the time of the meeting, with pregnancy outcomes being an area of focus. It was noted the Kansas Health Institute facilitates the collaborative. A Kansas Health Institute representative discussed care coordination and provided examples of meaningful measures. Network adequacy is an additional area of focus, and steps are being taken to develop meaningful measures.

At the December 9, 2020, meeting, a University of Kansas School of Social Welfare project manager stated the purpose of the KMMC is to establish consensus around which data and metrics are most needed to better understand the program. The current priority areas of care coordination, network adequacy, pregnancy outcomes, and social determinants of health were noted. The meaningful measures and metrics for each priority were reviewed. Highlights of the reports created for each priority were provided, except for social determinants of health.

A Kansas Health Institute representative discussed consumer engagement at the December 9, 2020, meeting. A survey was conducted as a snapshot of how approximately 700 KanCare consumers who received behavioral health services *via* telehealth felt about the service. There were high levels of satisfaction and a preference for some form of telehealth to continue following the COVID-19 pandemic. There will be continued analysis of telehealth consumer engagement survey results. Potential new priority areas for consideration include behavioral health (mental health and substance abuse), communication, quality assurance, and telehealth.

Presentations on KanCare from Individuals, Providers, and Organizations

Written and oral testimony was presented at each quarterly Committee meeting from individuals, providers, and organizations. Some individuals and organizations provided praise for the following: improvement in the LTC Medicaid application process since it was transferred back to KDHE in December 2019, the increase in the PIL for persons on the HCBS waivers, improved communication due to monthly standing calls between provider associations and MCOs to discuss issues, an increase in Medicaid dental rates in 2019, the increase in the SMC rate (later eliminated under the allotment plan), more transparent information regarding COVID-19 clusters, the SPARK Taskforce providing PPE for adult care homes, the PPE portal, and the unified testing strategy.

Concerns and suggested solutions presented by conferees are summarized below.

Concerns

Waiting list. Many individuals have been on the I/DD waiting list of more than 4,000 adults and children for almost a decade. There is insufficient capacity in the community even if the waiting lists is eliminated.

I/DD. The growing population of older individuals with I/DD faces additional chronic age-related conditions that increase their medical needs and the complexity of such needs. A data system is needed to ensure a less costly and more efficient way to meet the needs of individuals with I/DD. Training is needed for behavioral health providers to address the needs of the I/DD population. Increasing crisis exceptions indicate Adult Protective Services involvement because the needs of the I/DD and autism populations are not being met, placing them at risk of involvement with law enforcement. Incarceration due to behaviors instead of treatment in an ICF or state institution needs to be addressed.

The I/DD population does not fit the MCO medical model. Incarcerated individuals with I/DD do not receive all of the prescribed psychotropic medications needed, even when the individual is awaiting state hospital admission. The push for

development of an *Olmstead* plan could have a goal to further downsize and close ICF/IDD homes, which are the best settings for some of the I/DD population. There is a lack of ICF facilities. States are moving in the direction of forcing residents needing an ICF level of care into community-based care homes that do not provide the types of services and skilled staff needed. Families in crisis are not permitted to access the ICF care option under KDADS gatekeeping policies. Serious financial impacts have been suffered by I/DD providers due to the COVID-19 pandemic, and no relief has been provided by the State to help offset the impact. The level of need of the individuals on the waiting list should be known.

KDHE Clearinghouse. Discriminatory practices exist due to the inaccessibility of the KDHE Clearinghouse to individuals with disabilities and the wait times. There are long delays for approval of crisis exceptions. There are delays in the HCBS application and renewal process.

Targeted Case Management (TCM). Duplication of services exists because MCO care coordinators provide the same services as TCMs. There is a lack of notification by care coordinators to TCMs when individuals are moved from one HCBS waiver to another.

Protected Income Limit (PIL). The current PIL cap creates an obstacle for individuals looking for employment and can be a deterrent to looking for a job or striving for a better one.

Workforce. There is a need for competitive reimbursement rates to attract and maintain a trained workforce. There is a staffing crisis in LTC facilities. Staffing agencies are charging rates for temporary nurses and nurse aides that LTC facilities cannot sustain.

Prompt payment. Prompt payment loopholes for MCOs need to be closed. Submitting claims to the KDHE Clearinghouse prevents clean claims from being date stamped as received because of errors in the State's claims system; this is resulting in uncompensated care.

LTC. Legislation allowing edited tapes to be admissible in a court of law should not be enacted. There is a staffing shortage in LTC. Pay differentials between adult care home staff and staff provided by temporary staffing agencies, which charge twice the pay for their temporary staff, need to be addressed. Regulatory change is needed to allow certified medication aides to administer insulin to insulin-dependent residents. Survey oversight by KDADS has not improved for state-only licensed facilities. There is a need to address the increased use of antipsychotic drugs, high turnover rates among facility staff, and scarce evidence of quality improvement. The State still has an institutional bias that needs to change. Quarantine protocols also add to the workforce problem. Nonstop testing is a massive undertaking logistically and financially. PPE costs are rising and shortages continue.

Behavioral Health. It is difficult to find an adequate provider for a child in psychiatric distress in Kansas.

COVID-19. The State has left LTC providers without COVID-19-related liability protection given to other providers in 2020 Special Session HB 2016, only providing an affirmative defense. Liability insurance rates for LTC facilities have increased even without lawsuits against them. LTC facilities are faced with a lack of funding, workforce shortages, and a lack of PPE. The PPE received by LTC providers was inadequate to protect the individuals providing care. There is a need for fully funded access to rapid-results testing for older residents and care providers.

Without additional funding, most LTC facilities will likely close in the next 6 to 12 months. The cost of mandatory nursing home staff testing, additional PPE, sanitation supplies, and other COVID-19-related budget increases are placing a financial burden on LTC facilities. If the proper PPE is used in LTC facilities, the cost of per resident need is astronomical. The protocol for LTC facilities to request PPE is a complicated multi-step process, with no guarantee the materials will be made available. LTC facilities are walking a fine line between following rules and regulations and doing what is right for residents dealing with the effects of isolation, while not allowing potentially asymptomatic COVID-19-positive visitors into the facility to the detriment of

residents. It was difficult for LTC facilities to find labs to process the tests collected and testing results were delayed. There is confusion within temporary agencies providing staff to LTC facilities about which staff members need to be tested and when the testing should happen. State guidance is needed to protect older Kansans' lives. Some LTC facilities may not need SPARK funding until 2021, but SPARK funding has stipulations on how the funds may be used, and they can only be used until the end of 2020.

State and local officials need to make COVID-19-related data transparent and timely. Older adults living in nursing homes are being isolated with no recourse. There is a lack of federal oversight requiring public health reporting that identifies nursing homes with COVID-19 cases, which is information older adults and their families deserve.

PPE for direct care workers is in short supply. Individuals with disabilities are struggling to have their daily needs met. I/DD service providers are having difficulty accessing COVID-19-related items such as PPE and virus testing equipment and supplies. COVID-19 testing has become a challenge, especially in rural areas of the state. The I/DD population should be prioritized in the distribution of PPE and testing supplies due to having a higher susceptibility to complications from COVID-19.

PPE costs, increased wages and overtime, service interruptions, and COVID-19 relief funding have impacted SMC providers.

Specialized Medical Care (SMC). Grossly inadequate SMC rates are causing staffing shortages that cover less than 60.0 percent of medically necessary authorized hours and that result in delayed hospital discharges, unnecessary rehospitalizations, and compromised health outcomes. Even with the increase in SMC rates, nurses providing SMC level of care remain severely underpaid. There is difficulty in recruiting, training, and retaining SMC nurses in a field that is in high demand.

Money Follows the Person (MFP). Kansas has not taken the opportunity to gain supplemental

funding from CMS for the MFP program. Kansas needs to reinstate the MFP program.

Home modifications. MCOs are requiring individuals to seek other funding options for home modifications and provide documentation of the outreach and responses, although the service is covered by Medicaid.

Oral health. There is a need to improve the Medicaid dental provider network and to provide oral health benefits to adults in the Medicaid program. Several dental codes were omitted from the state plan amendment to increase Medicaid dental reimbursement rates.

Employment. The State needs to break barriers to help individuals with disabilities find employment in competitive integrated settings. Planning services need to be expanded. There are shortfalls in the Work Opportunities Reward Kansans program.

Prescription medications. Tresiba needs to be included in the KanCare preferred drug list to allow ease of access.

Recommended Solutions

Conferees offered comments on potential solutions in the categories below.

I/DD. A statewide crisis support program should be created to address systemic barriers and developing statewide solutions for effective services for diagnosis, behavioral health treatment, medication management, and crisis support. Community-based care management should be used to integrate all services into one plan. An intensive community support model for Kansans with I/DD and autism who are caught in the criminal justice system, the Sequential Intercept Model, should be used to identify those individuals who need preventive services. The State needs to ensure any *Olmstead* plan submitted or under consideration will honor guardian choice and protect individual, human, and civil rights. The unnecessary care coordinators and MCOs for the I/DD population should be eliminated. The State needs to develop mechanisms to preserve I/DD provider capacity, including retainer payments and enhanced provider rates that have been used in other states. The \$22.1 million,

including \$8.9 million SGF, for I/DD service providers, which had been removed from the FY 2021 budget by the Governor's July allotment, must be restored. Cross System Crisis Prevention and Intervention Plans should be implemented to improve the I/DD system, as they would provide tools to support an individual through a crisis. Mobile Crisis Support programs should be considered, and community-based care management should be considered as an alternative to traditional TCM. A study of Kansans on the waiting list should be conducted to answer questions about their needs and to build a tool to make this information easier to access and update. A tool to predict the needs over a three- to five-year period for individuals on the waiting lists is needed to better equip the Legislature and KDADS to make funding decisions and to benefit providers in making strategic plans.

Waiting lists. The State should review the current I/DD waiting list for the actual level of need and review how other states have dealt with their waiting lists. A strategic plan for the elimination of the I/DD waiting list should be created. The Legislature should pass legislation with provisions of 2020 HB 2550, which would direct this Committee to study the rates for services provided under the I/DD waiver and their impact on the I/DD waiting list and expand the study to included providers serving persons on all waiting lists.

Provider tax. The Legislature should extend the provider tax for another five years at the current rate, with a review again in the future.

PIL. The PIL should be increased to 300 percent of SSI, which is \$2,369 per month, to break down employment barriers for individuals with disabilities and help elders needing community-based services remain in their homes.

LTC. Stronger oversight of temporary staffing agencies is needed. Adoption of an insulin administration training program for certified medication aides working in skilled nursing facilities, assisted living facilities, residential health care facilities, or home plus facilities should be considered. There is a need to support funding for home-based care. Increased funding should be provided to KDADS to fulfill its federally and

state-mandated oversight functions and inspection time frames for adult care facilities to interrupt and prevent abuse and neglect of elders living in nursing facilities. A five-year sunset to the Quality Improvement Provider Assessment (nursing facility bed tax) should be set to allow for adequate review, and Medicaid funding should be tied to address specific improvement outcomes for elders residing in nursing facilities, such as workforce understaffing. The Committee should consider amending the Senior Care Act to include individuals under 60 years of age who have been diagnosed with younger-onset Alzheimer's or other forms of dementia, and funding should be added to cover the additional individuals.

Funding is needed for additional KDADS survey staff responsible for inspecting nursing facilities and adult care facilities. Enhanced state funding should be used to fund improvement outcomes that are specific and measurable. Efforts should continue on legislation to deal with the rates charged by staffing agencies. LTC facilities need to be provided liability protection for health care activities related to the COVID-19 public health emergency. A pathway for temporary nurse aides to become certified nurse aides should be created.

Prompt payment. There are mechanisms in place to address unusual claims. There are contract provisions between KDHE and the MCOs that require the MCOs to make payment when the State directs or instructs such payment in special claims. There is a mechanism through KDHE to instruct the MCOs to make payment timely when due with interest in unusual cases, including those that involve timely filing.

HCBS. There is need to fund community-based initiatives to allow older adults and persons with disabilities to remain in the community. Specific infrastructure is needed for current HCBS participants and to shift away from institutional care to home-based services; this includes strong case management, PPE, and testing. The State should create an *Olmstead* plan.

Workforce. Solutions for addressing the workforce shortage could include future COVID-19 relief funding tied directly to increasing staff wages, state "wage pass-through dollars," support

from the National Guard, extension of the temporary aide position, holding virtual clinics for certified nurse aide courses, and state agency support for collection of testing samples.

COVID-19. Federal funds being held by the State need to be released without delay to assist LTC providers. State guidance must be accompanied by tangible resources and hands-on help. Funding is needed to allow individuals to transition back into their communities. The focus should be on marshaling and distributing resources to stop the spread of the virus, assuring adequate oversight of adult care facilities, ensuring transparency of public COVID-19 information, and public reporting of federal and state COVID-19 funding.

SMC. The State should increase the provider reimbursement rate for SMC to \$47 or \$48 per hour to attract nurses with the skill level to care for medically fragile children. The State should implement the recommendations of the TA waiver work group. Money should be transferred from the KDHE hospital caseload budget to KDADS to fund the SMC rate increase. The rate increase could be budget neutral or a potential cost savings.

Behavioral Health. Expanding Medicaid, increasing the Medicaid reimbursement rate, continuing telemedicine treatment parity by the federal government, and allowing therapy to be billed in Medicaid without the patient being present would assist CMHCs during and after the COVID-19 pandemic. The mental health system in Kansas needs an overhaul, as it is extremely difficult to navigate.

TCM. The State should restore TCM services to support people in home settings of their choice, which is more cost effective and safer during times of emergency, such as the COVID-19 pandemic. The State should reinstate the MFP program to support persons moving out of nursing homes.

Oral health. The inclusion of an additional increase of \$3.0 million, all funds, for dental reimbursement rates in the FY 2021 KDHE budget is needed. The Dental Practices Act should be amended to authorize teledentistry, as teledentistry has been an important asset to triage needs during the COVID-19 pandemic.

Employment in integrated settings. Increased access to benefit planners at KDHE to help individuals with disabilities work and to navigate the complex systems is needed.

Conferees

Private citizens and representatives of the following organizations and providers testified or provided written-only testimony before the Committee: AARP Kansas; Americare Systems; Association of Community Mental Health Centers of Kansas, Inc.; Brewster Place; Case Management Services, Inc.; Craig HomeCare; Disability Rights Center of Kansas; GrassRoots Advocates for Independent Living; InterHab; Jenian, Inc.; KanCare Advocates for Better Care; KanCare Advocates Network; Kansas Adult Care Executives Association; Kansas Association of Area Agencies on Aging and Disabilities; Kansas Association of Centers for Independent Living; Kansas Developmental Disability Coalition; Kansas Health Care Association/Kansas Center for Assisted Living (KHCA/KCAL); Kansas Hospital Association; LeadingAge Kansas; Logan Manor Community Health Services, Maxim Healthcare Services; Morningstar Care Homes; Oral Health Kansas; Recover-Care Healthcare; Self Advocacy Coalition of Kansas; Southeast Kansas Independent Living Resource Center; Sunshine Meadows Retirement Community; Thrive Skilled Pediatric Care; and Topeka Independent Living Resource Center.

Responses from Agencies and MCOs

Representatives of KDHE, KDADS, and the MCOs provided responses to concerns expressed by individuals, stakeholders, and organizations at each Committee meeting. A representative of the Department for Children and Families (DCF) addressed one issue at the June 22–23, 2020, meeting. A spreadsheet prepared and updated after each meeting by KLRD staff was used to track issues presented to the Committee and the resolution of those concerns. The state agencies and MCOs used the spreadsheet to respond to the concerns. Each conferee concern was identified by name, the issue was noted, and the agency response or resolution was provided. Issues determined by the Committee to have been addressed were noted as closed and removed from future tracking spreadsheets.

The list included recurring topics: the PIL, the HCBS waiting list, eligibility issues, the impact of COVID-19, and mental health questions.

KDHE Responses

At the February 28, 2020, meeting, a KDHE representative reviewed the responses of the agency regarding unresolved Medicaid issues (both general issues and specific issues) identified by conferees at previous Committee meetings. With regard to outstanding claims owed by the prior MCO, Amerigroup, the KDHE representative stated timelines in the appeals process are dependent on when the adverse action occurred and when the provider was notified the claim was denied. Each provider would have had a contract with Amerigroup containing specific language as to the time frames for appeals and a date of no further action. The contract provides the bulk of information on the appeal process and the communication must start with the provider and Amerigroup. The State can step in only at a certain point in time. If there is no response from Amerigroup, KDHE would step in. One large payment is due to Amerigroup, but the release of those funds is not entirely tied to the settlement of claims being appealed by providers. The federal government places restraints on the holding of payments to the MCOs. There are federal timely filing requirements for federal matching dollars KDHE must meet that are different from those for the filing of claims. If KDHE fails to meet the timely filing requirements, it runs the risk of not receiving the federal matching dollars.

At the February 28, 2020, meeting, the KDHE representative stated KDHE does not plan to expand its definition of a “good cause” reason for a beneficiary to change MCOs. A change would be made if good cause is present, and consumers have an opportunity on an annual basis to change MCOs. The representative also stated the rules and regulations process to update the regulation on the PIL increase to 150 percent of SSI was underway.

Other topics addressed by the KDHE representative at the February 28, 2020, meeting included: how Medicaid expansion would provide access to affordable health care for the direct care workforce whose low wages place health care out of reach, the insufficient reimbursement rates contributing to the workforce shortage in adult

care homes, and complaints of delays in the credentialing process.

At the June 22–23, 2020, meeting, a KDHE representative presented the status of unresolved KanCare issues. Regarding a deadline when providers would no longer receive payment for claims from Amerigroup, the deadlines are established based on the negative actions taken by Amerigroup, on which appeal may be taken. The representative did not have a dollar amount of claims still outstanding for Amerigroup because she did not know the nature of the dispute.

At the June 22–23, 2020, meeting, the KDHE representative addressed the reason the implementation date for the CMS-approved supported employment pilot for persons on the HCBS waiting lists who have behavioral health needs was not to begin until 2021. She noted the design of the program is complex, and KDHE had to work on policies and benefits for the persons participating. Both KDADS and KDHE are responsible for parts of the project due to the population involved. She also addressed the hold on the community service coordination project to assist KanCare beneficiaries, stating it was due to the current COVID-19 public health emergency, but KDHE was trying to restart the project.

The KDHE representative stated at the June 22–23, 2020, meeting that KDHE assumed processing of eligibility for the elderly, disabled, and LTC programs in January 2020, and processing was in compliance. Because of noncompliance by Maximus, there was a reduction in the contract, and KDHE assumed some of the work under the contract. There were no damages assessed to Maximus for noncompliance.

After providing responses at the September 28, 2020, meeting on unresolved issues included in the spreadsheet that pertained to KDHE, a KDHE representative responded to several Committee member questions. The representative noted KDHE and KDADS do not have a target completion date for the KDHE project related to community service coordination. The KDHE representative stated the KDHE Clearinghouse was accessible to the public, but access was available by appointment.

At the December 9, 2020, meeting, a KDHE representative provided responses to unresolved issues and responded to questions. Regarding the administrative regulation reflecting an increase in the PIL, the regulation would go into effect 15 days after publication and carries the same weight as a statute. A Committee member stated a bill to codify the PIL would be introduced during the 2021 Legislative Session.

KDADS Responses

At the February 28, 2020, meeting, a KDADS representative provided responses to unresolved issues within KDADS' authority and addressed questions posed by Committee members regarding the issue of turnover of MCO care coordinators, indicating KDADS is monitoring the issue. The KDADS representative indicated KDADS would make it a priority to meet with TCMs for the I/DD population to discuss concerns that managed care does not fit the needs of the I/DD population and that a conflict of interest exists with those determining the needed services also being the provider of services. KDADS has had extensive conversation on the conflict of interest issue with CMS and needs to have conversations with the TCMs. The representative noted having both TCMs and care coordinators employed by an MCO is doable.

Regarding the posting the results of federal surveys conducted by KDADS and sent to CMS, a KDADS representative stated at the February 28, 2020, meeting the State is not required to post the results on a state website. The federal survey results are posted on the CMS website. The KDADS survey results website is used to post state-only licensed facility surveys, and KDADS tries to post the federal surveys for the other facilities on the KDADS website, as staffing allows.

At the June 22–23, 2020, meeting, KDADS representatives addressed unresolved issues. KDADS was making progress on the I/DD waiting list and made a request in its budget for FY 2021 for some additional funding to reduce the waiting list. Regarding not meeting the statutory funding for nursing homes, a representative stated KDADS had tried to adjust the rebasing process based on the statutory language. KLRD staff was asked to provide the Committee with statutory funding

requirements the Legislature was not meeting. A list of any unmet health-related funding requirements is to be provided to the Committee and all unmet statutory funding requirements are to be provided to the House Committee on Appropriations.

A KDADS representative was asked at the June 22–23, 2020, meeting to provide a response on how to close the issue of dual-diagnosed individuals being dropped from the SED waiver and having to wait years to receive I/DD services.

