

Committee Reports to the 2023 Kansas Legislature

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analysis for the Kansas Legislature*

Supplement

**Kansas Legislative Research Department
February 2023**

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

Special Committee on Mental Health Beds

Joint Committee on Child Welfare System Oversight
Robert G. (Bob) Bethell Joint Committee on Home and
Community Based Services and KanCare Oversight
Legislative Budget Committee



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Foreword

This publication is the supplement to the *Committee Reports to the 2023 Legislature*. It contains the reports of the following committees: Special Committee on Mental Health Beds, Joint Committee on Child Welfare System Oversight, Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight, and Legislative Budget Committee.

Summary information for all interim reports' conclusions and recommendations is published in the January 2023 *Committee Reports to the 2023 Legislature*.

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

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Final Report of the Special Committee on Mental Health Beds to the 2023 Kansas Legislature

CHAIRPERSON: Senator Carolyn McGinn

VICE-CHAIRPERSON: Representative Brenda Landwehr

OTHER MEMBERS: Senators Rick Billinger, J.R. Claeys, Tom Hawk, and Richard Hilderbrand; and Representatives Will Carpenter, Henry Helgerson, Kyle Hoffman, Troy Waymaster, and Kathy Wolfe Moore

STUDY TOPIC

The Committee is directed to:

- Review the need for inpatient psychiatric hospital beds and develop a long-term plan to address mental health needs;
- Review the regional bed expansion plan and how the beds would be constructed;
- Review best practice for providing the operation and oversight of the expanded beds;
- Review the long-term fiscal impact of the additional beds; and
- Study and develop a plan for providing a 50-bed facility with acute inpatient psychiatric beds and adult forensic beds in the Sedgwick County regional area. [*Note:* Provisions in 2022 HB 2510 [Section 8(b)] directed the Legislature to create an interim study committee on Sedgwick County regional mental health bed expansion and prescribed committee membership requirements.]

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Special Committee on Mental Health Beds

FINAL REPORT

(*Note:* This report is supplemental to the initial and updated reports submitted to the State Finance Council in October and December 2022.)

Conclusions and Recommendations

The Special Committee on Mental Health Beds (Committee) recognizes the need for additional beds and services for individuals who require inpatient care to treat mental illness. The Committee recognizes that there is a current shortage of appropriate services for this population, which places stress on the staff and budgets of other community institutions, such as hospitals, jails, and community mental health systems. In addition to addressing the need for more inpatient beds, the Committee recognizes the need to consistently staff these beds.

The Committee recommends:

- The State Finance Council release the \$15.0 million appropriated to the Kansas Department for Aging and Disability Services (KDADS) for the purpose of opening a new state hospital. The funds should be utilized to develop a specific plan for the construction and operation of a new state hospital, including the issuance of a request for proposal.
- KDADS work with Sedgwick County to open a facility in the Sedgwick County regional area with a capacity of up to 50 state institution beds. The facility should be located in an area with room for expansion to ensure additional beds can be added if needed. The project should begin within calendar year 2023. In addition, KDADS and Sedgwick County should consider whether the facility should be publicly or privately operated.
- The State Finance Council allocate \$40.0 million from federal American Rescue Plan Act funds to open the 50-bed facility, as requested by Sedgwick County through the Strengthening People and Revitalizing (SPARK) Kansas Task Force.
- The Committee meet with the Board of Nursing, Behavioral Sciences Regulatory Board, State Board of Regents, universities, community and technical colleges, state agencies, private colleges, and other stakeholders to discuss the following topics:
 - Increasing the accessibility and transferability of certifications such as the Licensed Mental Health Technician, Mental Health Developmental Disability Technician, and other mental health certificates applicable to workers in state hospital settings;
 - Creating outreach and incentive programs to expand the mental health workforce pipeline, such as the creation of scholarships and public-private partnerships;
 - Reducing barriers that prevent workers from rejoining the workforce once they have retired;

- Developing a method to track the use of programs designed to promote the mental health workforce and continually evaluate their effectiveness; and
- Addressing wage disparities among mental health providers and other similar jobs.
- The Legislature appropriate up to \$5.0 million to KDADS for each fiscal year to begin a two-year pilot program to reimburse hospitals for the supervision and transfer of individuals who are waiting for a state hospital bed. KDADS should then provide the Legislature with an annual report on how the funds are being used.
- The Legislature, KDADS, and the Kansas Department of Health and Environment investigate available waiver and reimbursement options that can be used to pull down additional federal funds to reimburse providers of mental health services.
- The Legislature and KDADS research how technology, such as apps, can be used to reach those facing mental health challenges and investigate current practices being used to reach individuals in crisis via technology.