At the June 22–23, 2020, meeting, a KDADS representative responded to a question regarding nursing students being unable to complete their training. The representative stated because of COVID-19, KDADS allowed some flexibilities. Students must complete a clinical component for the academic program before they can be licensed, and part of that component needs to be done in a clinical setting. KDADS allowed the students to work as certified nurse aides or work in a simulated lab for the clinical part of their curriculum. If students were already working in a nursing setting, the work was counted as part of the clinical requirement.

Regarding receiverships, a KDADS representative stated at the June 22–23, 2020, meeting that two receiverships remain, one in Great Bend and the other in Topeka.

At the September 28, 2020, meeting, a KDADS representative reviewed the status of unresolved issues and responded to Committee members' questions. Regarding the reasons a provider might not want to accept federal dollars provided by the CARES Act, the representative stated some providers may not have incurred significant costs to support accepting the funding and would have to attest for any dollars received. The representative states CARES Act dollars could not be used to replace revenue for government entities, including county facilities.

At the September 28, 2020, meeting, a KDADS representative provided a breakdown of the funding made available to nursing facilities. She noted the \$10.0 million in SPARK Taskforce funds was for state-licensed facilities only and to

purchase PPE and cleaning supplies. This funding was approved on September 18, 2020.

A KDADS representative provided the agency's responses to unresolved issues and responded to questions. The representative stated the reason the State would not want to move a child who no longer qualifies for the SED waiver and put them immediately on the I/DD waiver would be the child would be placed at the top of the I/DD waiting list and drop someone on the list further down; a fiscal note will be provided on the impact of such a move. With regard to receiverships, there were no new nursing homes in receivership. Some facilities had temporary management and were trying to avoid receivership.

The process for approval of funds for communication devices for LTC facilities was explained by a KDADS representative at the September 28, 2020, meeting. As part of the application process, each facility signed off that the devices were for resident and not staff use. A 2020 Special Session HB 2016 COVID Allocation – Facility List, which captures the funds provided or available to adult care homes and LTC facilities across Kansas in response to the COVID-19 pandemic, was provided. The PPE listed on the allocations spreadsheet was for PPE that had been shipped and was being received by facilities. The following responses were provided: KDADS was paying for the PPE ordered through the portal; the formula for PPE allotment was based on the number of beds, which is about 40,000; the deadline for requesting the funds was December 30, 2020, and orders need to be placed and shipped prior to the deadline to qualify; the PPE does not have to be used by the deadline but cannot be stockpiled; and there should not be more than a 30-day supply of PPE available at a LTC facility. The reporting period for CARES Act moneys was March 1 to December 30, 2020. That is the period for which businesses need to report all costs related to business interruptions, expenses, and increased staffing.

DCF Responses

The Secretary for Children and Families provided testimony at the June 22–23, 2020, meeting in response to concerns with staffing of Adult Protective Services (APS) that were

included in the unresolved issues spreadsheet. The Secretary noted 63 of the 65 positions were filled. She stated while APS caseloads were higher than she would prefer, the response rate had not been negatively affected. A breakdown of APS staffing ratios by region was provided.

MCO Responses

The representatives of each of the MCOs provided responses to unresolved issues. Responses to specific Committee questions are provided below. At the June 22–23, 2020, meeting, a representative of the Kansas Association of Medicaid Health Plans provided written-only testimony regarding MCO payments of the KAN Be Healthy program and vaccination charges.

Aetna. At the February 28, 2020, meeting, an Aetna representative provided responses to outstanding issues identified in the spreadsheet, noting all specific issues pertaining to Aetna had been resolved. With regard to a high turnover of care coordinators, the Aetna representative stated Aetna had 159 care coordinator positions, with 2 vacancies. At the September 28, 2020, meeting, the Aetna representative stated Aetna continues to follow the required state credentialing process. The Aetna representative provided updates at the December 9, 2020, meeting.

Sunflower Health Plan (Sunflower). The Sunflower representative responded at the February 28, 2020, meeting to issues identified in the outstanding issues spreadsheet. With regard to the cap on SMC, the representative said the State Plan indicates there is a limit of 12 hours per day. KDADS has provided new direction that the cap is a soft limit and, if there is a documented need for additional hours, the MCO should be able to fill it. The representative expressed concern about the ability to fill the SMC hours approved due to lack of staff and the gap between the state rate and the market rate. He stated Sunflower would approve special case agreements on a case-by-case basis to meet the SMC needs. The KanCare contract describes the SMC covered benefit as 1 unit of 15 minutes. At the September 28, 2020, meeting, the representative stated no new updates on the unresolved issues spreadsheet were available.

UHC. At the February 28, 2020, meeting, the UHC representative provided responses to

unresolved issues only for those issues with responses that differed from responses provided at the November 2019 meeting. With regard to a high turnover of care coordinators, the UHC representative stated there are only 2 care coordinator openings out of 167. UHC's annualized care coordinator turnover is between 4 percent and 9.5 percent, which is reasonable for UHC. The representative also noted the following: UHC is working with the New Birth Company on an arrangement of value-based outcomes for birth services under KanCare, turnaround for functional credentialing for UHC is 11 days and contracting to participate in the program takes 18-20 days, and no routine denial of services by UHC was identified. At the September 28, 2020, and December 9, 2020, meetings, the UHC representative provided responses and updates regarding unresolved issues related to UHC.

MCO Presentations

Representatives of all three MCOs provided testimony highlighting their programs at each Committee meeting.

Aetna Better Health of Kansas

At the February 28, 2020, meeting, an Aetna representative provided an update on the major accomplishments since the November 2019 Committee meeting, including the filling of key leadership positions. A review of the CAP remediation was included in the testimony. A review of the Aetna action plan moving forward was provided. An Aetna representative noted the steps the company was taking to proactively communicate with providers, including the formation of a provider advisory council scheduled to meet on March 31, 2020.

An Aetna representative stated at the June 22–23, 2020, meeting that Aetna had successfully met all the requirements of the CAP. A list of Aetna's areas of future focus was given. The representative described an enhanced provider model focusing on building relationships, which included increased provider communications and relations resources. A review of services Aetna had provided during the COVID-19 pandemic was presented. The representative described the Family Finding Initiative, noting it has a goal of connecting each child with a family so that every child may benefit

from the lifelong connections only a family can provide. The core beliefs and six essential components of the initiative were outlined, along with the plan for implementation.

At the September 28, 2020, meeting, an Aetna representative stated Aetna adapted to different care delivery and communication models to better serve its members during the pandemic. Aetna provided over 5,300 COVID-19 tests to its members. Regarding whether Aetna agreed with having one MCO oversee foster care members in KanCare, the Aetna representative said there were pros and cons to doing it that way.

An Aetna representative stated at the December 15, 2020, meeting that Aetna had maintained a high level of service throughout the pandemic utilizing modern care delivery and communication models, such as telehealth. Because of telehealth, there had been increased utilization of the Brain Injury (BI) waiver therapies and an increase in the utilization of remote patient monitoring. Aetna also completed the External Quality Review Organization Audit. The representative noted the number of COVID-19 tests given to members, the instances of care related to COVID-19 that was provided, and the number of COVID-19 outreach calls made to support members. Aetna also provided HCBS services to students receiving remote learning, primarily focusing on attendant care.

Sunflower Health Plan

A Sunflower representative provided health plan highlights at the February 28, 2020, meeting. Value-added benefits had increased in the past year. The vaccination program, Fluvention, generated a 2.76 percent increase in flu vaccine claims over the same time the previous year. The representative provided a summary of Healthcare Effectiveness Data and Information Set rates, which are federal government measures used to track improvement. There was improvement in childhood and adolescent Healthcare Effectiveness Data and Information Set measures. A Sunflower Long-term Services and Supports Treatment Satisfaction Survey conducted for the third year showed 95.0 percent of Sunflower members were satisfied with the quality of services received. An overview was provided for the No One Eats Alone program in five Kansas middle schools and Project

Echo, a lifelong learning and guided practice model. The number of admissions to PRTFs, average lengths of stay, current number of members in a PRTF, and the number of members approved and on the PRTF waiting list as of February 21, 2020, were also provided.

At the June 22–23, 2020, meeting, a Sunflower representative testified as to Sunflower’s response to the COVID-19 pandemic. A list of programs and projects to address care management was provided, including approving temporary long-term services and supports for children out of school who received these services in a school setting prior to the COVID-19 pandemic and persons no longer using I/DD day services. The representative provided Sunflower’s responses related to social determinants of health, such as broadband connectivity with providers, grants for provider telehealth equipment, and financial support to food pantries. Sunflower was able to maintain claim processing levels during the COVID-19 pandemic, exceeded goals in customer service calls by transitioning to work-from-home plans, and maintained a commendable accreditation level and achieved long-term services and supports distinction from the National Committee for Quality Assurance. Information Healthcare Effectiveness Data and Information Set measures improvements for 2019 and 2020 and PRTF data on average length of stay, admissions, and waiting list were provided. A request was made to report future claims processing data without pharmacy claims, which were believed to skew the data because of the instantaneous response.

A Sunflower representative stated at the September 28, 2020, meeting the MCO had provided face masks to 15 Northwest Kansas Area Agency on Aging community developmental disability organizations and multiple CMHCs. Food and educational supplies and grocery delivery services were provided to Sunflower members. A Sunflower representative stated there were pros and cons to having one MCO oversee all foster care members; a benefit would be having one MCO with a concentrated area of expertise; however, members sometimes criticized not being allowed a choice for their MCO.

At the December 15, 2020, meeting, a Sunflower representative provided an update on

Sunflower’s efforts during the pandemic. Sunflower distributed tablets to long-term services and supports and aging providers to support individuals with social isolation. Cloth face masks were distributed to educational agencies, foster care contractors, other partners, and members designated at high risk for COVID-19. Through Appendix K, over 1,000 school-age students with disabilities who are receiving remote education are being provided HCBS services. The representative also provided responses to questions from the September 29, 2020, meeting regarding the lower percentage of Sunflower pharmacy appeals resolved during the second quarter of 2020 as compared to the other MCOs, the pros and cons of a single MCO providing coverage for foster care children, and admissions and average length of stay in PRTFs.

UnitedHealthcare Community Plan of Kansas

At the February 28, 2020, meeting, a UHC staff member provided testimony regarding a bridge housing pilot project being launched in Kansas in 2020, named Housing First. Housing First is an approach to connect individuals and families experiencing homelessness to housing without preconditions and barriers to entry. The Housing First program is focused on individuals who are medically complex, with high dollar claims, and who are also homeless. The high volume areas for homelessness are Sedgwick County and the Kansas City area. UHC providers are expected to focus on providing housing and care management in the units for a duration of one year. It is expected Kansas providers will focus on multi-site or single-site settings that are low barrier or no barrier, with a goal of having the individual transition in place. The programs provided must be evidence-based for trauma-informed care. Information was provided on the impact of these types of programs in other states. UHC was in negotiations with the project bidders and anticipated having a contract with providers by March 2020, with the program starting in April or May 2020. The representative said the settings are existing structures the providers already have ready, are a good fit, and are Americans with Disabilities Act-accessible units. Information about the PRTF waiting list and admissions also was provided.

A UHC representative described UHC's response during the pandemic at the June 22–23, 2020, meeting. A list of temporary services provided to UHC members was given. A list of programs provided as part of the COVID-19 relief efforts totaling nearly \$1.0 million was given. A description was provided of the federally qualified health center (FQHC) Transformation Pathways, which have a goal to deploy a targeted incentive model that supports providers' needs to address the impact of COVID-19 while investing in transformation efforts targeting access to care and improved outcomes. The transformation pathways included addressing the COVID-19 pandemic, Healthy Children, Healthy Pregnancy, Integrating Behavioral and Physical Health, and Living with Chronic Conditions, and additional projects related to housing and food access also were undertaken. One project described was a housing pilot in Sedgwick County, the Housing First model, which would provide housing for UHC members. UHC's COVID-19-related provider outreach efforts to help meet supply needs were noted. With regard to the impact of COVID-19 on UHC's day-to-day management, issuance of provider payments, and similar operations, the representative noted UHC tried to lower the payment time frames to get payments to providers since utilization had declined. UHC also worked with the other MCOs to streamline the process. Overall, UHC made a total investment in Kansas of over \$2.0 million above the KanCare contract requirements. Data regarding the UHC PRTF waiting list was provided.

At the September 28, 2020, meeting, a UHC representative provided a list of Empowering Health Grants that were provided. Examples of the partnering in Kansas between FQHCs and UHC, such as the FQHC Transformation Pathways, were provided. This included implementing telehealth solutions for pediatric patients, focusing on well child visits and addressable social barriers. A chart reflecting UHC's efforts related to food and housing services provided to its members and COVID-19 provider outreach efforts were also discussed. The UHC presenter agreed with the other MCOs that there were advantages and disadvantages with having one MCO oversee foster care members in KanCare.

A UHC representative stated at the December 15, 2020, meeting that there had been no

reductions in existing services during the COVID-19 pandemic. Temporary services were authorized to include telehealth, personal care services, and home-delivered meals. UHC provided long-term services and supports members and skilled nursing facilities with COVID-19 testing kits. The Safety, Testing, Overall, Partnership (STOP) initiative was created to address the health disparities of disadvantaged communities. UHC donated surgical masks to each FQHC partner. Meals were distributed through the Mom's Meals program. The testimony included responses to questions posed at the September 28, 2020, meeting related to foster care, managed care, Appendix K flexibilities of IEPs, the PRTF waiting list, and COVID provider outreach efforts.

Human Services Consensus Caseload

Staff from the Division of the Budget, DCF, KDHE, KDADS, and KLRD met April 16, 2020, to revise the estimates on human services caseload expenditures for FY 2020 and FY 2021, and on October 28, 2020, to revise estimates on caseload expenditures for FY 2021 and to develop estimates for FY 2022. The estimates include expenditures for Temporary Assistance for Needy Families, the Reintegration/Foster Care contracts, and KanCare Regular Medical Assistance and KDADS Non-KanCare.

Spring Estimate

The combined estimate for FY 2020 and FY 2021 was an all funds decrease of \$9.4 million and an SGF decrease of \$40.9 million below the amount approved by the 2020 Legislature for FY 2020 and FY 2021. In response to a question regarding funds set aside in the budget for Medicaid expansion, the KLRD fiscal analyst stated there were funds in the budget for Medicaid expansion, but because no expansion legislation was passed by the Legislature, the funds went in the COVID-19 relief fund.

Fall Estimate

The estimate for FY 2021 was a decrease of \$20.3 million from all funding sources, including a decrease of \$166.5 million SGF, below the budget approved by the 2020 Legislature, adjusted for reappropriation of money not expended in FY 2020 and for funds allotted by the Governor in FY 2021. The estimate for FY 2022 is an increase of

\$184.2 million from all funding sources, including an SGF increase of \$204.8 million, above the FY 2021 revised estimate.

340B Drug Pricing Program

A representative of Community Care Network of Kansas provided testimony at the December 9, 2020, meeting regarding a threat to the 340B drug pricing program. The 340B drug pricing program was passed by Congress in 1992 to provide equitable access to medications. The program allows nonprofit providers to stretch federal resources and works by drug manufacturers selling drugs at discounted prices to community health centers, hospitals, and other eligible providers. The representative stated the threat is from pharmacy benefit managers (PBMs) attempting to force health centers into contracts that treat them differently because they are a 340B program. She stated this was an attempt by pharmaceutical companies to increase their revenues by limiting or eliminating the 340B program. To date, seven states prohibit PBMs from treating community health centers, hospitals, and other 340B providers differently simply because they participate in the 340B program. She requested full support from the Legislature to ban such activity.

A representative of the Health Ministries Clinic also presented at the December 9, 2020, meeting, stating the relief being sought was legislation that would prohibit PBMs from engaging in actions that reduce funding for Kansans' health care while increasing the PBMs' profits. He noted the remedy required no additional spending by the State, while providing substantial benefits to its residents. The 340B program gives community health centers a mechanism to ensure their patients, who are disproportionately uninsured or under-insured, have the ability to obtain prescribed medications.

At the December 9, 2020, meeting, a representative of Salina Family Healthcare Center provided an overview of the actions taken by PBMs requiring the Center to sign three contracts that have reduced its pharmacy reimbursement rate solely based on its eligibility to participate in the 340B program. He described how the PBMs' actions have impacted his facility. He also provided a 340B program savings impact statement, noting the critical programs and health

care services supported by his facility's 340B program savings.

Presentations on HCBS Appendix K Flexibility for IEP Services

KDADS Presentation

A KDADS representative provided testimony at the December 9, 2020, meeting regarding Appendix K, which can be utilized by states during emergency situations to request amendment to approved Section 1915(c) waivers. A list of the CMS-approved Appendix K flexibilities for Kansas was provided. After receiving questions and concerns from parents, providers, and educators about how the needs of school-age waiver participants would be supported during remote learning, KDADS drafted an amendment to the State's existing approved Appendix K (Additive Appendix K#4) and submitted it to CMS for approval. Additive Appendix K#4 proposed to allow medically necessary personal care services and SMC services to be provided during remote school hours as a flexibility afforded during the COVID-19 pandemic. During discussion with CMS, it was determined the amendment was unnecessary, as the State could utilize Early and Periodic Screening, Diagnosis, and Treatment to deliver the medically necessary services. Since the Additive Appendix K#4 amendment was submitted to CMS in draft form, no formal action was necessary to abandon the amendment.

The KDADS reviewed the process to request Appendix K flexibilities at the December 9, 2020, meeting. A list of the waivers to which Appendix K applies was provided. The representative noted the current Appendix K is time-limited and expires January 26, 2021. Services for these students pivot from fee-for-service to managed care delivery. Local education authorities (LEAs) bill KDHE directly for Medicaid services paid as fees for services. MCOs authorize medically necessary Early and Periodic Screening, Diagnosis, and Treatment services through managed care. The LEAs and Medicaid service providers bill only for services actually provided, and there is no duplication of payment for services. The children receiving the attendant care and nursing services are the same children who already receive HCBS waiver services during the summer and school breaks and are now being provided services in the home due to a remote learning situation. Not all

special education children with IEPs receive these services; only those children currently receiving HCBS services would qualify.

Kansas State Department of Education Presentation

A KSDE representative testified regarding the interplay between the federal Individuals with Disabilities Education Act (IDEA) and the Kansas Special Education for Exceptional Children Act. He explained the complexity of services that are not educational in purpose but are necessary for a child to access a free appropriate public education (FAPE), as required by IDEA. The school assumes these services when the school is in session. When the school is not in session, these services are provided in-home through HCBS. The Individual Education Plan (IEP) team determines what it means to receive FAPE for each student, based upon the specific circumstances and context of a given child. If non-educational in-home services are required for a student to receive FAPE and are provided by the LEA, the district may be able to submit a claim for state special education categorical aid or federal Medicaid to subsidize the cost. If the services are found to be unnecessary for FAPE and not provided, the LEA receives no additional state or federal aid.

Integrated Care Presentations

Several individuals provided testimony on the topic of integrated care at the December 15, 2020, meeting. A Kansas Health Institute representative presented a review of the recommendation related to integrated care developed by the System Capacity and Transformation Working Group of the Special Committee on Mental Health Modernization and Reform that met during the 2020 Interim. The introduction to this working group's report stated an important strategy for system transformation would be to "address the continuum of care to ensure an integrated and coordinated approach to care delivery," and the working group designated the recommendation for immediate action (within two years). A second working group, the Finance and Sustainability Working Group, included a recommendation also for action within the next two years, related to the Certified Community Behavioral Health Clinic (CCBHC) Model.

A federal Substance Abuse and Mental Health Services Administration representative provided testimony on integrated care. She noted primary care settings have become a gateway to the behavioral health system, and its providers need support and resources to screen and treat individuals with behavioral and general health care needs. She stated the solution lies in primary and behavioral health care integration. The representative discussed the enactment of the federal Protecting Access to Medicare Act of 2014, which contains a section requiring HHS to establish a process for the certification of CCBHCs as part of a two-year demonstration project under Medicaid. She described the CCBHC model and its benefits and provided a timeline of the CCBHC preparation, planning, and demonstration phases and the awarding of the CCBHC expansion grants, some of which went to southeast Kansas. The required quality measures and reports to Congress were outlined. Information on some of the outcomes of Missouri's CCBHC program were provided, including a 25 percent increase in veteran participation, a 20 percent increase in access to care, and decreasing emergency room visits and hospitalizations.

Several individuals representing the Washington State Health Care Authority (HCA) provided testimony regarding a range of HCA activities with "social determinants of health" (SDOH), integrated care, and the Collaborative Care Management (CoCM) model. The SDOH activities noted included: the Medical Transformation Project (MTP) waiver; examining opportunities to link SDOH with Medicaid managed care purchasing and employee benefit purchasing, which is still in research and development; and MTP Foundational Community Supports, which targeted federal funding to provide supportive housing and supported employment to high needs Medicaid clients. One presentation focused on the MTP Foundational Community Supports program, which is based on the idea that stable employment leads to healthier lives, and addressing housing concerns can result in reduced health care costs. Outcomes data from a preliminary report on this program was provided. The presentation on integrated care included information on legislation enacted in Washington in 2014 to change the way the state purchased mental health and substance use disorder services

in the Medicaid program. The state was directed to fully integrate the financing and delivery of physical health, mental health, and substance use disorder services in the Medicaid program *via* managed care by 2020. Information was provided on how this integration was to be carried out and successes in those regions adopting the program early. The CoCM model was implemented in 2018 and was based on Medicaid rates. The CoCM required, in order to receive payment, the group must have a team trained to deliver care that included a psychiatric consultant, a primary care provider champion, staff with training in aspects of behavioral health, and a registry for tracking progress and interaction with patients.

A Community Health Center of Southeast Kansas (CHCSEK) representative provided information on the integrated care model currently being used at CHCSEK. She noted the various services provided by the Community Health Action Team and CHCSEK's OneCare program. The representative stated CHCSEK cannot bill for TCM with all KanCare members, because they are not a CMHC, but a FQHC. She recommended the Committee explore more opportunities for all providers to bill for services like TCM that support and promote integrated care models.

MCOs' Collaborative Testimony on Integrated Care

Sunflower and UHC representatives provided collaborative testimony on behalf of Sunflower, UHC, and Aetna on integrated care. Multiple representatives for each of the MCOs also were available for questions from the Committee members. A UHC representative listed the impacts of behavioral health issues on Americans. The impact and benefits integrated care can have on individuals was discussed. She noted system barriers include communication and collaboration, infrastructure and investments, and incentives and performance. The representative stated the goal of integrated care was "achieving the triple aim": cost of utilization, population health, and experience of care. The testimony included a handout, "Integrated Care and State Policy in Kansas: Case Study of Community Health Center of Southeast Kansas." The Sunflower representative noted the importance of working internally to remove communication barriers and working outside the MCOs' comfort zones.

In response to questions, the UHC representative stated there are rehabilitative codes that only CMHCs can use. The codes are not only TCM rehabilitative health services, but other rehabilitative services as well. Although codes play a large part in the move to integration, there is still the need for specialists to focus on the areas they do best. The Sunflower representative also noted some of the codes are high cost. The representative said consideration should be given to the overall effect on the system of opening the codes to more providers and the need to proceed with caution so as not to devastate part of the health care system. The Sunflower representative noted there were creative ways to incentivize providers to work together without opening codes and to look at barriers in place to prevent integration.

COVID-19 and LTC Facilities

At the December 15, 2020, meeting, representatives of KDADS, LeadingAge Kansas and two of its members, and the KHCA/KCAL and two of its members presented testimony on COVID-19 testing strategies and the challenges being faced by LTC facilities due to COVID-19.

KDADS

A KDADS representative provided an update on KDADS testing strategies. He noted the federal government shipped point of care testing machines to 319 nursing facilities with a current Clinical Laboratory Improvement Amendment certificate of waiver in three waves of delivery between July 20 and November 6, 2020. The facilities received enough tests and kits for one round of tests. The facilities were directed to buy additional tests from the manufacturer to continue using the testing machines to meet the staff testing requirements set by CMS. Nursing facilities reported a backlog from the manufacturer to obtain more test kits. The facilities were required to have positive tests confirmed with a polymerase chain reaction (PCR) test, which tests for genetic material from the virus. Through Operation Warp Speed, HHS had distributed or was slated to distribute Abbott BinaxNOW rapid test cards to 106 assisted living facilities and 264 nursing facilities in Kansas. These rapid result tests are used in detecting COVID-19 antigens. The tests would be free of charge and would be prioritized to serve vulnerable populations including nursing homes,

assisted living facilities, and home health agency workers to address the shortage of supplies for the point of care testing machines in nursing facilities. When a positive antigen test occurred, facilities could use the KDHE lab or access the SPARK Taskforce-funded regional labs to confirm a positive result from their point of care testing machine. The frequency of the required testing in nursing facilities is dependent on the COVID-19 positivity rate. CMS authorized the use of the KDHE positivity rates to determine the required testing frequency. A summary of all allocations by nursing facilities by funding type was provided.

The KDADS representative reviewed the principle of the Governor's unified testing strategy, with a goal of controlling community spread by expanding statewide testing beyond those with symptoms and cluster investigations, coordinating public and private testing efforts across the state, and communicating testing goals and objectives. The representative discussed the application process for SPARK Taskforce funds, including the goal and who was eligible, and outlined the populations to prioritize and the scalability. The distribution of SPARK Taskforce funds and their use were as follows: \$10.0 million in round 1 allocated to counties, \$24.0 million in round 2 to increase lab capacity, and \$52.0 million in round 3 to implement a unified testing strategy. The SPARK funding process for round 3 was presented. The representative provided a summary of the three sections of the round 3 testing RFP: laboratory testing solutions, high-risk populations, and innovative strategic solutions. A summary of the proposals received from qualified bidders was provided. Some labs were given money up front to allow for setting up the labs. Payments to the labs were made on the number of tests run. A list of the nine labs contracted out for statewide COVID-19 testing and a map showing the counties covered by each lab and the testing services provided was presented. The KDADS representative stated the testing began mid-November and may be able to continue into 2021 if funding continued. The representative said the State was well short of the \$52.0 million set aside for testing because the average number of tests per day had not hit the threshold. KDHE will be asked to provide the Committee with the status of the spending by contracted lab.

In response to questions, the KDADS representative stated a survey of LTC facilities licensed by KDADS was conducted prior to rolling out the regional labs. The survey indicated the vast majority of the LTC facilities had the resources to test (700 facilities said they were able to comply with testing, approximately 100 said they were not testing, and 120 to 130 did not respond). The representative said requirements were not placed on LTC facilities that they could not meet. If a facility was unable to comply with testing requirements due to lack of testing supplies or the inability to afford the supplies, they could make their best effort and document the reason to avoid being penalized.

The KDADS representative responded that early in the pandemic, COVID-19 testing was not being done at all nursing facilities. Facilities licensed by CMS were mandated to start testing on August 25, 2020. KDADS had concerns the availability of supplies and testing results could not be guaranteed to state-licensed facilities to meet a testing requirement. With the availability of SPARK Taskforce funding for testing, the State was more comfortable with setting a testing requirement for state-licensed facilities through Executive Order Number 20-69, effective December 14, 2020.

Concern was expressed by a Committee member regarding the position nursing facilities were being placed in if they were relying on a false negative test result. The KDADS representative stated the facilities could use the rapid test for one required test and the PCR test for the second test, so a false negative could be caught in the second test. KDHE would provide further clarification on this topic.

LTC Associations and Members

A LeadingAge Kansas representative discussed two major issues its LTC facility members are facing during the COVID-19 pandemic: the lack of liability protection and staffing shortages.

The LeadingAge Kansas representative stated LTC providers were the only health care providers excluded from full COVID-19 liability protection. She noted for all other health care providers, the protections given were narrowed to only health

care activities related to the COVID-19 emergency and do not apply to acts, omissions, or decisions that result in gross negligence or willful or reckless conduct. She said these liability protections preserve the right to go after the “bad apples.” LTC facilities are asking the Legislature for the same liability protections granted to other health care providers. She said singling out the LTC facilities for personal injury class action lawsuits during the pandemic threatens the existence of the senior care system in Kansas, and it has also sparked a crisis in the liability insurance markets and may ultimately threaten the State’s Health Care Stabilization Fund.

The LeadingAge representative stated the COVID-19 pandemic has caused a shortage in the nursing home workforce. Staffing agencies are short on workers, and their charges for nurses and nurse aides have quadrupled. The 10- to 14-day quarantining requirements before placing a new agency nurse or aide into a nursing facility delays the placement of temporary staff in nursing facilities. Staff are working 80- to 100-hour work weeks. The following were among the possible solutions to reduce the workforce shortage: using the National Guard to assist with specific tasks, continuing the use of temporary nurse aides and a pathway to certified status after the emergency order has ended, and limiting staffing agency charges. Information regarding testing was included in the testimony but was not presented.

A Logan Manor Community Health Services (Logan Manor) representative testified as to her facility’s challenges with COVID-19. She expressed concern over an increase in sadness and depression resulting from the residents’ inability to see friends and relative other than through closed windows or communication devices. The residents’ health is declining due to isolation and an inability to leave the facility. The rates of depression have increased, and residents have decreased appetites resulting from eating alone in their rooms. The representative provided a review of the first and subsequent round of cases of residents and staff contracting COVID-19.

The Logan Manor representative discussed the staffing issues the facility encountered, with staff working over 80 hours per week and some staffing agencies not willing to send temporary staff to the facility or staffing not being available for three to

four weeks. She stated testing has been a problem because results are not available in a timely manner, taking ten or more days to get the results. A change in the lab used has reduced the test result time to two days. She said although the facility was able to order the PPE needed, the cost was high. The facility experienced difficulty in obtaining testing kits for a few weeks. HHS is sending weekly Abbott rapid testing cards to the facility.

A Brewster Place representative stated PPE has been an issue for his facility, at times requiring the use of handmade face coverings for staff and residents. Staffing has been a major concern, with caregiver applications dropping from 30 per month to 3 per month. The promised direct caregiver time per resident per week has been cut by 500 hours at the facility due to staffing issues. He said testing is a daunting task. The inability to take patients for rehabilitation, which is a major part of the facility’s revenue stream, due to staffing shortages has caused difficulties for the facility and hardship for patients who need a family member to be released from the hospitals but who have nowhere to go. He noted nursing homes need additional funding not tied to difficult to adhere to mandates and a solution to the staffing shortage.

A KHCA/KCAL representative stated she believed the federal and state governments have failed the nursing home residents and the people who care for them during the COVID-19 pandemic. She stated workforce instability is the most difficult to deal with. Wage pass through legislation and funding and helping to transition temporary nurse aides to certified nurse aides could help address the workforce needs. KHCA is working with Health Care Occupations Credentialing and KDADS to allow training online and clinicals at the facilities where the temporary nurse aides are employed. Providing a waiver to nursing facilities banned from providing nurse aid training due to survey results would also assist with the workforce instability. She noted the Legislature needed to revisit funding for front-line workers.

The KHCA/KCAL representative stated another issue is the rapidly increasing insurance rate. She said nursing facilities need liability protection like that of other health care providers.

The third issue addressed by the KHCA/KCAL representative was the risk of insolvency and closure. Noting the \$1.9 billion total economic impact LTC facilities have on the State, she said the State needed to provide stable and sustainable funding for LTC facilities. The representative noted the industry is in crisis.

A representative of Recover-Care Healthcare stated concerns related to COVID-19 management and prevention, noting the virus has exposed the weaknesses across all sectors, and there is no playbook to fall back on. He said providers have been left to innovate and apply protocols to prevent the spread, and there have been inconsistent and inaccurate guidelines from public health officials. He said there had been a large misuse of people and resources in performing a large number of surveys across his 22 facilities, with only 2 deficiencies issued. He stated PPE and staffing have been major concerns. The COVID-19 pandemic has made recruiting, which was already difficult, even more difficult. Wages are low and working in clinics and hospitals was a preferable environment. He stated staffing agencies are recruiting caregivers by offering high wages and passing along the cost to the nursing facilities.

An Americare Systems representative cited two primary issues that have had a significant impact on her organization during the pandemic. The first issue is staffing. She noted eight Directors of Nursing in the skilled division have left due to regulations, liability concerns, the difficulty of the job, and a lack of staff. She stated in her organization with almost 800 employees, there were 80 open positions at the time of the December 15, 2020, meeting. Proper funding for Medicaid would be a solution to the staffing issue. Her second concern was the difficulty in navigating through the process because each county had different reporting requirements, as do multiple local entities within the counties. She asked the Legislature to look at improving the Medicaid reimbursement for LTC facilities. The representative stated in her organization's current situation, there is the possibility of 1 or 2 facilities closing in the state, affecting 100 employees and 80 residents.

Written testimony on the impact of COVID-19 was provided by representatives of the Kansas

Adult Care Executives Association and Kansas Advocates for Better Care.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends:

- The House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare hold informational hearings within the first 60 days of the 2021 Legislative Session on the 340B Drug Pricing Program;
- The House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare hold informational hearings within the first 60 days of the 2021 Legislative Session regarding the efforts of Oral Health Kansas;
- The Legislature review how other states estimate caseloads;
- The K-TRACS prescription drug monitoring program be funded through the State General Fund;
- Nursing facilities be given the same immunity from civil liability provided to healthcare providers in 2020 Special Session HB 2016;
- The Legislature address the systemwide health care workforce issues, for example: safety, shortages, pay, education, licensure, and training (such as virtual training of certified nurse aides by nursing facilities);
- The Legislature work on integrated care and coordinating general and behavioral health, which includes mental health, substance abuse, and primary care;
- The Legislature monitor the financial stability of long-term care facilities in Kansas;

- The Legislature monitor and report the increase in HCBS waiver services provided to school-aged children in remote settings;
- The Legislature support expansion of the federal Excellence in Mental Health Act and then pursue participation. If participation in the Excellence in Mental Health Act is not possible, pursue a state plan amendment or change to the Section 1115 Waiver to allow interested providers to gain access to the Certified Community Behavioral Health Clinic (CCBHC) model. [*Note: This recommendation mirrors Recommendation 2.1 of the Special Committee on Mental Health Modernization and Reform working groups' report to the Special Committee, Strategic Framework for Modernizing the Kansas Behavioral Health System.*];
- The Legislature consider adding PACE to the consensus caseload process;
- Regarding telehealth, the Legislature should:
 - Develop standards to ensure high-quality telehealth services are provided. This includes: establishing consistent guidelines and measures for telehealth in collaboration with licensing and regulatory agencies, requiring standard provider education and training, ensuring patient privacy, educating patients on privacy-related issues, allowing telehealth supervision hours to be consistently counted toward licensure requirements, and allowing services to be provided flexibly when broadband access is limited;
 - Maintain reimbursement codes added during the public health emergency for behavioral telehealth services and consider options to prevent loss of facility fees so that providers are not losing revenue by delivering telehealth services;
 - Establish coverage of telehealth for crisis services to allow for the use of telehealth with law enforcement and mobile crisis services and explore virtual co-responder models for law enforcement to aid police departments and other law enforcement agencies as they respond to mental health crises in rural and frontier communities;
- Address the following items to ensure that individuals receive, and providers offer, telehealth in the most appropriate locations: adopt a broad definition of originating site, consistent with the Kansas Telemedicine Act; allow staff to provide services from homes or other non-clinical sites, if patient privacy and safety standards can be met; and examine issues related to providers practicing, and patients receiving, services across state lines, such as by exploring participation in interstate licensure compacts; and
- Utilize telehealth to maintain service and provider continuity as children, particularly foster children, move around the state and consider how the unique needs of parents of children in the child welfare system can be met *via* telehealth. [*Note: The telehealth recommendations mirror Recommendations 10.1 through 10.5 of the Special Committee on Mental Health Modernization and Reform working groups' report to the Special Committee, Strategic Framework for Modernizing the Kansas Behavioral Health System.*]; and
- Study and consider adjusting PACE rates annually, similar to the KanCare managed care organizations.

The Committee expressed concern and suggested the Legislature look at the charges nursing facilities incur when temporary staff must be used to meet workforce needs.

The Committee proposed a Committee bill be introduced containing the language of 2020 HB 2550, as amended by the House Committee on Social Services Budget, to increase reimbursement rates for providers of HCBS under the Intellectual and Developmental Disability waiver.

APPENDIX A

ROBERT G. (BOB) BETHELL JOINT COMMITTEE ON HOME AND COMMUNITY BASED SERVICES AND KANCARE OVERSIGHT

ANNUAL REPORT FOR THE 2020 LEGISLATIVE SESSION

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight is charged by statute to submit an annual written report on the statewide system for long-term care services to the President of the Senate and the Speaker of the House of Representatives at the start of each regular legislative session. The authorizing statute (KSA 2020 Supp. 39-7,159) creating a comprehensive and coordinated statewide system for long-term care services became effective July 1, 2008.

The Committee's annual report is to be based on information submitted quarterly to the Committee by the Secretary for Aging and Disability Services. The annual report is to provide:

- The number of individuals transferred from state or private institutions to home and community based services (HCBS), including the average daily census in state institutions and long-term care facilities;
- The savings resulting from the transfer of individuals to HCBS as certified by the Secretary for Aging and Disability Services; and
- The current balance in the Home and Community Based Services Savings Fund.

The following tables and accompanying explanations are provided in response to the Committee's statutory charge.

Number of Individuals Transferred from State or Private Institutions to HCBS, including the Average Daily Census in State Institutions and Long-term Care Facilities

Number of Individuals Transferred—The following provides a summary of the number of individuals transferred from intellectual/developmental disability (I/DD) institutional settings into HCBS during state fiscal year (SFY) 2020, together with the number of individuals added to HCBS due to crisis or other eligible program movement during SFY 2020. The following abbreviations are used in the table:

- ICF/IDD — Intermediate Care Facility for Individuals with Developmental Disabilities
- SFY — State Fiscal Year

I/DD INSTITUTIONAL SETTINGS AND WAIVER SERVICES*	
Private ICFs/IDD: Average Monthly Caseload SFY 2020	110
State I/DD Hospitals – SMRH: Average Monthly Caseload SFY 2020	288
I/DD Waiver Community Services: Average Monthly Caseload SFY 2020	9,106
*Monthly averages are based upon program eligibility.	
Sources: SFY 2020—Medicaid eligibility data as of October 31, 2020. The data include people coded as eligible for services or temporarily eligible.	

The following provides a summary of the average monthly caseload. The caseload had been decreasing in SFY 2019 as the MFP federal grant wound down. Kansas stopped MFP transitions in July 2017; individuals transitioning by that time had 365 days of MFP, after which they were transitioned to the appropriate HCBS program. The MFP program has ended. These additional abbreviations are used in the table:

- FE — Frail Elderly Waiver
- PD — Physical Disability Waiver
- TBI—Traumatic Brain Injury Waiver

FE / PD / TBI INSTITUTIONAL SETTINGS AND WAIVER SERVICES*	
Nursing Facilities-Average Monthly Caseload SFY 2020	10,500
Head Injury Rehabilitation Facility	31
FE Waiver: Average Monthly Caseload SFY 2020	4,834
PD Waiver: Average Monthly Caseload SFY 2020	6,014
TBI Waiver: Average Monthly Caseload SFY 2020	461
*Monthly averages are based upon program eligibility.	
Sources: SFY 2019—Medicaid eligibility data as of October 31, 2020. The data include people coded as eligible for services or temporarily eligible.	

AVERAGE DAILY CENSUS IN STATE INSTITUTIONS AND LONG-TERM CARE FACILITIES

KANSAS NEUROLOGICAL INSTITUTE: AVERAGE DAILY CENSUS

FY 2014 – 143
FY 2015 – 144
FY 2016 – 141
FY 2017 – 142
FY 2018 – 140
FY 2019 – 138
FY 2020 – 132

PARSONS STATE HOSPITAL AND TRAINING CENTER: AVERAGE DAILY CENSUS

FY 2014 – 174
FY 2015 – 173
FY 2016 – 163
FY 2017 – 160
FY 2018 – 160
FY 2019 – 162
FY 2020 – 157

PRIVATE ICF/IDD: MONTHLY AVERAGE*

FY 2014 – 143
FY 2015 – 140
FY 2016 – 137
FY 2017 – 133
FY 2018 – 137
FY 2019 – 119
FY 2020 – 110

NURSING FACILITIES: MONTHLY AVERAGE*

FY 2013 – 10,788
FY 2014 – 10,783
FY 2015 – 10,491
FY 2016 – 10,235
FY 2017 – 10,047
FY 2018 – 10,049
FY 2019 – 10,226
FY 2020 – 10,500

*Monthly averages are based upon Medicaid eligibility data.

Savings Resulting from the Transfer of Individuals to HCBS

In most, but not all cases, services provided in the community do cost less than those provided in an institutional setting, such as an ICF/IDD or a nursing facility. However, “savings” are only realized if a bed is closed behind the person transferring to HCBS. Due to demand, beds are typically refilled by individuals requiring the level of care provided by the facilities, therefore, the beds are not closed.

As certified by the Secretary for Aging and Disability Services, despite individuals moving into community settings that does have the effect of cost avoidance, the savings resulting from moving the individuals to home and community based services, as of October 31, 2020, was \$0.

Balance in the KDADS Home and Community Based Services Savings Fund

The balance in the Kansas Department for Aging and Disability Services Home and Community Based Services Savings Fund as of October 31, 2020, was \$0.

Report of the Joint Committee on Information Technology to the 2021 Kansas Legislature

CHAIRPERSON: Senator Mike Petersen

VICE-CHAIRPERSON: Representative Kyle Hoffman

RANKING MINORITY MEMBER: Senator Tom Holland

OTHER MEMBERS: Senators Kevin Braun, Dinah Sykes, and Caryn Tyson; Representatives Kenneth Collins, Pam Curtis, Steve Huebert, and Jeff Pittman

CHARGE

The Committee is directed to:

- Study computers, telecommunications, and other information technologies used by state agencies and institutions. The state governmental entities defined by KSA 75-7201 include executive, judicial, and legislative agencies and Regents Institutions;
- Review proposed new acquisitions, including implementation plans, project budget estimates, and three-year strategic information technology plans of state agencies and institutions. All state governmental entities are required to comply with provisions of KSA 75-7209 *et seq.* by submitting such information for review by the Committee;
- Monitor newly implemented technologies of state agencies and institutions;
- Make recommendations to the Senate Committee on Ways and Means and House Committee on Appropriations on implementation plans, budget estimates, and three-year plans of state agencies and institutions; and
- Report annually to the Legislative Coordinating Council and make special reports to other legislative committees as deemed appropriate.

Joint Committee on Information Technology

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Information Technology makes the following recommendations to the 2021 Legislature:

- Relevant state law including, but not limited to, KSA 75-7211 should be amended to require state agencies to submit information technology (IT) project plans to the Committee prior to the release of any request for proposal, or request for quote in the case of a sole-source contact, related to such IT projects;
- The Legislative Coordinating Council (LCC) should authorize the Committee to meet on call of the Chairperson at least once a month during the legislative session;
- In future legislative sessions, standing committees should be established in both the House and the Senate for review of IT and security topics in both the House and the Senate;
- Legislative leadership should work in consultation with the Legislative Chief Information Technology Officer (Legislative CITO) and other experts to develop guidelines and business practices for the use of videoconferencing services and other technology to conduct legislative proceedings;
- The House and the Senate should adopt rules for their respective chambers and joint rules for the use of videoconferencing technology for legislative committee meetings. Such rules should include procedures for conferee participation, state agency representative participation, legislator participation, and course of action on how to proceed when technology is uncooperative or fails;
- The House and the Senate should adopt a rule for their respective chambers and a joint rule requiring each individual participating in a legislative proceeding *via* videoconferencing platform to enable their camera to verify the identity of the participant;
- The House and Senate should adopt rules for their respective chambers and a joint rule to require executive sessions of legislative proceedings to be conducted in person and not with the use of a videoconferencing service and to require state agencies to have the appropriate representative responsible for the topic being discussed physically present for such a proceeding;
- The Kansas State Board of Education should set guidelines for IT security for school districts and provide IT security training to school district employees; and
- State departments and agencies should make security a priority and continue the review of public employee pay for state IT professionals to make compensation more comparable to compensation in the private sector.

The Committee commends the Kansas Department of Labor (KDOL) for their efforts to combat fraud and recommends KDOL continue to expand such efforts to combat fraud across the state. Additionally, KDOL should work with the Office of the Attorney General to develop and implement fraud prevention guidelines.

Proposed Legislation: None

BACKGROUND

The Joint Committee on Information Technology has statutory duties assigned by its authorizing legislation in KSA 46-2101 *et seq.* The Committee may set its own agenda, meet on call of its Chairperson at any time and any place within the State, and introduce legislation. The Committee consists of ten members: five senators and five representatives. The duties assigned to the Committee by KSA 46-2101 and KSA 2018 Supp. 75-7201 *et seq.* are as follows:

- Study computers, telecommunications, and other information technology (IT) used by state agencies and institutions. The state governmental entities defined by KSA 75-7201 include executive, judicial, and legislative agencies and Kansas Board of Regents institutions;
- Review proposed new acquisitions, including implementation plans, project budget estimates, and three-year strategic IT plans of state agencies and institutions. All state governmental entities are required to comply with provisions of KSA 75-7209 *et seq.* by submitting such information for review by the Committee;
- Monitor newly implemented technologies of state agencies and institutions;
- Make recommendations to the Senate Committee on Ways and Means and the House Committee on Appropriations on implementation plans, budget estimates, and three-year plans of state agencies and institutions; and
- Report annually to the Legislative Coordinating Council (LCC) and make

special reports to other legislative committees as deemed appropriate.

In addition to the Committee's statutory duties, the Legislature or its committees, including the LCC, may direct the Committee to undertake special studies and to perform other specific duties.

KSA 75-7210 requires the Executive, Judicial, and Legislative Chief Information Technology Officers (CITOs) to submit to the Committee annually all IT project budget estimates and revisions, all three-year plans, and all deviations from the state IT architecture. The Legislative CITO is directed to review the estimates and revisions, the three-year plans, and the deviations, and make recommendations to the Committee regarding the merits of and appropriations for the projects. In addition, the Executive and Judicial CITOs are required to report to the Legislative CITO the progress regarding implementation of projects and proposed expenditures, including revisions to such proposed expenditures.

COMMITTEE ACTIVITIES

The Committee met during the 2020 Legislative Session on March 11 and March 16, 2020. In addition to these days, the Committee met during the 2020 Interim, as authorized by the LCC, on August 11, November 12, and December 16, 2020.

Election of Chairperson, Vice-chairperson, and Ranking Minority Member

At the March 11, 2020, meeting, the Committee elected a new chairperson, vice-chairperson, and ranking minority member for the 2020 calendar year (CY).

Executive Branch Quarterly IT Project Reports

At the March 16, 2020, meeting, the Director of the Kansas Information Technology Office (Director) reviewed the executive branch agency reports for the October-December 2019 quarter. The Director reported five projects were on “alert” status:

- Fort Hays State University (FHSU) Enterprise Resource Planning (ERP) project implementation has been recast and at the time of this meeting was pending approval from the Executive CITO;
- The Kansas Corporation Commission Document Management System was delayed, but has been completed;
- The Kansas Department of Health and Environment (KDHE) Bureau of Environmental Remediation’s Data Management System is behind schedule with completion of phase three targeted for October 2020 and completion of phase four targeted for February 2021; and
- The Office of Information Technology Services (OITS) IT Hybrid Cloud project was in its execution phase but behind schedule at the time of the meeting due to paperwork not being filed.

The Kansas Department of Transportation (KDOT) K-Hub project was recast in January 2019 and was move out of alert status.

The Director cited one project in “caution” status from the October-December 2019 quarterly report:

- The KDOT Construction Management System replacement was reported as behind schedule but should be completed in summer 2020.

At the August 11, 2020, meeting, the Secretary of Administration (Secretary) reviewed second-quarter 2020 IT project reports, noting two projects were on alert status:

- FHSU ERP project implementation has been recast, and the project was under review; and
- The OITS IT Hybrid Cloud project has been recast, and the project was under review.

The Secretary also discussed an information gathering initiative to help improve the IT project quarterly reporting process and said that OITS will be deploying a new way to share and store these reports with Committee members.

At the November 12, 2020, meeting, the Secretary reviewed third-quarter 2020 IT project reports, noting one project was on alert status:

- The FHSU ERP project implementation has been recast due to the extensive nature of the project and its difficult-to-maintain timeline.

The Secretary also discussed the updated three-year IT plan for executive branch agencies, stating plans will now be refreshed in even-numbered years and updated in odd-numbered years. Additionally, the document will now contain project success stories, and its presentation format is being reassessed to establish clearer priorities and goals.

Executive Branch IT Update

At the August 11, 2020, meeting, the Secretary updated the Committee on a number of IT-related initiatives, including:

- Realigned OITS service rates, including a reduction of unique rates from 30 to 19;
- Statewide Cost Allocation Plan repayment negotiations, which would be between \$1.6 million and \$1.9 million if accepted by the U.S. Department of Health and Human Services;
- Use of the IT Capital Improvement Fund to upgrade the State’s networking and switch hardware and telephones;

- Negotiations with Legislative Administrative Services (LAS) regarding service utilization levels and fees for services;
- Ongoing migration of state data centers to a new data center located in Overland Park, along with the relocation of smaller state agency data centers from the Eisenhower State Office Building to the Landon State Office Building; and
- Hiring of a new Chief Information Security Officer to implement improved cybersecurity measures throughout state agencies.
- The Department of Administration is working with other state agencies to deploy softphones (software that enables computers to make telephone calls) for use with state-issued laptops for remote work in response to the COVID-19 pandemic;
- Phase one of the Layer 2 switch upgrade is almost complete; and
- OITS will be working with legislators to introduce a bill to require state agency IT project reports to be determined by a risk-basis assessment rather than a \$250,000 monetary threshold.

At the November 12, 2020, meeting, the Secretary updated the Committee on the following IT-related initiatives, noting:

- The migration of state data centers is 78 percent complete and is expected to be finished by the end of CY 2020;
- OITS has started the IT Architecture Inventory Project to better understand the State's more than 1,300 IT systems across 12 cabinet and 45 non-cabinet agencies; and
- OITS has started increasing its utilization of a financial management tool (Apptio) to consolidate its financial and operational data and will eventually allow service users to compare actual expenses with budgeted expenditures or potential vendor costs.

At the December 16, 2020, meeting, the Secretary updated the Committee on the following IT-related initiatives, noting:

- The migration of state data centers is 90 percent complete and is expected to be finished by the end of February 2021;
- The state Voice over Internet Protocol (VoIP) phone upgrade is 65 percent complete;

At the December 16, 2020, meeting, the Secretary also provided an overview of the IT Architecture Inventory Project. The goal of the project is to obtain an accounting of the State's more than 1,300 digital systems, supporting resources, and hosting environments. The newly hired Chief Information Technology Architect (CITA) was also present at the meeting and informed the committee he intends to reactivate the Kansas Technical Architecture Review Board and is currently reviewing Information Technology Executive Council (ITEC) policies related to data management and IT strategic direction.

Proposed IT Reporting Statutory Changes

At the November 12, 2020, meeting, the Secretary presented on possible statutory amendments to KSA 75-7201 *et seq.* The amendments were developed by the Kansas Information Technology Office with input from the CITO and the ITEC. Among other things, the proposed changes would amend the definition of an "IT project" by removing the reference to a specific dollar figure that triggers the current reporting process, allowing the review of projects that would be considered low-risk because they fail to meet this threshold.

Fort Hays State University ERP Project Update

At the December 16, 2020, meeting, the Vice President for Administration and Finances for FHSU provided background information and an update on the University's ERP project implementation. The representative said the

project was approved in 2015, and the first phase dealing with university finances and payroll was completed in 2017. The second phase deals with university admissions and recruiting and has required extensions and growth of the project's scope. The project's original budget was \$11.6 million and is now projected to cost about \$17.5 million. The Vice President for Administration and Finances indicated the project is expected to be completed in August 2021, and it will be one of the most advanced student management systems in the country.

Judicial IT Projects Update

At the March 16, 2020, meeting, the Judicial CITO updated members on the multi-year electronic court system project, specifically the progress on the eCourt Case Management System, which will centralize all court system documents. He reported the project is in the 27th month of the scheduled 45-month timeline, and project efforts in 2020 will focus on preparing the system for implementation of the next three scheduled tracks. The project is being implemented in seven tracks (six district court tracks and one appellate court track). Track I was completed in August 2019 and was composed of Clay, Dickinson, Geary, Marion, Morris, and Riley counties. Tracks II, III, and IV are scheduled to be completed by the end of 2020 and include Douglas, Leavenworth, Sedgwick, Shawnee, Wyandotte, and other counties. He said the project is on budget and scheduled to be completed on time in September 2021.

At the August 11, 2020, meeting, the Judicial CITO provided an updated on the Judicial Branch eCourt Case Management System, noting the project roll-out was hindered due to the COVID-19 pandemic. At the time of the meeting, the project was in its 32nd month of a 45-month timeline and was still on budget. The Judicial CITO noted courts started to hold remote hearings during the COVID-19 pandemic and have noticed a higher appearance rate.

At the November 12, 2020, meeting, the Chief Financial Officer for the Judicial Branch provided an update on the Judicial Branch eCourt Case Management System. She said it is anticipated the project will be completed by the end of CY 2021. The project is expected to cost \$14 million in total, and expenditure projections remain stable. The

district courts in Allen, Anderson, Bourbon, Chautauqua, Cherokee, Coffey, Cowley, Crawford, Franklin, Labette, Linn, Miami, Montgomery, Neosho, Osage, Wilson, and Woodson counties were added to the system on November 2, 2020.

Kansas Department of Labor IT Updates

At the August 11, 2020, meeting, the IT Director for the Kansas Department of Labor (KDOL) provided an update on the Unemployment Insurance (UI) system. He noted the challenges KDOL has faced when trying to update the systems to accommodate new federal unemployment programs that were a result of the COVID-19 pandemic. This included the extension of unemployment benefits to 13 weeks and implantation of the Pandemic Unemployment Assistance (PUA) program. These challenges resulted in a backlog of approximately 25,000 unemployment claims. Additionally, the IT Director noted challenges in combating fraud and identity theft. The IT Director also discussed KDOL's work with the vendor Accenture to help stabilize the system's IT infrastructure and stated the agency has hired additional IT staff to implement additional tools to handle the influx of claims.

At the November 12, 2020, meeting, a Deputy Secretary of KDOL provided an overview of the agency's efforts to review modernization of the UI system. The Deputy Secretary noted that prior to 2016, only one in five projects of this nature succeeded in providing the promised functionality. Since that time, the success rate is closer to one in two projects, indicating this increase is due to improved information sharing among states and more experienced vendors working with "out of the box" solutions. The Deputy Secretary also provided a history of KDOL's modernization efforts since implementation of its mainframe system nearly 40 years ago. Current modernization initiatives include:

- Creating a modernization steering committee;
- Dedicating staff resources to a modernization project;
- Working toward completion of a feasibility study; and

- Identifying the most successful state solutions that align with expectations.

At the December 16, 2020, meeting, the Acting Secretary of KDOL provided an update on the agency's unemployment benefits backlog and IT fraud prevention efforts. The Acting Secretary noted that the agency had paid out over \$2.4 million in weekly claims, reduced the regular claims backlog to 4,400 individuals, and reduced the PUA claims from 25,000 to 10,000.

Unemployment Insurance Fraud Prevention

In a closed session at the December 16, 2020, meeting, the Committee heard a presentation on UI fraud prevention efforts from KDOL and other relevant state agency representatives.

Kansas Department of Revenue IT Project Update

At the December 16, 2020, meeting, the Kansas Department of Revenue (KDOR) CITO updated the Committee on the agency's IT preparedness for the 2021 tax season. The KDOR CITO noted the agency's server and data center migration was back on track after OITS worked with the vendor Unisys to resolve performance concerns. The migration is expected to be completed prior to the 2021 tax season. The KDOR CITO also noted KDOR's tax processing staff are working remotely and have not had a single day of non-production, resulting in \$1.7 million of individual income tax returns being processed for the 2020 tax season.

Legislative Branch IT Update

At the March 16, 2020, meeting, the Legislative CITO provided an update on water-damaged committee room audio systems, noting several equipment units were damaged beyond repair and had to be replaced. The systems were back in service on March 3, 2020.

The Legislative CITO also provided an update on a COVID-19 pandemic business continuity plan for Kansas Legislative Office of Information Services (KLOIS), noting a plan has been drafted but is frequently being revised. The plan is designed to ensure operation of information

services and assist legislators, staff, and the public during the COVID-19 pandemic.

Regarding IT projects during the 2020 Interim, the Legislative CITO announced KLOIS was preparing for the systems biennium rollover process, which will update core systems components and implement virtual servers with an updated operating system. Additionally, the Legislative CITO noted the Legislature's web-interface search will move to an enhanced internal search system to eliminate reliance on Google search and allow more control over web searches. The Legislative CITO also stated enhancements to the committee system and legislature website were in development to allow testimony to be published online before minutes are created and to allow miscellaneous documents to be published on the website.

The Legislative CITO stated KLOIS was testing equipment to provide full video and audio streaming of House and Senate chamber sessions and committee meetings, including services for the deaf and hard of hearing in response to an LCC directive to develop these services.

The Legislative CITO also discussed a request for proposals (RFP) for legislator laptops and printers.

At the August 11, 2020, meeting, the Director of Technical Services for KLOIS provided an update on IT hardware projects being worked on during the 2020 Interim. These included: a legislator laptop refresh, a Statehouse printer refresh, and server updates. The Director also noted a new tool has been implemented that will allow legislators to reset the password for accessing their issued laptops should they get locked out. Additionally, the Director of Application Services for KLOIS provided information on updates to the Kansas Legislative Information Services System (KLISS). These updates included chamber automation and Open Office upgrades.

At the November 12, 2020, meeting, the Director of Technical Services provided an update on IT hardware projects underway. The delayed Statehouse printer refresh project had been restarted and was awaiting review of a draft

contract by the LCC. KLOIS was also in the process of inventorying and configuring new legislator laptops and upgrading Statehouse servers. Various network infrastructure projects were also in progress to accommodate the Virtual Statehouse Project. Additionally, the Director of Application Services for KLOIS updated the Committee on the group's progress on testing an upgrade to the Open Office document development component of the KLISS system for the Office of the Revisor of Statutes and the Kansas Legislative Research Department, noting an anticipated deployment for the 2022 Legislative Session.

Virtual Statehouse Project

At the August 11, 2020, meeting, the Legislative CITO provided an update on a Legislative Budget Committee request to review options for improved communications for virtual legislative meetings. The request resulted in the development of the "Kansas Virtual Statehouse" report with the director of LAS. The Legislative CITO provided an overview of the report, noting recommendations for audio, video, and teleconferencing capabilities with closed captioning services in all committee rooms and House and Senate chambers. The estimated cost to implement was \$5.0 million, but the Legislative CITO indicated the project was scalable.

At the November 12, 2020, meeting, the Legislative CITO reported three vendors responded to the RFP and provided system demonstrations. At the time of the meeting, the proposals were under review. The Legislative CITO stated the next steps of the project included approval of a system design and finalization of a vendor contract.

At the December 16, 2020, meeting, the Legislative CITO reported World Wide Technology was selected as the vendor to implement the project. The project will integrate Cisco Webex video conferencing systems and required hardware (monitors, cameras, and microphones) in each committee room. The total cost was estimated to be approximately \$3.6 million. He noted staff training began on December 14, 2020, and installations are expected to be completed before the start of the 2021 Legislative Session.

Information Technology Executive Council Report

As the Chairperson of the Information Technology Executive Council (ITEC) for 2021, the Legislative CITO presented an update on ITEC's review of business contingency and shared solutions policies (series 5000 and 8000, respectively) at the November 12, 2020, meeting. The Legislative CITO provided information on the ITEC members reviewing the policies.

IT Security Audits

At the March 11, 2020, meeting, Legislative Division of Post Audit (LPA) staff provided a three-year summary of agency IT security audits for 19 state agencies. LPA staff noted over 50 percent of audited agencies did not comply with applicable IT security standards and best practices, citing top management inattention and inadequate IT resources as primary reasons for noncompliance. The most significant weaknesses identified were: irregular scans of computers, failure to update security software, lack of incident response and continuity plans, inadequate security awareness or training, and gaps in protection of data.

In a closed session at the August 11, 2020, meeting, an IT auditor with LPA presented the results of IT security audits of the Judicial Branch and KDOT.

In closed sessions at the November 12, 2020, meeting, an IT auditor with LPA presented the results of IT security audits of the Kansas Board of Regents and the Topeka Correctional Facility.

In closed sessions at the December 16, 2020, meeting, an IT auditor with LPA presented the results of IT security audits of the Kansas State Board of Healing Arts, Kansas Public Employees Retirement System, Kansas State University, and the Seaman School District (USD 345). In closed session, the Committee also received requested follow-up information regarding the Topeka Correctional Facility.

COMMITTEE COMMENTS AND DISCUSSION

The Committee requested several reports and follow-up presentations from FHSU, KDOL, KLOIS, OITS, and the Topeka Correctional Facility.

CONCLUSIONS AND RECOMMENDATIONS

At its meeting on December 16, 2020, the Committee members discussed their conclusions and recommendations to the 2021 Legislature and agreed to the following:

- Relevant state law, including, but not limited to, KSA 75-7211, should be amended to require state agencies to submit IT project plans to the Committee prior to the release of any RFP, or request for quote in the case of a sole-source contact, related to such IT projects;
- The LCC should authorize the Committee to meet on call of the Chairperson at least once a month during the legislative session;
- In future sessions, standing committees for reviewing IT and security topics in both the House and the Senate should be established;
- Legislative leadership should work in consultation with the Legislative CITO and other experts to develop guidelines and business practices for the use of video conferencing services and other technology to conduct legislative proceedings;
- The House and the Senate should adopt rules for their respective chambers and joint rules for the use of video conferencing technology for legislative

committee meetings. Such rules should include procedures for conferee participation, state agency representative participation, legislator participation, and course of action on how to proceed when technology is uncooperative or fails;

- The House and the Senate should adopt a rule for their respective chambers and a joint rule requiring each individual participating in a legislative proceeding *via* video conferencing platform to enable their camera to verify the identity of the participant;
- The House and Senate should adopt rules for their respective chambers and a joint rule to require executive sessions of legislative proceedings be conducted in person and not with the use of a video conferencing service, and to require state agencies to have the appropriate representative responsible for the topic being discussed physically present for such a proceeding;
- The Kansas State Board of Education should set guidelines for IT security for school districts and provide IT security training to school district employees; and
- State departments and agencies should make security a priority and continue the review of public employee pay for state IT professionals to adjust compensation to be more comparable to compensation in the private sector.

The Committee commends KDOL for their efforts to combat fraud and recommends KDOL continue to expand such efforts to combat fraud across the state. Additionally, KDOL should work with the Office of the Attorney General to develop and implement fraud prevention guidelines.

Report of the Legislative Budget Committee to the 2021 Kansas Legislature

CHAIRPERSON: Senator Carolyn McGinn

VICE-CHAIRPERSON: Representative Troy Waymaster

OTHER MEMBERS: Senators Rick Billinger and Tom Hawk; Representatives Will Carpenter, Kyle Hoffman, and Kathy Wolfe Moore, and Sean Tarwater (substitute member)

CHARGE

State Budget Issues

The Legislative Budget Committee is statutorily directed to:

- Compile fiscal information and study and make recommendations on the state budget, including revenues and expenditures, and the organization and functions of the State, including its departments, subdivisions, and agencies, with a view of reducing the cost of state government and increasing efficiency and economy.

In addition to its statutory duties, the Committee is to:

- In regard to COVID-19 pandemic federal funding and expenditures—Receive updates on federal funding and expenditures by state agencies related to the COVID-19 pandemic;
- In regard to the Kansas Board of Regents and Regents Institutions—Receive a report on the impact of COVID-19-related closures and virtual learning;
- In regard to the Kansas Department of Transportation—Receive an update on T-WORKS and Eisenhower Legacy Transportation Program projects;
- In regard to the Docking State Office Building and Kansas Department of Health and Environment Laboratory—Review proposals for potential renovation and construction;

- In regard to Veterans' residential facilities funding—Receive an update on location, utilization, and funding for residential facilities for veterans; and
- Review and discuss community and technical colleges, including:
 - How the institutions are funded and how the funding is distributed;
 - Mission of the colleges;
 - Transfer of credits to state universities;
 - The efficiencies and effectiveness of the colleges; and
 - Whether the colleges are meeting the needs of Kansas residents.

Legislative Budget Committee

ANNUAL REPORT

Conclusions and Recommendations

Following its review and discussion, the Legislative Budget Committee makes the following recommendations.

Recommendations to the Legislative Coordinating Council

- Transfer \$11.6 million, all from the State General Fund (SGF) Coronavirus Relief Account, to the Department for Children and Families in fiscal year (FY) 2020 for the foster care program;
- Transfer \$830,000, all from the SGF Coronavirus Relief Account, to the Kansas Commission on Veterans Affairs Office in FY 2020 for revenue replacement due to decreased admissions;
- Transfer \$6.9 million, all from the SGF Coronavirus Relief Account, to the Kansas Bureau of Investigation, in FY 2021 for the Automated Biometric Identification System (ABIS);
- Transfer \$5.5 million in FY 2020 and \$5.0 million in FY 2021, all from the SGF Coronavirus Relief Account, to the Department of Commerce to offset Commerce expenditures for the Hospitality Industry Relief Emergency (HIRE) program and invest in the Job Creation Program Fund;
- Transfer \$1.0 million, all from the SGF Coronavirus Relief Account, to the Kansas Department for Health and Environment (KDHE) in FY 2021 for distribution to local health departments; and
- Transfer \$205,000, all from the SGF Coronavirus Relief Account, to the Kansas State Fair in FY 2020, and \$2.3 million, all from the SGF Coronavirus Relief Account, in FY 2021 to replace lost revenue.

Further recommendations

- The Committee concurs with the Special Committee on Kansas Mental Health Modernization and Reform recommendation to support expansion of the federal Excellence in Mental Health Act or a state plan amendment of the 1115 Waiver to allow interested providers to gain access to the Certified Community Behavioral Health Clinic (CCBHC) model when the opportunity is available. The Committee further recommends that the House Committee on Appropriations and the Senate Committee on Ways and Means receive information on the effect the CCBHC model would have on the mental health system by Kansas Department for Aging and Disability Services, KDHE, and appropriate stakeholders.

- The Committee recommends the Kansas Commission on Peace Officers’ Standards and Training and the Kansas Law Enforcement Training Center communicate to law enforcement agencies and local governments that a database of records related to violations of the Kansas Law Enforcement Training Act, including, but not limited to, records of complaints received or maintained by the Commission, is available and should be used to aid in the avoidance of hiring law enforcement officers previously fired for egregious offenses, as referenced in the initial report of the Governor’s Commission on Racial Equity and Justice.
- The Committee encourages the Kansas Department of Agriculture (KDA) to make changes to its price verification inspection process to ensure efficient and effective inspections across the state. The Committee also encourages the use of increased timely enforcement mechanisms in order to encourage compliance by businesses. The Committee requests KDA provide an update to the House Committee on Appropriations and the Senate Committee on Ways and Means during the 2021 Legislative Session.
- The Committee recommends the Board of Indigents’ Defense Services present its September 2020 “A Report on the Status of Public Defense in Kansas” to the appropriate legislative committees during the 2021 Legislative Session, including the applicable budget committees.
- The Committee strongly recommends the 2021 Legislature make a decision regarding the Docking State Office Building to fully renovate the building; partially renovate the building; or demolish the building and replace it with a parking garage, each option with the potential addition of laboratory space for KDHE. The Committee further recommends the Department of Administration provide a cost estimate for an option to build a three-story parking garage with the KDHE laboratory located on top.
- The Committee recommends the Legislature consider convening a meeting of the Legislative Compensation Commission organized under KSA 46-3101 or consider elimination of the Legislative Compensation Commission. The Commission statutorily studies the compensation and expense allowances and reimbursement of members of the Legislature. The Commission last met during the 2000 Interim.
- The Committee recommends the Kansas Department of Revenue report to the House Committee on Appropriations and Senate Committee on Ways and Means concerning the current status of driver’s license offices in the State of Kansas and the impact of the COVID-19 pandemic on their operations.
- The Committee recommends the Legislature consider amending relevant state law (including, but not limited to, KSA 75-7211) to require state agencies to submit proposed information technology projects to the Joint Committee on Information Technology prior to the release of any request for proposal related to such an information technology project.
- The Committee expresses its displeasure concerning how the COVID-19 testing strategy was implemented by KDHE, especially concerning the delay in providing funding to private entities to perform testing activities.

Proposed Legislation: None.

BACKGROUND

The Legislative Budget Committee is statutorily directed in KSA 46-1208 to compile fiscal information. It is also directed to study and make recommendations on the state budget, revenues, and expenditures, and on the organization and functions of the State, including its departments, subdivisions, and agencies, with a view of reducing the cost of state government and increasing efficiency and economy.

COMMITTEE ACTIVITIES

The Legislative Coordinating Council (LCC) authorized ten meeting days for the Committee during the 2020 Interim. In addition, the Committee utilized two of its remaining authorized meeting days from the 2019 Interim with the designated House Chairperson and Senate Vice-chairperson. The Committee met 11 times during the 2020 Interim on the following days: June 15 and 17, July 15, August 3, September 3 and 23, October 6 and 7, November 13, and December 1 and 15.

On June 15, 2020, the Committee met to discuss State General Fund (SGF) receipts and Strengthening People and Revitalizing Kansas (SPARK) Taskforce recommendations.

On June 17, 2020, the Committee met to discuss federal coronavirus response funding and requests by state agencies for SGF moneys from the Coronavirus Relief Account to respond to the COVID-19 pandemic. The Committee made recommendations to the LCC for the expenditure of SGF Coronavirus Relief Account funds.

On July 15, 2020, the Committee received an update on COVID-19 testing, the impact of the COVID-19 pandemic on the Legislature, personal protective equipment (PPE) for nursing facilities, the Department of Commerce Job Creation Program Fund, the Governor's fiscal year (FY) 2021 SGF allotments, and the Attorney General's review of a request for proposal for legal services.

On August 3, 2020, the Committee met to discuss Statehouse technology upgrades, the

unemployment insurance system, SGF receipts, and broadband enhancement proposals.

On September 3, 2020, the Committee received an update on the Statehouse technology upgrades, Coronavirus Relief Fund (CRF) expenditures, year-to-date spending from the SGF, the Job Creation Program Fund, and a request for funding from the Kansas State Fair.

On September 23, 2020, the Committee received updates on COVID-19 testing in nursing facilities, the Veteran's Claims Assistance Program (VCAP), Statehouse technology upgrades, K-12 education system expenditures, the impact of the COVID-19 pandemic on lottery receipts, and the closure of Kansas Department of Revenue driver's license offices.

On October 6 and 7, 2020, the Committee received further updates on COVID-19 testing, particularly in nursing facilities, the status of the state hospitals, the Kansas Water Authority budget, the impact of the COVID-19 pandemic on the courts and the Board of Indigents' Defense Services, future plans for the Docking State Office Building, and flood repairs at the state parks. The Committee also received presentations from private companies on COVID-19 mitigation strategies.

On November 13, 2020, the Committee discussed the Fall 2020 Revised Consensus Revenue Estimates. The Committee also received updates on the Statehouse technology upgrades, COVID-19 financial assistance for businesses, Juvenile Justice Oversight Committee activities, Human Services Caseloads, and funding for the State's prescription drug monitoring program (K-TRACS).

On December 1, 2020, the Committee received reports on the Statehouse technology upgrades, deferred maintenance at the state universities, CRF utilization, COVID-19 vaccines, and unemployment insurance fraud.

On December 15, 2020, the Committee received updated reports on the Statehouse technology upgrades and funding for community mental health centers. The Committee also received a report from the Legislative Division of

Post Audit on the Department of Agriculture's price verification system. The Committee received an update from the Governor's Commission on Racial Equity and Justice and discussed legislative pay. Finally, the Committee made recommendations to the LCC for the expenditure of SGF moneys from the Coronavirus Relief Account.

State Revenue Updates

At the June 15, 2020, meeting, the revised revenue estimates for FY 2020 and FY 2021 were presented. The Spring Estimate reduced estimated revenue by \$1.3 billion over two years. The largest reduction of \$648.8 million was due to the delayed filing deadline for taxes from April 15 to July 15. The remaining reductions were attributable to reduced economic activity due to the impact of the COVID-19 pandemic.

At the August 3, 2020, meeting, the Director of Legislative Research provided an update on SGF receipts for the first month of FY 2021. Total receipts for July were \$8.7 million above the estimate, and SGF receipts from taxes were only below estimates by \$4.6 million; both actual amounts were close to the estimates. Sales tax, compensating use tax, and insurance premiums tax exceeded estimates by more than \$1.0 million. Individual income tax, corporate income tax, and financial institutions privilege tax came in below estimates by more than \$1.0 million.

The Director stated the situation is more complicated when looking at those receipt amounts that were expected to shift from April to July when the tax deadline was moved. June receipts were higher than estimated by approximately \$48.0 million, and July estimates were lower. Overall, concerns remained about the amount of money that will be received, but the withholding tax was coming in higher than anticipated.

Corporate income tax came in below estimates by \$5.2 million for July, but for June, the amount was approximately \$24.4 million above the estimate. Financial institutions privilege tax receipts were about \$2.3 million below what was anticipated in July, but the amount was \$6.0 million above the estimate for June.

At the November 13, 2020, meeting, the Director of Legislative Research presented the Fall Consensus Revenue Estimates. The FY 2021 estimate increased by \$477.2 million to \$7.708 billion, and the FY 2022 estimate decreased \$224.1 million to \$7.484 billion. The Director stated the changes from the Spring Estimate were largely attributable to federal spending in the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

FY 2021 SGF Allotments

At the July 15, 2020, meeting, the Director of the Budget provided an overview of the Governor's FY 2021 SGF allotments totaling \$374.5 million in reduced SGF expenditures. In addition, the Director provided an overview of the remainder of the Governor's allotment plan, which includes \$63.0 million in expenditure reductions requiring legislative approval and \$266.8 million in revenue adjustments that also require legislative approval. The total of all three components of the Governor's allotment plan is \$704.3 million.

SPARK Taskforce Recommendations

At the June 15, 2020, meeting, the Executive Director of the Office of Recovery and the SPARK Taskforce Chairperson presented the three-phase plan for the distribution of the federal CRF moneys. The first phase is to distribute \$400.0 million to local cities and counties. The second phase includes expenditures for short- and long-term growth. The third phase will depend on emergent considerations, including the potential for another sudden significant increase of COVID-19 infections. The Executive Director said the SPARK Taskforce based its decisions on an evaluation of what is fair, impactful, and timely, and the CRF moneys must be used for expenditures that are directly related to the COVID-19 pandemic and responses to this public health emergency.

At the September 23, 2020, meeting, the Executive Director of the Office of Recovery provided an update on SPARK Taskforce funding recommendations. Kansas made its biggest investments in July and August when COVID-19 cases increased. In Round 1 of the funding distributions, 105 Kansas counties received portions of \$400.0 million; in Round 2, 23

statewide programs received \$314.0 million for public health, education, economic development, and connectivity; and in Round 3, 3 statewide programs received \$215.0 million for COVID-19 testing, child supervision, and housing stability. More than 20 meetings were held since June to develop the recommendations and gather input from Kansans, the State Finance Council, the Legislative Budget Committee, and representatives from state government. The Executive Director provided an overview of the foundation for distribution of funding. Round 1 funding was based upon a population calculation of \$194.00 per person in the 105 counties, with a \$50.0 million impact fund for county needs. In rounds 2 and 3, the calculation was based on SPARK Taskforce recommendations in topic-focused areas, with a reserve fund of \$75.0 million. A preliminary review of the allocation of funds from all 105 counties showed that \$45.0 million had been spent, \$317.0 million in incremental planned aid will be spent before December 30, 2020, and \$38.0 million was unreconciled funds. In response to questions from Committee members, the Executive Director noted that 42 percent of nursing facility providers (149 out of 357) had returned Kansas Department for Aging and Disability Services (KDADS) attestation forms, and the Executive Director expected the number to increase.

At the December 1, 2020, meeting, The Executive Director of the Office of Recovery presented a report on the CRF utilization. Of the \$1.0 billion in CRF moneys made available, a total of \$440.0 million had been expended by end users as of Oct 31, 2020. The remaining amount included funds awarded but pending payment (\$502.0 million) and funds allocated but unawarded (\$61.5 million). Counties will submit final spending reports on December 10, 2020, and state agencies will submit final spending reports on December 14, 2020. From December 17 to 30, 2020, recipients enter a voluntary recoupment phase. All expenditures must cease on December 30, 2020, but recipients have until January 31, 2021, to pay encumbered expenses. Clawback of unencumbered funds will begin on December 30, 2020. Members expressed concerns about equity in distribution of funds for small business grants and lack of information regarding movie theater assistance.

Requests for Expenditures from the LCC SGF Coronavirus Relief Account

At the June 17, 2020, meeting, the Committee received requests for expenditures from the SGF Coronavirus Relief Account from the Department for Children and Families (DCF), Department of Commerce (Commerce), Department of Corrections (KDOC), Department of Health and Environment, Kansas Board of Regents, Kansas Bureau of Investigation (KBI), Kansas Commission on Veterans Affairs Office (KCVAO), Kansas Highway Patrol, Kansas State Fair, KDADS, and the Judicial Branch, along with recommendations for funding from the Director of the Budget.

The Committee recommended the LCC transfer the following funding: \$11.6 million in FY 2020 to DCF for the foster care program, \$5.5 million in FY 2020 to Commerce for the Job Creation Program Fund, \$205,000 in FY 2020 to the Kansas State Fair for replacement of revenue lost from non-fair facility rentals, and \$6.9 million in FY 2021 to the KBI for the Automated Biometric Identification System (ABIS).

At the September 3, 2020, meeting, the Committee recommended transferring \$5.0 million in FY 2021 to Commerce for the Job Creation Program Fund.

At the October 7, 2020, meeting, the Committee recommended transferring \$1.0 million to the Kansas State Fair to replace lost revenue from the cancellation of the 2020 State Fair event.

At the December 15, 2020, meeting, the Committee recommended transferring an additional \$1.3 million in FY 2021 to the Kansas State Fair for lost revenue due to the cancellation of the 2020 State Fair and \$1.0 million in FY 2021 for local health departments.

Statehouse Technology Upgrades

At the August 3, 2020, meeting, the Director of Legislative Administrative Services provided an overview of the steps taken to date to upgrade technology in the Statehouse in response to a Committee request to provide a cost estimate to implement virtual meeting technologies in the Statehouse. In December 2019, the LCC and the

Committee requested information regarding improving accessibility for people who are deaf or hard of hearing; these requests have been merged due to the COVID-19 pandemic.

The Legislative Chief Information Technology Officer (CITO) from the Kansas Legislative Office of Information Services (KLOIS) provided initial estimates of the cost to “virtualize” the Statehouse (the Kansas Virtual Statehouse project). The Legislative CITO emphasized this estimate is preliminary, as there are many details to be worked out. The current estimate is \$5.068 million in one-time costs plus \$937,000 annually for maintenance and staffing. This includes costs relating to installing video conference systems in the committee rooms and audio system upgrades, integrating audio and video systems, and increasing KLOIS staff. Because the cost exceeds \$250,000, this initiative will need to have a project plan approved and then filed with the Kansas Information Technology Office and reported to the Joint Committee on Information Technology.

At the September 3, 2020, and September 23, 2020, meetings, the Legislative CITO provided an update on the Kansas Virtual Statehouse project. The Kansas Virtual Statehouse project was presented to the LCC on September 16, 2020, and a motion was passed to approve the project. Video conference system requirements were included in the request for proposal (RFP) and were released on September 23, 2020. A request for \$5.068 million from the CRF was submitted on September 3, 2020. The SPARK Taskforce approved the recommendation for funding in Round 3 funding at the September 16, 2020, SPARK Taskforce meeting, and the State Finance Council approved the funding on September 17, 2020. KLOIS will work with Mission Electronics, Inc., on the upgrade plan for the audio systems. The Legislative CITO noted the quote for the upgrade plan was expected to be received the week after the September 23, 2020, meeting and estimated another two to four weeks to receive the equipment. It was estimated to take three business days to install and configure the new systems and complete testing. The Office of Information Technology Services (OITS) was preparing a quote for additional data jacks in the wiring closets for new equipment.

In response to questions from Committee members, the Legislative CITO reported the deadline for responses to the RFP was October 7, 2020. An evaluation of the current infrastructure will be completed by the information technology (IT) staff as part of the equipment installation process. Legislative staff are currently reviewing Microsoft Teams and Cisco Webex platforms for use.

At the November 13, 2020, meeting, the Legislative CITO provided an overview of the current status of proposal considerations, Statehouse infrastructure, platform capabilities, and implementation time frame. The decisions on awarding the contract will be made in the upcoming week, with the plan for full installment of equipment before the 2021 Legislative Session, including discussion of potential options for session remote access.

At the December 1, 2020, meeting, the Legislative CITO provided an update on the IT RFP, stating that a \$2.7 million contract was recently signed with World Wide Technology, which included 24-hour technical assistance for 5 years. Work has begun, with an anticipated completion date of December 30, 2020. The project was expanded to include select conference rooms, in addition to committee rooms and the House and Senate Chambers.

At the December 15, 2020 meeting, the Legislative CITO noted the upgrade project is still on track to be completed by the end of the year, and all equipment is now on-site. The project includes upgrades to the Statehouse infrastructure that are 97 percent complete and should be finished December 15, 2020. Other upgrades include OITS upgrades to the Statehouse network and to the firewall, which are scheduled to be completed this week.

Review of RFP for Legal Services

At the July 15, 2020, meeting, the Attorney General appeared before the Committee to provide information concerning the status of an RFP for legal services on behalf of the State, which totals more than \$1.0 million.

Updates on the Unemployment Insurance System and Claims

At the August 3, 2020, meeting, the Acting Secretary of Labor (Acting Secretary) provided an update on the Unemployment Insurance (UI) system. The Acting Secretary indicated the magnitude of the COVID-19 pandemic crisis has been exacerbated by the legacy IT systems used by the Kansas Department of Labor (KDOL). There are many systems in use and no single point of truth for data verification. The Acting Secretary said he was working with OITS and the Department of Administration to make sure unemployed Kansans receive benefits. The unemployment rate in Kansas went from 2.8 percent in March to 11.9 percent in April. The Acting Secretary stated KDOL was not staffed to handle the rapid increase in call volume and had just over 20 customer service representatives to handle incoming calls, which reached 1.6 million attempted calls. KDOL has subsequently added many representatives to handle intake calls; however, there is 42 percent turnover, as it is not an easy job, and representatives are severely underpaid compared to workers at other call centers in the area, which also have more-user-friendly systems. For each caller, KDOL customer service representatives must check five different systems, with two on mainframe systems, which means the representatives cannot use a mouse to easily toggle between them.

The Acting Secretary also discussed the UI Trust Fund balance. Even though the balance may look concerning, the Acting Secretary noted Kansas is in a much better position than many other states due to previous legislation and the State's strong rating with the U.S. Department of Labor. Because of that strong rating, if Kansas does have to tap into federal funds, the State should be able to use federal funds at a zero percent interest rate. The Acting Secretary said he did not expect to request legislation on the UI Trust Fund for this calendar year but will likely need to request modifications next year.

The Acting Secretary said KDOL is working with its contractor, Accenture, to deal with the surge in demand, improve communication across the agency, and perform program audits to confirm claimants are paid. Accenture is also working on an operational assessment to determine what

KDOL needs to do to stabilize the system and then what needs to be done to modernize it. The report from the assessment is expected in the next week or two. KDOL also intends to hire and train additional call center representatives and programming and analyst staff.

At the December 1, 2020, meeting, members recessed to executive session for discussion on fraud concerns.

Later, the Acting Secretary certified the Kansas UI Trust Fund is solvent for the remainder of FY 2021. The agency was previously concerned the UI Trust Fund would be insolvent in January 2021. However, because the economy is rebounding, unemployment claim expenditures are shifting to federal programs, and due to other provisions of the CARES Act, KDOL was able to extend the estimated solvency date.

Rural Broadband Initiatives

At the August 3, 2020, meeting, the Secretary of Commerce addressed the need to increase Kansans' access to high-quality broadband. The Secretary said this is the most important economic development issue at this time, as it impacts quality of life, health, education, and economic well-being. The Director of Broadband Initiatives, Commerce, provided information on the mechanics of the connectivity proposal.

Spokespersons for the Communications Coalition of Kansas, Kansas Cable Telecommunications Association, Kansas Farm Bureau, Kansas Hospital Association, League of Kansas Municipalities, and University of Kansas Health System provided testimony in support of broadband expansion. The representatives indicated broadband is key to rural healthcare delivery, education, and business.

At the September 23, 2020, meeting, the Chief Counsel for Commerce provided an update on broadband connectivity grants. The Connectivity Emergency Response Grant (CERG) program was created in response to the COVID-19 pandemic to improve Internet connectivity to underserved and unserved areas of the state. The program requires at least a 20 percent match of the total project cost, and the maximum grant award is \$10.0 million. The projects must comply with CARES Act

guidelines and be completed by December 30, 2020. A total of 84 applications were received from all parts of the state and were primarily from Internet service providers and community anchor institutions, including schools, libraries, and cities. Overall, the matching contributions exceeded the minimum 20 percent requirement. There were 31 applications for the Broadband Partnership Adoption Grant, which targets providing Internet subscription support for low-income households. The requested funds totaled \$8.9 million. Commerce provided further updates on October 7, 2020.

Commerce Job and Economic Relief Programs

At the September 3, 2020, meeting, the Secretary of Commerce submitted a request for an additional \$5.0 million from the SGF Coronavirus Relief Account for the Job Creation Program Fund (JCPF). In addition to the request, the Secretary provided an update on the JCPF. The Secretary noted the total number of deals under consideration was up 17 percent above the prior year, which was attributed to having a full-time recruitment staff. The Secretary also noted that during the market changes due to the COVID-19 pandemic, the JCPF can react to economic opportunities and incentivize businesses that are struggling to receive capital. The Secretary reviewed new announced offers and pending offers. At the time of the meeting, Commerce had 10 outstanding JCPF offers, totaling \$6.6 million, which would add 2,419 jobs and over \$243.0 million in capital investment. Additionally, since the July 15, 2020, meeting, there was \$9.1 million in announced offers, up from the \$750,000 at the time of the July meeting. The Secretary noted the request for additional funding was due to this influx in offers, which had left only \$1.6 million in unobligated funds in the JCPF. The Secretary stated this amount was insufficient to be able to react to any offers that may come up prior to the 2021 Legislative Session. After discussion focused on the announced offers, the Committee recommended the LCC approve the additional \$5.0 million requested by Commerce for the JCPF.

At the November 13, 2020, meeting, a representative of Commerce provided an overview of the CARES Act funding, including moneys for broadband grants (*via* the SPARK Taskforce),

Community Development Block Grant (CDBG)-CV, economic development grants (*via* the SPARK Taskforce), and the Kansas Creative Arts Industries Commission. The Committee inquired about the status of the Meals on Wheels funding and expressed concerns about funding and funding levels for entertainment venues. The Committee received further updates on the status of these programs at the October 7, 2020, meeting.

Response of the Universities, Colleges, Technical Colleges, and Community Colleges to the COVID-19 pandemic

At the September 3, 2020, meeting, representatives from each Kansas Board of Regents institution, Washburn University, technical colleges, and community colleges provided briefings to the Committee regarding their response to the COVID-19 pandemic and plans for limiting spread of the disease during the Fall 2020 Semester. Discussion of COVID-19 testing plans included the ability of students to get tested, recent positive COVID-19 case numbers and quarantine procedures, how positive tests would be reported if the student returns to another county to quarantine, CRF county funding received, and athletic departments' response, including what sports are continuing and what sports might be moved to the spring. In addition to the COVID-19 pandemic response plans, the representatives provided outlines of the classroom plans, including what in-person, hybrid, and remote learning may include, and the effect of the pandemic on program and overall enrollment. The representatives of the technical and community colleges in particular noted a drop in career and technical education enrollment in part due to the skills-focused sections, which must be in person, and a disconnect with K-12 institutions' schedules, which shift between in-person, hybrid, and remote learning, depending on the number of COVID-19 cases in the school and county.

Update on the Eisenhower Legacy Transportation Program

At the September 3, 2020, meeting, the Secretary of Transportation provided an update on the Eisenhower Legacy Transportation (IKE) Program. The Secretary noted the agency is determining new performance measures for meeting its three goals for the program: safer

roads, economic growth, and more options for Kansans and more resources for communities. The IKE program continued the eight programs from the previous T-WORKS program and added or reinstated an additional seven programs. The modernization and expansion part of the IKE program incorporates evaluations of projects on a two-year rolling cycle and identifying local project needs after local consults, with targets for each Kansas Department of Transportation (KDOT) district. The Secretary noted that in response to the COVID-19 pandemic, the KDOT met with industry to ensure the safety of workers. Everyone was asked to wear a mask and trailers should be cleaned every week.

KDOT put \$1.6 billion into the project scheduling pipeline in the spring, with the goal of being shovel-ready for any federal stimulus funds and to include sufficient rural projects to meet future specific targets. With the two-year rolling planning cycle, new projects will be added every two years to ensure optimum project progression. Additionally, to ensure completion of the outstanding T-WORKS projects, a T-WORKS project must be let before letting any modernization or expansion projects.

KDOT received \$38.8 million in federal funds related to public transportation: \$5.8 million went to intercity buses for travel across Kansas and the U.S., and the remaining \$33.0 million went to rural general transit, with \$7.2 million expended to local units of government. The Secretary noted the remaining funds are expected to be expended by early FY 2022, though there is no deadline for expenditure.

The Secretary noted KDOT is on schedule to deliver all T-WORKS projects per the accelerated schedules. KDOT anticipates letting \$430.0 million in preservation, the highest investment in five years, and \$212.0 million in modernization and expansion in FY 2021. In July 2020, \$20.0 million was awarded to 24 cost-share projects across Kansas. The cost-share program requires a local match. Other grants closing in fall 2020 include \$18.5 million in 36 City Connecting Link Improvement Program (CCLIP) projects, \$5.0 million for short line projects, \$200 per student for driver's education, \$3.0 million for innovative technology, \$5.0 million for the Kansas Airport Improvement program, \$5.0 million for local

bridges, and \$7.0 million for transportation alternatives.

The Secretary also reviewed FY 2020 revenues, with \$546.0 million in sales tax, \$209.5 million in registration fees, and \$301.0 million in motor fuel sales tax collected. The Secretary noted the motor fuel sales tax estimated receipts amount is below the prior two fiscal years in FY 2021.

In addition to review of the projects, the Secretary noted KDOT hired a program management consultant to manage the program overall to adopt best practices, forecasting, and better tracking. The Secretary also noted KDOT is working with industry leaders to incorporate practices from other states, including more efficient environmental practices.

Veterans' Claims Assistance Program Statutory Update

At the September 23, 2020, meeting, the Deputy Director, Kansas Commission on Veterans Affairs Office (KCVAO), provided an overview of the Veterans' Claims Assistance Program (VCAP), which helps eligible residents of Kansas get assistance and advice for procuring veterans benefits from the State and federal government. In FY 2020, for every dollar provided to the grant participants, \$187 was returned to the State in the form of federal benefits. Since the inception of VCAP, more than 100,000 claims have been approved and awarded, and over \$1.8 billion in claims have been paid to veterans and family members. In response to a question, the Deputy Director stated the proviso in the appropriations bill two years ago, which set a definite amount of Kansas Lottery funds from the Veterans' Benefit lottery game, has helped provide adequate funding for the KCVAO budget. The Committee discussed keeping the proviso, but members expressed a preference for having legislation passed.

COVID-19 Testing and Vaccine Distribution

COVID-19 Testing Discussion

At the October 6, 2020, meeting, the Committee received an update on the COVID-19 testing strategy, provided by a representative from KDHE. The representative indicated the agency

was attempting to balance the moneys it receives for testing and the identified testing populations to utilize those funds economically. The update included an overview of the different types of tests available, including information on when each test is most effective during the life of the disease. The representative stressed the importance of working with universities and private entities to adopt a unified testing strategy, including utilization of funds and laboratory capacity. The representative discussed a need for increased testing as well as the need to test asymptomatic individuals.

Another KDHE representative addressed the Committee regarding the testing of wastewater for COVID-19. The representative indicated the use of wastewater testing has been utilized to track various health issues, including tuberculosis and opioid use, and could be used to track COVID-19. While these tests may be used for monitoring the COVID-19 spread, KDHE is still working to determine how useful the process may be.

At the December 1, 2020, meeting, members expressed general concern that testing of asymptomatic individuals is not proactive. Members were concerned that payment to labs for testing is a reimbursement process, while the SPARK Taskforce intended CRF moneys as advance payment to include purchase of kits. KDHE stated the normal process for labs is to process tests, then be reimbursed on the back end. The Department of Administration directed KDHE to avoid advance payments.

Members were concerned that testing was not focused on the workforce, as intended by the SPARK Taskforce. KDHE stated that testing is provided to the general public by region, as opposed to employers. Employees can be sent to community testing sites. Employers can request testing from contracted labs, in a limited capacity.

Members were concerned that a Dallas, Texas-based firm was selected for testing instead of Kansas firms. KDHE stated WellHealth, of Dallas, was contracted to assist with testing because the firm has capacity to collect samples, which Kansas labs lacked. Kansas labs are the primary source for processing tests. WellHealth has sites in Dodge City, Garden City, and Liberal. Another firm, NicUSA, has sites in Colby, Great Bend, Hays,

and Norton, with mobile units in northwest Kansas.

COVID-19 Testing in Nursing Facilities

At the September 23, 2020, meeting, the Deputy Secretary of Hospitals and Facilities, KDADS, provided information on nursing facility COVID-19 testing. KDHE released a testing strategy on June 10, 2020, that did not recommend general surveillance testing, and on June 12, 2020, KDADS used this testing strategy as guidance to allow nursing facilities to reopen for visitors, in coordination with reopening orders issued by local health departments.

At the October 6, 2020, meeting, the committee heard an update provided by a representative from KDADS on COVID-19 testing and visitation policies in nursing facilities. The representative indicated testing policies are largely established by the federal Centers for Medicare and Medicaid Services (CMS), and facilities are generally required to test all staff and be prepared to test all residents in case of positive test results. The U.S. Department of Health and Human Services (HHS) provided the testing instruments and supplies to the 281 nursing facilities in Kansas.

The KDADS representative proceeded to provide an overview of COVID-19 impacts on the state hospitals. It was indicated that all the state hospitals have developed isolation areas for quarantining confirmed cases and have limited admissions at Larned and Osawatomie state hospitals. The representative also indicated SPARK Taskforce resources were used to provide hazard pay for individuals who have continued to work during the emergency declaration.

On August 26, 2020, CMS issued an interim final rule that required COVID-19 testing in long-term care facilities for staff at a frequency based on the COVID-19 test positivity rates within the county where the facility is located. As of September 13, 2020, there were 31 Kansas counties with a positivity rate of 10 percent or higher, requiring testing 2 times a week; 30 counties, including Johnson, Wyandotte, and Sedgwick with a 5 to 5.9 percent positivity rate, requiring weekly testing; and 44 counties were subject to testing once a month due to a test

positivity rate of less than 5 percent. Facilities were required to use a rapid point-of-care test or an off-site laboratory that could return results within 48 hours and were directed to be prepared to test all residents if positive cases were identified in the facility through routine screening. The HHS sent a one-time shipment of 281 testing machines to those nursing homes in Kansas with a current Clinical Laboratory Improvement Amendments Certificate of Waiver. These machines test for COVID-19 antigens using nasal swabs. The facilities received enough testing kits to complete one round of tests and were directed to reorder test kits from the manufacturers, at which point facilities began reporting a backlog in receiving more test kits. As of September 13, 2020, there were 31 Kansas counties with a positivity rate of 10 percent or higher, requiring testing 2 times a week; 30 counties, including Johnson, Wyandotte, and Sedgwick with a 5 to 5.9 percent positivity rate, requiring weekly testing; and 44 counties were subject to testing once a month due to a test positivity rate of less than 5 percent.

In response to Committee members' questions about how tests were administered, the Deputy Secretary responded the test for COVID-19 antigens is done with a nasal swab or skin prick. The CMS guidance for a positive result on the COVID-19 antigen test is the test should be confirmed with a polymerase chain reaction test that detects genetic material from the virus.

In response to questions about the types of facilities under the CMS regulation for testing, the Deputy Secretary responded that it does not apply to assisted living facilities. Committee members asked about guidelines for reopening nursing facilities to visitors and the Deputy Secretary reported that visiting plans are dependent on decisions at both the facility and county level. CMS had provided new information and guidance in the week before the meeting that could lead to facilities having more flexibility.

COVID-19 Environmental Mitigation

At the October 7, 2020, meeting, representatives from both Ion Environmental Services and Sarus Systems presented information to the Committee regarding sanitation techniques for disinfecting items and spaces for the State. Ion Environmental Services indicated its technology

has been used to disinfect multiple pathogens and microorganisms and is used in multiple hospitals and pharmaceutical plants across the country. The representative from Sarus Systems presented information on their disinfection process and highlighted its use on smaller items like personal protective equipment (PPE), clothing, backpacks, and electronics.

COVID-19 Vaccine Distribution Plan

At the December 1, 2020, meeting, a KDHE representative provided an update on COVID-19 vaccines and distribution. Two vaccines have emerged, one of which requires ultra-cold storage. The Centers for Disease Control and Prevention (CDC) instructed states not to purchase cold storage, as CDC has a solution. Both vaccines are anticipated to be available mid-December, in limited capacity. Initial vaccination will not include children or pregnant women, which is common with new vaccines. Vaccination requires two doses, administered three weeks apart. CDC's Advisory Committee on Immunization Practices (ACIP) will provide guidance to states regarding priorities for vaccination. On approximately December 10, 2020, some vaccine doses will be pre-positioned at five ultra-cold storage sites in Kansas, and vaccination is anticipated to begin December 15, 2020.

KDHE anticipates the following priorities for vaccination, with ACIP providing further guidance regarding Phase 2 and Phase 3. Phase 1 (winter 2020) will include health care workers, first responders, and select correctional staff (200,000 individuals). Phase 2 (spring 2021) will include essential workers. Phase 3 (summer 2021) will include the general public.

Members expressed concern regarding who is defined as an "essential worker." KDHE will determine who qualifies as "essential worker," with guidance from ACIP and the Governor.

Kansas State Fair Funding

At the September 23, 2020, meeting, the President and Chief Executive Officer (CEO) of the International Association of Fairs and Expositions provided background on the different ways state fairs are funded and how they were dealing with the COVID-19 pandemic. Eight of

the United States' state fairs operate under the respective state's department of agriculture and do not feature a carnival or concerts. The New Mexico and Kentucky state fairs operate under their state's respective tourism department, and the Wisconsin State Fair is operated under the state's Department of Administration. Three state fairs are Internal Revenue Service nonprofit organizations (under Section 501(c)(3) or 501(c)(5) of the Internal Revenue Code), but they are widely considered to be state agencies despite not having that legal classification, and 14 state fairs are solely nonprofit organizations (under Section 501(c)(3) or 501(c)(5)). Examples of state fair funding other than state general funds are unclaimed property; marijuana taxes; parimutuel betting and casinos; sales taxes; state-issued bonds; municipal or county support; and, in Iowa, the Rebuild Iowa Infrastructure Fund. Due to the COVID-19 pandemic, 95 percent of the U.S. state fair industry had been shut down from full programming, resulting in a \$4.67 billion loss of economic activity.

The President and CEO responded to questions from Committee members regarding the impact of the COVID-19 pandemic on state fairs. Amusement businesses have not totally shut down but have seen shrinkage over the past dozen years prior to 2020, largely due to labor shortages, the high costs of insurance, and moving from location to location. The federal Agricultural Fairs Rescue Act, HR 7883, was introduced by Representative Panetta of California and Representative Long of Missouri. This Act would provide \$500.0 million in grant funding to state, county, and local fair organizations. Money would be allocated through the U.S. Department of Agriculture's Agricultural Marketing Program, which would then distribute funds to respective state agriculture departments. Kansas Legislative Research Department (KLRD) staff advised the committee the Kansas State Fair does have state general fund bonding from 2015 for a building.

At the October 7, 2020, meeting, the Committee considered adding additional funding for the Kansas State Fair. The Committee moved to recommend to the LCC the addition of \$1.0 million, all from the SGF Coronavirus Relief Account, to retain staff and prepare for the 2021 State Fair.

At the December 15, 2020, meeting, the Committee recommended the transfer of an additional \$1.3 million from the SGF Coronavirus Relief Account, for a total of \$2.3 million for FY 2021.

K-12 School Year Expenditures

At the September 23, 2020, meeting, KLRD staff provided an overview of the Kansas State Department of Education (KSDE) COVID-19-related funding and expenditures. There were two primary sources of money available to school districts and other K-12 educational systems: the CRF and the CARES Act. The unified school districts (USDs) and other K-12 institutions were expected to receive approximately \$69.8 million from the CRF. This amount was part of the \$400.0 million issued to county governments from the State CRF *via* the SPARK Taskforce. KSDE also collaborated with other state agencies to fund mutual programs using CRF funds, including \$20.0 million to KDHE for K-12 educational institutions as part of a statewide COVID-19 testing effort and \$40.0 million to the Kansas Children's Cabinet for childcare and remote learning. In addition, Kansas was allocated \$84.5 million to be disbursed to USDs and K-12 education institutions as part of the CARES Act. State education agencies could reserve one-half of 1.0 percent of the funding for administrative costs. KSDE allocated \$76.1 million to be disbursed to the USDs and \$8.0 million to be allocated to USDs for special education funding. After one year from the date of receiving the funds, any unused funds must be returned to the federal government; however, the funding would be available at the federal level until September 21, 2021.

The Deputy Commissioner, Division of Fiscal and Administrative Services, KSDE, provided an update on CARES Act and SPARK Taskforce expenditures and learning formats. In response to questions from Committee members, the Deputy Commissioner stated money was distributed to schools based on the Title 1 formula. Every district has a home county, but two-thirds of the school districts were in more than one county, and the formula took that into account. The SPARK Taskforce money was to be spent by December 31, 2020; however, the CARES Act funding was available at the federal level until September 21, 2021. A one-year extension required the CARES

Act school money to be spent by September 2022. USDs are using a variety of learning formats, including in-person, hybrid, and fully remote. The majority of the school districts were teaching in person, but the majority of the students were hybrid or remote learning.

At the December 1, 2020, meeting, KLRD staff provided an update regarding CRF and non-CRF moneys provided to K-12 schools. Of the \$400.0 million from the CRF provided to county governments, approximately \$70.8 million was transferred to local K-12 institutions. This was slightly above September estimates. CRF moneys were directly allocated to KSDE for programs through the Children's Cabinet that included remote learning (\$40.0 million) and technologies for families (\$20.0 million). In November 2020, \$23.5 million was recouped from remote learning programs due to under-utilization. The CARES Act provided \$84.5 million in non-CRF federal relief funds for K-12 institutions in Kansas. As of November 2020, a total of \$43.8 million was drawn down and dispersed in FY 2020 and FY 2021.

Committee members inquired as to whether there was a decrease in student headcount from FY 2019 to FY 2020 resulting from the COVID-19 pandemic. KLRD staff stated there was a decrease of roughly 15,000 students in the unaudited headcount between the school years.

Update on Commercial Driver's License Renewal and Satellite Offices

At the September 23, 2020, meeting, the Driver Services Manager, Kansas Department of Revenue, provided an update on commercial driver's license renewals. The Division of Vehicles operations have been impacted significantly since March 2020, beginning with an initial two-week shutdown. The Division began offering services for custom harvesters in the Colby, Dodge City, Edgerton, and Topeka commercial driver's license (CDL) offices as early as April 1, 2020, but the following offices remained closed for CDL services (Tuesday, Wednesday, Thursday only): Chanute, Dodge City, Junction City, Phillipsburg, and Salina. The Driver Services Manager said one of the major challenges has been conducting driving tests for new CDL applicants while still complying with social distancing requirements.

The Federal Motor Carrier Safety Administration (FMCSA) approved the use of a follow/chase vehicle for the road test portion of the exam, allowing the examiner to ride in a separate vehicle and communicate *via* cellphone. The number of CDL applicants processed was down from the number in 2019 due to the shutdown of offices, which caused a backlog of applicants. At the time of the meeting, the Division was working with third-party vendors to provide more testing opportunities for CDL drivers.

Impact of COVID-19 on Lottery and Gaming

At the September 23, 2020, meeting, the Executive Director of the Kansas Lottery provided an update on revenue streams at the four state-owned and state-operated gaming facilities. The four casino gaming facilities suspended operations on March 23, 2020, and resumed operations May 22, 2020, following Governor Kelly's executive order to move the State into a revised Phase 2. Because the casinos' operations were suspended, gaming revenues decreased by nearly \$77.0 million, or 18.7 percent, below FY 2019 revenues. In FY 2020, traditional lottery sales decreased by \$20.3 million, or 6.9 percent, compared to FY 2019 total sales. This included FY 2020 draw ticket sales, such as Powerball, Mega Millions, Lotto America, and other draw games, which decreased by \$40.5 million, or 31.5 percent, compared to FY 2019. The decrease was also due to unusually high jackpots in FY 2019, which drove ticket sales for Powerball, Mega Millions, and Super Kansas Cash games. The COVID-19 pandemic caused a slow rise in jackpots because players nationwide were not visiting retailers as frequently, resulting in minimum increased jackpot rolls. Instant ticket sales in FY 2020 increased by \$20.2 million, or 12.3 percent.

In response to questions from Committee members, the Executive Director explained casinos in Kansas require each person attending to wear a mask, maintain six feet of distance from others, and limited capacity on the gaming floor, including the number of available slot machines and table games. The reopening of casinos was advertised locally *via* radio, newspaper, television, and social media.

Presentation on Juvenile Justice Oversight Committee Activities

At the November 13, 2020, meeting, the chairperson of the Juvenile Justice Oversight Committee gave an overview of 2016 SB 367 and the creation of the Evidence-Based Practice Fund and the programs and activities that have received funding. Committee members noted they would like to have a presentation made to the House Committee on Appropriations and Senate Committee on Ways and Means during the 2021 Legislative Session.

Kansas Criminal Justice Reform Commission

At the December 1, 2020, meeting, the Committee received a briefing from the Chairperson of the Kansas Criminal Justice Reform Commission on the final report, which will include approximately 52 recommendations. The Chairperson focused on recommendations with budgetary impact, such as requests for the Legislative Division of Post Audit to examine data sharing, expanded substance abuse treatment to include people on diversion, continued support of KDOC capacity expansion projects, development of mobile units from Larned State Hospital to eliminate the wait for competency evaluations, and further support of the Board of Indigents' Defense Services for public defense. The Commission will request an additional year to further explore topics, such as race and the criminal justice system.

Human Services Consensus Caseloads

At the November 13, 2020, meeting, KLRD staff provided an explanation on the estimating process, including the entities involved and formula used. The FY 2021 revised estimate is \$4.1 billion, including \$1.2 billion SGF. This is an all funds decrease of \$20.3 million, including \$166.5 million SGF. The FY 2022 estimate is \$4.3 billion, including \$1.4 billion SGF, an all funds increase of \$184.2 million, including \$204.8 million SGF, above the FY 2021 revised estimate.

Presentation on Fall 2020 Assigned Counsel Caseloads

At the November 13, 2020, meeting, KLRD staff presented the revised Assigned Counsel Consensus Estimates. The FY 2021 revised

estimate is \$14.4 million, a \$3.0 million SGF decrease below the FY 2021 approved amount. The FY 2022 estimate is \$16.0 million, an increase of \$1.6 million SGF above the FY 2021 revised estimate.

Presentation of Fall 2020 Education Caseload Estimate

At the November 13, 2020, meeting, KLRD staff presented the revised Education Consensus Caseload Estimate. The FY 2021 revised estimate is \$4.9 billion, an all funds decrease of \$35.7 million below the FY 2021 approved amount. The FY 2022 estimate is \$5.2 billion, an all funds increase of \$263.0 million above the FY 2021 revised estimate. The FY 2023 estimate is \$5.3 billion, an all funds increase of \$137.8 million above the FY 2022 estimate.

Overview of K-TRACS Funding

At the November 13, 2020, meeting, the Executive Secretary of the Board of Pharmacy presented a funding proposal for the State's prescription drug monitoring program (K-TRACS) for FY 2022 and FY 2023. The Executive Secretary stated the Board had projected total budgetary expenditures in FY 2021 of \$1.7 million and in FY 2022 of \$367,303. There was additional discussion of potential fee increases as well as setting up a donation fund. The Executive Secretary also provided a brief comparison to other states.

Deferred Maintenance at State Universities

At the December 1, 2020, meeting, a representative of the Kansas Board of Regents shared two studies, conducted by third-party consultants, intended to inform forthcoming comprehensive deferred maintenance initiative. The Facilities Condition Assessment determined estimated costs to address the deferred maintenance backlog for Educational Building Fund (EBF) eligible buildings are \$1.2 billion, and the Space Utilization Study determined six percent of space (classrooms and teaching labs) is underutilized. Members encouraged the Kansas Board of Regents to consider the lasting impact of a transition to remote learning and to explore the sale of buildings. Members requested action plans be developed to determine disposition of buildings

that rated poorly in the Facilities Condition Assessment.

Kansas Water Authority Presentation

At the October 6, 2020, meeting, the Kansas Water Authority (KWA) briefed the Committee on the KWA budget recommendations. Following an overview and background information on the KWA, a KWA representative briefed the Committee on the fees structure that supports the State Water Plan Fund and the reductions in statutory transfers from the SGF and Economic Development Initiatives Fund over the last several years. The representative indicated the policies and principles that direct KWA's recommendations, prior to outlining several of KWA's recommendations.

Kansas Judicial Branch Shutdown

At the October 6, 2020, meeting, the Committee received a briefing from a Judicial Branch representative regarding the COVID-19 impact on court operations. The representative indicated the courts did not shut down completely, but rather moved to emergency operations. The briefing included an overview of some of the actions taken by the Chief Justice early in the COVID-19 pandemic to extend or suspend deadlines and authorize the use of audio-visual equipment in court proceedings. The representative outlined several of the measures the Judicial Branch has taken to operate remotely, including redirecting COVID-19 relief funds for hardware and software so that all courts have a basic ability to work remotely and conduct remote hearings. The overview ended with a discussion how limiting court operations has affected revenue for the court system, which traditionally relies on filing fees.

Board of Indigents' Defense Services

At the October 6, 2020, meeting, the Committee received a report from the Board of Indigents' Defense Services regarding the agency's staffing problems and its plan moving forward to address those issues. A representative from the agency identified the major contributions to its problems were high workloads and low compensation. A three-phased plan was presented to increase staff salaries and increase the number of staff for certain offices to address both

concerns. Following the staffing report, the representative indicated the agency experienced some issues acquiring equipment to work remotely and described continued caseload issues, as the agency received new cases while the previous cases remain open due to COVID-19-related court delays.

Department of Corrections—Impact of COVID-19

At the October 6, 2020, meeting, the Committee received an update from a representative from KDOC on the impact of the COVID-19 pandemic on the correctional system. According to the KDOC representative, KDHE provided staff to help KDOC establish and monitor testing strategies to limit the spread of COVID-19. Isolation units were established at several facilities, including the former Larned Juvenile Correctional Facility. The representative indicated the adoption of mask requirements and consistent testing protocols have been able to contain outbreaks within the system. Most KDOC employees are considered essential and are unable to work from home, and as a result there is anxiety among the staff related to possible exposure. The representative indicated a decrease in the population due to the COVID-19 court delays; however, KDOC anticipates a spike once the courts normalize operations.

Docking State Office Building

At the October 7, 2020, meeting, the Committee received an update on the plans for the Docking State Office Building and the KDHE Laboratories from a Department of Administration representative. The update contained a brief overview of the four options presented to the Legislature during the 2020 Legislative Session. The representative indicated the basic information regarding timelines and plans have remained the same, but there have been some changes to bond repayment rates since the plans were presented.

The Committee requested the Department of Administration provide the estimated cost of an alternate proposal to replace the existing structure with a three-story parking garage with the KDHE Laboratories on top.

Kansas Department of Wildlife, Parks and Tourism Flood Repairs

At the October 7, 2020, meeting, the Committee received an update from a Kansas Department of Wildlife, Parks and Tourism representative on the status of flood repairs at various state parks. The representative briefly described some of the efforts that have been made and the projects currently pending to restore facilities to pre-flood functionality. The representative indicated the agency is working to finish repairs quickly due to the renewed outdoor recreation interest since the COVID-19 pandemic began.

Impact of COVID-19 on the Foster Care System

At the October 7, 2020, meeting, a Department for Children and Families (DCF) representative provided a brief overview on the impact of the COVID-19 pandemic on the foster care system. The representative indicated that while DCF offices were briefly closed, Child Protective Services and Adult Protective Services continued to receive and respond to abuse reports. The Committee discussed the effect of school closures on the number of reports received by the agency. The overview included a description of DCF's efforts to maintain agency operations while ensuring support for those within the system, including adjustments to licensing requirements, efforts to meet educational needs, expanding independent living supports, and maintaining visitations. The representative stated DCF staff continues to work from home and engage with families and stakeholders to ensure safe delivery of services.

Governor's Commission on Racial Equity and Justice

At the December 15, 2020, meeting, Co-chairpersons of the Governor's Commission on Racial Equity and Justice gave a presentation on the history, process, and recommendations of the Commission. The Commission conducted 26 learning sessions with commission members and stakeholders across the state. A final report was presented to the Governor on December 1, 2020, which included over 60 recommendations divided into 3 categories: recommendations of actions to

be taken by state agencies/the executive branch, the Legislature, and local units of governments. The presentation focused on recommendations for actions by the Legislature that included passing legislation prohibiting a fired law enforcement officer from being hired by another law enforcement agency/security entity, passing legislation which would mandate records be checked before hiring any individual for a law enforcement position, and increasing diversity in the Kansas Commission on Peace Officers' Standards and Training (KCPOST).

Audit on Department of Agriculture Price Verification Inspection Process

At the December 15, 2020, meeting, a representative of the Legislative Division of Post Audit presented to the Committee the findings of the audit on the Department of Agriculture's (KDA) price verification inspection process. He stated the audit found about 60 percent of businesses fail a price verification inspection, meaning that at least 2 percent of scanned items were ringing up incorrectly when checking out. Additionally, KDA is only inspecting a small fraction of businesses in the state and only in certain areas of the state. The audit also noted that although KDA is permitted to bring legal action against businesses who repeatedly fail inspections, KDA either does not bring action at all or not as early as the agency could. The audit also included a study of surrounding states, but the study did not reveal any promising methods for ensuring thorough compliance of a majority of businesses.

Community Mental Health Centers and COVID-19 Funding

At the December 15, 2020, meeting, a KDADS representative detailed that \$7.5 million of the CARES Act and SPARK Taskforce moneys the agency received from Round 2 was allocated to community mental health centers (CMHCs). After this initial transfer, two additional transfers totaling \$6.7 million have been allocated in the form of grants to the majority of CMHCs.

A representative of the Association of Community Mental Health Centers of Kansas discussed how the COVID-19 pandemic has had a negative effect on mental health, including an increase of new clients and crisis service centers.

The representative reviewed several policy recommendations, but the Committee was primarily interested in the expansion of the Certified Community Behavioral Health Clinic (CCBHC) model in Kansas. The representative stated this model provides comprehensive mental and substance use disorder services to vulnerable individuals. In return, CCBHCs received an enhanced Medicaid reimbursement rate that will allow for resources for workforce recruitment and retention.

The Executive Director of High Plains Mental Health Center provided a specific narrative for how some CMHCs are using CARES Act funding, including information technology upgrades to allow for virtual consults and virtual administrative work, such as a new patient information system.

Elected Officials Pay

At the December 15, 2020, meeting a representative of the Legislative Division of Post Audit provided an overview of a 2019 report for the Committee, primarily focusing on how Kansas compares to other states in various salaries, compensation, and allowances. She stated the report found Kansas ranks low in all categories when compared to other states.

The KLRD Assistant Director for Fiscal Affairs provided an overview of the history of the Legislative Compensation Commission. Members of the Committee expressed interested in the LCC convening this Commission as soon as possible in order to create recommendations for the elected officials serving in 2024.

CONCLUSIONS AND RECOMMENDATIONS

Following its review and discussion, the Committee makes the following recommendations:

Recommendations to the LCC:

- Transfer \$11.6 million, all from the SGF Coronavirus Relief Account, to DCF in FY 2020 for the foster care program;

- Transfer \$830,000, all from the SGF Coronavirus Relief Account, to the KCVAO in FY 2020 for revenue replacement due to decreased admissions.
- Transfer \$6.9 million, all from the SGF Coronavirus Relief Account, to the KBI, in FY 2021 for the Automated Biometric Identification System (ABIS);
- Transfer \$5.5 million in FY 2020 and \$5.0 million in FY 2021, all from the SGF Coronavirus Relief Account, to Commerce to offset Commerce expenditures for the HIRE program and invest in the Job Creation Program Fund;
- Transfer \$1.0 million, all from the SGF Coronavirus Relief Account, to KDHE for distribution to local health departments; and
- Transfer \$205,000, all from the SGF Coronavirus Relief Account, to the Kansas State Fair in FY 2020 and \$2.3 million, all from the SGF Coronavirus Relief Account, in FY 2021 to replace lost revenue.

Further recommendations:

The Committee concurs with the Special Committee on Kansas Mental Health Modernization and Reform recommendation to support expansion of the federal Excellence in Mental Health Act or a state plan amendment of the 1115 Waiver to allow interested providers to gain access to the CCBHC model when the opportunity is available. The Committee further recommends the House Committee on Appropriations and the Senate Committee on Ways and Means receive information on the effect the CCBHC model would have on the mental health system by KDADS, KDHE, and appropriate stakeholders.

The Committee recommends the KCPOST and the Kansas Law Enforcement Training Center communicate to law enforcement agencies and local governments that a database of records related to violations of the Kansas Law

Enforcement Training Act, including, but not limited to, records of complaints received or maintained by KCPOST, is available and should be used to aid in the avoidance of hiring law enforcement officers previously fired for egregious offenses, as referenced in the initial report of the Governor's Commission on Racial Equity and Justice.

The Committee encourages KDA to make changes to its price verification inspection process to ensure efficient and effective inspections across the state. The Committee also encourages the use of increased timely enforcement mechanisms in order to encourage compliance by businesses. The Committee requests KDA provide an update to the House Committee on Appropriations and the Senate Committee on Ways and Means during the 2021 Legislative Session.

The Committee recommends the Board of Indigents' Defense Services present their September 2020 "A Report on the Status of Public Defense in Kansas" to the appropriate legislative committees during the 2021 Legislative Session, including the applicable budget committees. The report includes a three-phase plan to address concerns of salary levels and staff numbers.

The Committee strongly recommends the 2021 Legislature make a decision regarding the Docking State Office Building to fully renovate the building; partially renovate the building; or demolish the building and replace with a parking garage, each option with the potential addition of laboratory space for the KDHE Laboratories. The Committee further recommends the Department of

Administration provide a cost estimate for an option to build a three-story parking garage with the KDHE Laboratories located on top.

The Committee recommends the Legislature consider convening a meeting of the Legislative Compensation Commission organized under KSA 46-3101 or consider elimination of the Legislative Compensation Commission. The Commission statutorily studies the compensation and expense allowances and reimbursement of members of the Legislature. The Commission last met during the 2000 Interim.

The Committee recommends the Kansas Department of Revenue report to the House Committee on Appropriations and Senate Committee on Ways and Means concerning the current status of driver's license offices in the State of Kansas and the impact of the COVID-19 pandemic on their operations.

The Committee recommends the Legislature consider amending relevant state law (including, but not limited to, KSA 75-7211) to require state agencies to submit proposed information technology projects to the Joint Committee on Information Technology prior to the release of any request for proposal related to such an information technology project.

The Committee expresses its displeasure concerning how the COVID-19 testing strategy was implemented by KDHE, especially concerning the delay in providing funding to private entities to perform testing activities.

Report of the Joint Committee on State Building Construction to the 2021 Kansas Legislature

CHAIRPERSON: Senator Rick Billinger

VICE-CHAIRPERSON: Representative J. R. Claeys

OTHER MEMBERS: Senators Marci Francisco, Tom Hawk, Carolyn McGinn, and John Skubal; Representatives John Alcala, Eileen Horn, Michael Houser, and Marty Long

CHARGE

The Committee is authorized by KSA 46-1701, which includes provisions allowing the Committee to meet on call of its Chairperson at any time and any place within the state and to introduce legislation. The Committee is authorized to:

- Study, review, and make recommendations on all agency five-year capital improvement plans, leases, land sales, and statutorily required reports by agencies. The Committee is authorized to make use of one travel day.

Joint Committee on State Building Construction

ANNUAL REPORT

Conclusions and Recommendations

All five-year capital improvement plans and leases were recommended by the Committee.

Proposed Legislation: None

BACKGROUND

The Joint Committee on State Building Construction was established during the 1978 Legislative Session. The Special Committee on Ways and Means recommended the bill creating the Committee, 1978 HB 2722, as a result of its interim study of state building construction procedures.

The Committee was expanded from six members to ten members by 1999 HB 2065. It is composed of five members of the Senate and five members of the House of Representatives. Two members each are appointed by the Senate President, the Senate Minority Leader, the Speaker of the House of Representatives, and the House Minority Leader. The Chairperson of the Senate Committee on Ways and Means and the Chairperson of the House Committee on Appropriations serve on the Committee or appoint a member of such committee to serve (KSA 46-1701).

Terms of office are until the first day of the regular legislative session in odd-numbered years. A quorum of the Committee is six members. The chairperson and vice-chairperson are elected by the members of the Committee at the beginning of each regular session of the Legislature and serve until the first day of the next regular session. In odd-numbered years, the chairperson is to be a representative and the vice-chairperson is to be a senator. In even-numbered years, the chairperson is to be a senator and the vice-chairperson is to be a representative (KSA 46-1701).

The Committee may meet at any location in Kansas on call of the Chairperson and is authorized to introduce legislation. Members receive the normal per diem compensation and expense reimbursements for attending meetings during periods when the Legislature is not in session (KSA 46-1701).

The primary responsibilities of the Committee are set forth in KSA 46-1702. The Committee is to review and make recommendations on all agency capital improvement budget estimates and five-year capital improvement plans, including all project program statements presented in support of appropriation requests, and to continually review and monitor the progress and results of all state capital construction projects. The Committee also studies reports on capital improvement budget estimates that are submitted by the State Building Advisory Commission. The Committee makes annual reports to the Legislature through the Legislative Coordinating Council (LCC) and other such special reports to the appropriate committees of the House of Representatives and the Senate.

Each state agency budget estimate for a capital improvement project is submitted to the Committee, the Division of the Budget, and the State Building Advisory Commission by July 1 of each year. Each estimate includes a written program statement describing the project in detail (KSA 75-3717b). The budget estimate requirement does not apply to federally funded projects of the Adjutant General's Department or to projects for buildings or facilities of the Kansas Correctional Industries of the Department of Corrections that are funded from the Correctional Industries Fund.

In those cases, the Adjutant General reports to the Committee each January regarding the federally funded projects, and the Director of Kansas Correctional Industries advises and consults with the Committee prior to commencing such projects for the Kansas Correctional Industries (KSA 75-3717b and 75-5282).

The Secretary of Administration issues monthly progress reports on capital improvement projects, including all actions relating to change orders or changes in plans. The Secretary of Administration is required to first advise and consult with the Committee on each change order or change in plans having an increase in project cost of \$125,000 or more, prior to approving the change order or change in plans (KSA 75-1264). This threshold was increased from \$25,000 to \$75,000 by 2000 HB 2017 and to \$125,000 by 2008 HB 2744. Similar requirements were prescribed in 2002 for projects undertaken by the State Board of Regents for research and development facilities and state educational facilities (KSA 76-786) and in 2004 for projects undertaken by the Kansas Bioscience Authority (KSA 74-99b16).

If the Committee will not be meeting within ten business days, and the Secretary of Administration determines it is in the best interest of the State to approve a change order or change in plans with an increase in project costs of \$125,000 or more, 2000 HB 2017 provided an alternative to prior approval by the Committee. Under these circumstances, a summary description of the proposed change order or change in plans is mailed to each member of the Committee, and a member may request a presentation and review of the proposal at a meeting of the Committee. If, within seven business days of the date the notice was mailed, two or more members notify the Director of Legislative Research of a request to have a meeting on the matter, the Director will notify the Chairperson of the Committee, who will call a meeting as soon as possible. At that point, the Secretary of Administration is not to approve the proposed action prior to a presentation of the matter at a meeting of the Committee. If two or more members do not request the proposed matter be heard by the Committee, the Secretary of Administration is deemed to have advised and consulted with the Committee and may approve

the proposed change order, change in plans, or change in proposed use (KSA 75-1264).

The “comprehensive energy bill,” 2009 Senate Sub. for HB 2369, required the State to establish energy-efficient performance standards for State-owned and -leased real property and for the construction of state buildings. State agencies are required to conduct energy audits at least every five years on all State-owned property, and the Secretary of Administration is prohibited from approving, renewing, or extending any building lease unless the lessor has submitted an energy audit for the building. Each year, the Secretary of Administration shall submit a report to the Committee that identifies properties where an excessive amount of energy is being used (KSA 75-37,128).

COMMITTEE ACTIVITIES

The LCC approved three meeting dates for the Committee. The Committee met on two days, September 22 and December 14, 2020. The Committee reviewed agencies’ five-year capital improvement plans, reviewed leases, received the Department of Transportation’s Excess Right-of-Way Annual Report, and received an update on the sale of a building in Topeka that was owned by the Kansas Insurance Department. All agency five-year capital improvement plans were recommended.

Five-Year Capital Improvement Plans

Department of Commerce. An agency representative presented the five-year capital improvement plan. Projects include re-roofing and facade replacement at the Garden City Job Center (JC) in fiscal year (FY) 2021; elevator #2 improvement in the Topeka JC in FY 2022; a project regarding heating, ventilation, and air conditioning (HVAC) controls at the Topeka JC and re-roofing the Salina JC in FY 2023; re-roofing the Dodge City JC and waterproofing the exterior of the Topeka JC in FY 2024; new carpet and paint and electrical improvements for the Hays Workforce Center in FY 2025; and electrical improvements and exit door replacement for the Topeka JC in FY 2026.

Kansas Commission on Veterans Affairs Office. The Director of the Kansas Commission on Veterans Affairs Office (KCVAO) provided the five-year capital improvement plan. The approved FY 2021 capital improvement plan contains four projects for the Kansas Veterans' Home, four projects for the Kansas Soldiers' Home, and one project for the Cemetery Program. For FY 2022, KCVAO requested approval for three projects at the Kansas Veterans' Home, three projects at the Kansas Soldiers' Home, and three projects for the Cemetery Program. The Director listed projects for FY 2023 through FY 2026, but noted projects could change depending on the status of the different buildings.

State Historical Society. The Director of the State Historical Society discussed the five-year capital improvement plan. The Director stated the agency uses State General Fund (SGF) moneys, as well as federal and private funds, on capital improvement projects. The Director said the agency receives \$250,000 SGF each year for repairs to address cyclical maintenance issues and emergency repairs due to age, accidents, or weather-related causes, and she stated without those funds, the agency would not be able to function. The FY 2022 agency budget contains an enhancement request for additional SGF moneys for delayed maintenance of the entrance and lobby of the Kansas Museum of History. The project was previously funded by the Legislature and the Governor for FY 2021, but was removed from the budget through the allotment process. The agency is making a one-time request for \$650,000 SGF for that delayed maintenance. In addition, the agency intends to spend \$6.0 million on new exhibits, with 91 percent of funding coming from private donations. Currently, the agency has secured close to 70 percent of the private funds needed. The Director said projected installation of the new exhibits will start in calendar year 2023, and these exhibits will use historic artifacts and documents to tell the stories of Kansas. She noted it is important to provide more information through virtual and digital means. An agency representative provided additional information on the breakdown of the requested funds.

Judicial Branch. A representative of the Judicial Branch presented the five-year capital improvement plan, which encompasses two potential capital improvement projects for the

Judicial Center, subject to grant funding. The representative said these projects will proceed only if grant funding is secured, and an application has been submitted to the Strengthening People and Revitalizing Kansas (SPARK) Taskforce. The first project is an office restructure for Judicial Administration in the amount of \$200,000 during FY 2021. The second is expansion of the information technology help desk in the amount of \$200,000, also during FY 2021.

Kansas Highway Patrol. An agency representative presented the five-year capital improvement plan. The agency's five-year plan is separated into six categories: Training Academy Major Projects, Training Academy Maintenance/Repair, Troop Facility Major Projects, Troop Facility Maintenance/Repair, Scale House/Scale Repair/Replacement, and New Construction. For FY 2021, the agency has an approved capital improvements budget of \$3.15 million, with funding earmarked through special revenue funds. These planned expenditures were approved by the Committee and the Legislature during the 2020 Legislative Session. A list of projects and related budget information was provided for FY 2022 through FY 2026.

Department of Labor. An agency representative presented the five-year capital improvement plan. The representative stated there is very little change from what was presented last year. The plan includes general rehabilitation and repair each year. In FY 2021, it includes renovation of the first floor; installation of an intercom system; masonry work; and repair or replacement of HVAC vents at the 2650 East Circle Drive South, Topeka, building. Also included are barriers for the front desk and roof replacement at the 401 Southwest Topeka Boulevard, Topeka, building. Plans for later years include phases 3, 4, and 5 of renovation at 2650 East Circle Drive South, repaving and overlay of parking lots at 401 and 1309 Southwest Topeka Boulevard, and brickwork maintenance and window and air conditioning unit replacements at 401 Southwest Topeka Boulevard.

School for the Blind. An agency representative presented the school's five-year capital improvement plan. Projects include safety and security systems maintenance, campus boilers and HVAC upgrades, major maintenance for the

next five years, and a renovation project for a student elevator and upgrade to the Brighton Recreation Center in FY 2023.

School for the Deaf. The Director of the School for the Deaf presented the five-year capital improvement plan. The Director stated there are some changes to the plan related to COVID-19; the School is not asking for new funding, but is asking for a reappropriation. Funds were not able to be bid out due to the COVID-19 pandemic. No changes are anticipated for the safety and security systems projects during the next five years. The Director stated some of the HVAC efficiency upgrade and maintenance work will be done using SPARK Taskforce funds. Regarding major repairs for the next five years, the Director said the priority is to keep facilities in functional and safe condition for the staff and general public. The major remodeling of the main campus auditorium/theater is underway after it suffered significant damage from ruptured steam lines.

Kansas Bureau of Investigation. An agency representative discussed the five-year capital improvement plan, the agency's accomplishments in FY 2020, and the agency's priorities for FY 2021 through FY 2026. In FY 2020, the KBI completed renovation of the Garden City Regional Office, replacement of a HVAC system at the Topeka headquarters, repairs to the parking lot at the Topeka annex, and expansion of the Kansas City Regional Office. Additionally, the KBI began a two-phased approach to replacing the HVAC systems in the Great Bend Regional Office. The first phase is anticipated to be completed in October 2020. For FY 2023, the KBI expects to complete the HVAC system replacement in the Great Bend Regional Office. Due to concerns related to the COVID-19 pandemic, the KBI sought the use of federal Coronavirus Aid, Relief and Economic Security (CARES) Act funding to replace the two systems, but has been told the replacement funding would not cover all of the costs for the project. Other FY 2023 priorities include renovation of the laboratory space in the Pittsburg and Kansas City laboratories and the postponed FY 2021 renovation of the auditorium at KBI Headquarters in Topeka. In FY 2024, renovations to the Great Bend Regional Office are scheduled.

Department of Administration. An agency representative presented the five-year capital improvement plan. He stated the agency continues to rely on rehabilitation and repair (R&R) funds to address deferred maintenance projects for the Capitol Complex. The representative noted the projects completed in FY 2020: a re-roof for Memorial Hall and elevator modernization for the Landon State Office Building. The representative also provided a list of planned projects for FY 2021 through FY 2023, including maintenance projects for the Landon, Eisenhower, and Curtis state office buildings; Docking Utility Plant; and Judicial Center. Responding to a question regarding capital improvement projects funded by federal moneys, he replied federal CARES Act funds are not shown in the five-year plan, but were used for some capital improvement work. The representative expressed appreciation for the restoration of R&R funds.

Department of Corrections. The Secretary of Corrections presented the five-year capital improvement plan for the Kansas Department of Corrections (KDOC). The Secretary said a new building had been donated to the Lansing Correctional Facility, and the additional space will be used for education and programming. The Secretary also briefed the Committee on projects in progress, including additional substance-abuse treatment space at Lansing Correctional Facility and the transfer of two buildings at the Winfield Correctional Facility for housing the agency's geriatric population from KCVAO to KDOC. The Secretary also announced issuance of a request for proposal to assess the condition of all KDOC facilities, determine the costs for improvements, and recommend a tiered approach to address identified needs. An agency representative referenced the five-year capital improvement plan and reported that no large projects are currently being planned.

Kansas State Fair. An agency representative presented the five-year capital improvement plan. He detailed the history of the Kansas State Fair, reporting the COVID-19 pandemic has resulted in a 90.0 percent loss of revenue during the past year, and for the first time in its history, the Kansas State Fair was canceled. All expenditures and projects, except for staff salaries, have been placed on hold.

The representative also cited the ongoing need for repairs, including roof repairs, pathway/road overlay, and repair of concrete deterioration of the grandstand. The representative explained the need for rehabilitation and repurposing of the Bison Building and the long-term concerns regarding the Expo Center. Responding to questions, the representative indicated there is no private funding for the Bison Building. Additionally, all maintenance work is presently on hold. Any available funds are allocated for staff salaries and utilities.

Department of Wildlife, Parks and Tourism. An agency representative outlined the five-year capital improvement plan. The representative said the \$14.9 million budget had been supplemented by an additional \$2.0 million from the SGF, but the FY 2022 budget request reduces that amount to \$10.5 million in order to complete the previous year's projects. Answering a question, the representative said two shooting ranges are operational, but more are planned. A member expressed appreciation that Kansas state parks were being kept open during the pandemic.

Adjutant General's Department. An agency representative reviewed the five-year capital improvement plan, citing a third-party statewide installation status report on facility assessments and deficiencies. The representative expressed gratitude for the Legislature's financial support for several projects, specifically the Leavenworth Kansas Army National Guard Readiness Center, a \$28.0 million project. The representative noted the consultant's status report concluded that 97.0 percent of agency facilities were failing or near failing and illustrated conditions with photographs. The representative explained the needs of the Kansas Emergency Operations Center and presented two options: build a new facility at Forbes Field in Topeka (\$38.4 million) or remodel the present State Defense Building in Topeka (\$21.0 million).

Kansas Department of Transportation. A representative from the Kansas Department of Transportation (KDOT) presented information regarding FY 2022 projects and the agency's five-year capital improvement plan. The representative reported KDOT's FY 2022 capital improvements budget of \$4.1 million is focused primarily on preserving building assets, including 981 buildings

for a total of 2.9 million square feet. The representative noted 11 re-roofing projects across the state, 4 subarea modernization projects, land purchases, and a relocation project in Concordia.

Kansas Board of Regents. A representative from the Kansas Board of Regents (Board) introduced the five-year capital improvement plan. The representative said the Board has initiated a comprehensive plan to assess its oversight of capital improvements, and he noted the key element in the plan, the Educational Building Fund, as the primary source for funding of capital improvements.

University of Kansas. An agency representative reviewed the five-year capital improvement plan. The representative referenced KU's deferred maintenance projects, including re-roofing the east wing of Murphy Hall and replacing air handler units in Strong Hall. The representative also discussed current capital improvement projects, including elevator upgrades in various buildings and Phase 1 of the Spencer Museum of Art renovation. The representative commented on future projects in various stages of development. Responding to a question, he replied in nearly all buildings the air quality is much better than standards require.

KU Medical Center. An agency representative outlined the five-year capital improvement plan. The representative identified deferred maintenance projects, such as the Robinson Building fire alarm upgrade, which replaces an outdated fire alarm system with a system featuring a digital voice command unit. The project is funded by the Educational Building Fund (EBF). The representative also listed current capital improvement projects, including the installation of a solar array funded by utility savings and commented on future projects, including the expenditure of \$22.0 million for construction of a building to house the Comprehensive Cancer Center.

Kansas State University. An agency representative presented the five-year capital improvement plan. She expressed appreciation for the funding that has addressed critical needs. The representative explained the EBF has allowed significant deferred maintenance projects to go

forward, including various roofing projects, infrastructure upgrades, and ventilation improvements to the Eisenhower Building. The representative also listed current projects, which include a new Multi-Cultural Student Center funded with private donations and, referencing the College of Agriculture Master Plan, the representative noted three future projects, one of which is a new Agriculture Research and Extension Facility. The project's entire \$150.0 million cost will be provided by private funding.

Wichita State University. An agency representative presented the five-year capital improvement requests. The representative noted the projects recently completed, including improvements to Eck Stadium and renovation of the Charles Koch Arena Student-Athlete Center. The representative also listed requested projects with funding support: a new School of Business building (private funds and revenue bonds), replacement of the Central Energy Plant cooling tower (funding to be determined), a pedestrian bridge to Woolsey Hall (private funds), Cessna Stadium demolition (private funds), a new building to house the National Institute for Digital Transformation (bond), and an addition to the Marcus Welcome Center (private funds). The representative also noted partnership building projects that are completed and ongoing.

Emporia State University. An agency representative outlined the five-year capital improvement plan. After commenting on recently completed projects, including renovation of the Abigail Morse Complex and the relocation of several utility lines, the representative identified the funding sources for each of the current projects, including the Beach Hall re-roofing project (EBF) and renovation of the Student Veterans Association building (private funds). The representative then listed planned projects, such as repurposing the Morse Central building. The representative referenced Emporia State's 2014-2020 Master Plan and thanked the Committee for the \$2.5 million allocated for R&R.

Pittsburg State University. An agency representative reviewed the five-year capital improvement plan. The representative listed \$204,000 of deferred maintenance projects and commented on the current projects, including renovation of the Leonard H. Axe Library

(\$800,000 from R&R funds) and the Block22 initiative to repurpose four buildings in downtown Pittsburg (\$18.0 million from private funds). The representative also referenced planned projects, such as expanding the Tyler Research Center.

Fort Hays State University. An agency representative commented on the five-year capital improvement plan. The representative referenced several R&R projects, such as the Gross Memorial Coliseum roof replacement, and he identified ten completed projects. Current projects include construction of the Center for Student Success (from private and student fee funds) and the replacement of generators at the Akers Energy Center (\$2.5 million). Referring to Fort Hays State's new Master Plan, the representative noted future projects, including a new football facility funded from private and university sources.

Kansas Department for Aging and Disability Services. An agency representative from the Kansas Department for Aging and Disability Services (KDADS) reviewed the five-year capital improvement plan for the four state hospitals, which house and treat about 1,100 Kansans daily. The four campuses include nearly 200 buildings, and many of them and their ancillary equipment are more than 50 years old. The representative explained that in FY 2021, KDADS received \$3.2 million for R&R for addressing deferred maintenance. The 2020 Legislature also allocated \$5.3 million from the State Institutions Building Fund to renovate and expand capacity for the Biddle Building at Osawatomie State Hospital. For FY 2022, the representative identified \$3.2 million to address critical building needs and \$4.4 million for second-priority projects. The representative also noted an additional \$1.8 million request to raze seven abandoned buildings at Osawatomie State Hospital.

Kansas Department for Children and Families. An agency representative from the Kansas Department for Children and Families (DCF) presented the five-year capital improvement plan. He gave a brief history of the agency and the Topeka Service Center and

outlined the five-year expenditures for R&R with an estimated total cost of \$1.5 million.

Statutorily Required Reports

The State Transportation Engineer, in accordance with KSA 75-3516, reported on KDOT's inventory system for real property and real estate transactions. The representative highlighted the agency's Bureau of Right of Way (Bureau), which maintains the inventory system for all real property and is responsible for acquiring property rights for infrastructure and non-infrastructure projects. The Bureau also disposes of excess right-of-way property. The agency is working to digitize its records. The representative explained there is a tiered decision-making process in place to dispose of excess right-of-way property. Funds from sales have gone back into the SGF, to the agency, or to the federal government.

Leases and Land Sales

The State Lease Administrator, Office of Facilities and Property Management, presented the following leases, all of which were recommended by the Committee.

State Board of Pharmacy. A representative from the Department of Administration provided the Committee information on the lease amendment for the State Board of Pharmacy (Board). The lease amendment is for an additional term of five years at a rate of \$16.50 per square foot; the negotiated rate and terms over the five years is approximately \$42,000 less than the original proposal from the lessor. The Board is also provided with 492 square feet of office space free of charge. The proposed lease rate is within the market range of properties within the area and in the building. The representative said the lease is a full-service lease and the Department of Administration is supportive of it. The Committee asked for information regarding the difference in parking costs, to which the representative responded that landlords have begun charging for parking as a response to demand from business revitalization efforts in downtown Topeka.

Board of Indigents' Defense Services. A representative from the Department of Administration presented lease information on the

State Board of Indigents' Defense Services (BIDS) Salina Regional Public Defender Office. That office has been at its current location since approximately 1997. A request for proposal was released by BIDS in 2019; only one proposal was received at \$20.81 per square foot, excluding janitorial services and trash, so the search for space continued. This proposed lease is for 5,750 square feet for a term of 10 years at a rate of \$17.72 per square foot. A five-year renewal option is available at the same rate, at the discretion of the agency. The proposed lease rate is within the market range of properties within the area. The lease is a full-service lease and includes new carpet and paint, as well as other office renovation to suit the functionality and needs of BIDS. The Committee had concerns about cutting three parking spaces and was informed there were several lots nearby.

Office of the Attorney General.

A representative from the Department of Administration presented lease information for the Office of the Attorney General (OAG). Currently, the OAG is centrally located in Topeka in the Memorial Hall building, which it shares with the Secretary of State, with additional personnel in the Landon and Curtis state office buildings. The representative said none of the current OAG locations can accommodate the Office of the Medicaid Inspector General (OMIG), nor the recently authorized increase in staff of the Medicaid Fraud Control Unit (MFCU). Because no additional space will become available in any of the current state office buildings, the OAG had to seek lease space outside state ownership. A search was conducted by the OAG, and the Department of Administration assisted with the leasing process. The lease for consideration is for the seventh floor in the Mills Building in Topeka. The representative said this space will provide multiple advantages to the existing operational footprint for both the OMIG and MFCU, and the space will house both of these entities, resulting in improved efficiency as they routinely interact with each other regarding the Medicaid program. The lease is for 12,260 square feet for a term of 10 years; the initial base lease rate is \$14.50 per square foot and increases to \$16.50 per square foot in years nine and ten. Thereafter, two five-year renewal options are available, at the discretion of the Department of Administration, with rates to be determined.

Update on Sale of the Kansas Insurance Building in Topeka

A representative from the Department of Administration provided an update on the sale of the property located at 420 Southwest 9th Street in Topeka, formerly occupied by the Kansas Insurance Department. A survey, a Phase I environmental assessment, and an appraisal were ordered and completed for the property, and the property was advertised for sale *via* the *Kansas Register*; the Department of Administration's email list to approximately 300 registered participants, and by the state-contracted auctioneer using various media. The property was appraised at \$1.16 million, and the highest bid at the public auction on September 2, 2020, was \$535,000. The representative explained the disparity between the appraised price and the highest bid was due to the relative age of the building as well as the repairs that would be needed to maintain it. The highest bidder, a private individual, provided an earnest

money check to hold in escrow until the sale is approved by the State Finance Council.

The Kansas Insurance Department continues to be responsible for upkeep and maintenance until the building is sold. The monthly expense for utilities is \$2,395, or \$28,741 annually. A typical budget is \$35,000 for annual repairs, not including capital improvements, so the total annual cost would be approximately \$63,741, or \$5,312 a month. The Department of Administration also maintains the grounds. The sale proceeds, minus fees paid by the Department of Administration, will be deposited according to statute. The State plans to close on this property as soon as approval is received from the State Finance Council.

CONCLUSIONS AND RECOMMENDATIONS

All agency five-year capital improvement plans were recommended by the Committee.

Report of the Capitol Preservation Committee to the 2021 Kansas Legislature

CHAIRPERSON: Jennie Chinn

OTHER MEMBERS: Senator Elaine Bowers, Representative Fred Patton, and Representative Valdenia Winn

NON-LEGISLATIVE MEMBERS: Chase Blasi, Melinda Gaul, Tim Graham, Will Lawrence, Jeremy Stohs, and Sharon Wenger

EX OFFICIO MEMBERS: Frank Burnam and Peter Jasso

CHARGE

The Committee shall review various issues regarding the Capitol and its grounds.

January 2021

Capitol Preservation Committee

ANNUAL REPORT

The Capitol Preservation Committee was not convened during the 2020 Interim.