Proposed Legislation: None

BACKGROUND

The Special Committee on Mental Health Beds (Committee) was established by provisions in 2022 HB 2510, the omnibus appropriations bill, in Section 8(b). The Legislative Coordinating Council (LCC) later affirmed its establishment and granted the Committee five meeting days. The stated purpose of the Committee is to develop a plan for providing a facility with acute inpatient psychiatric adult beds and adult forensic beds in the Sedgwick County regional area and report any recommendations regarding such facility to the State Finance Council.

COMMITTEE ACTIVITY

The Committee met on August 23, September 29, October 27, November 28, and December 21, 2022, to hear information on mental health topics, summarized in this report. The Committee meeting on September 29, 2022, was held at Wichita State University. The December 21, 2022, meeting was held virtually.

Overview of Authorizing Legislation

An Assistant Revisor from the Office of Revisor of Statutes provided an overview of the legislation that authorizes the Committee.

A proviso in 2022 HB 2510 Section 8(b) created an interim study committee on Sedgwick County regional mental health bed expansion to develop a plan for providing a facility with acute inpatient psychiatric adult beds and adult forensic beds in the Sedgwick County regional area. The legislation directs the Committee to report any recommendations to the State Finance Council by October 1, 2022. In addition, 2022 HB 2510 Section 28(c) appropriates \$15.0 million to the Kansas Department for Aging and Disability Services (KDADS) for the purpose of expanding mental health bed access in the Sedgwick County regional area.

The expenditure of these funds is subject to the approval of the State Finance Council. Following the 2022 Legislative Session, the LCC further directed the Committee to assess mental health bed capacity statewide.

History of Mental Health Services

Analysts from the Kansas Legislative Research Department (KLRD) reviewed several research documents relevant to mental health services in Kansas, including a history of mental health hospitals and services in Kansas, a document outlining pertinent recommendations made by past legislative committees and task forces, and an overview of inpatient bed numbers and funding in surrounding states. In addition, an

analyst from KLRD reviewed a funding chart with information on state mental health funding from FY 2013 to FY 2022 and a chart of bed capacity and admissions at Osawatomie State Hospital (OSH) and Larned State Hospital (LSH) over the past ten years.

The Secretary for Aging and Disability Services provided the Committee with historical information on behavioral health reform initiatives beginning with the Kansas Mental Health Reform Act of 1991 and continuing through the 2017 Mental Health Modernization and Reform Committee. The Secretary outlined a continuum of adult behavioral health care that includes state psychiatric hospitals, community inpatient care, structured care environments, community clinical services, and services dealing with prevention, assessment, and early intervention. The Secretary offered key modernization elements for the Committee's consideration, including the expansion of crisis stabilization services, State Institution Alternative (SIA) beds, and mobile competency services.

A representative of the Kansas Mental Health Coalition (KMHC) provided an overview of the 2018 and 2019 Mental Health Task Force reports and recommendations. The representative of KMHC noted that KDADS has convened many workgroups over the years to address the Kansas mental health inpatient capacity crisis, which was compounded by the June 2015 moratorium on admissions at OSH. The representative outlined some of the legislative actions that have come out of the task force reports, including the creation and funding of health homes, juvenile crisis centers, and the K-12 Mental Health Pilot Program.

State Institution Alternative Beds

The Deputy Secretary of Hospitals and Facilities, KDADS, provided an overview of SIAs, which were created in response to the moratorium at OSH. SIAs expand the number of regional psychiatric hospital beds available to serve individuals who would be eligible for admission to a state hospital. The representative of KDADS noted that the 8 regional SIA facilities authorized in the past year have served 479 adults and 699 children, and the agency continues to search for other facilities that might qualify to provide SIA services.

National Trends in Psychiatric Bed Capacity

The Senior Director of Government and Commercial Research for the National Association of State Mental Health Program Directors Research Institute (NRI), and the Executive Director, National Association of State Mental Health Program Directors, presented information regarding trends in psychiatric bed capacity. The representative of NRI summarized findings that, between 2010 and 2018, there was a 17.2 percent increase in the number of mental health beds due to the expansion of private psychiatric hospital beds and specialty-unit hospital beds. At this same time, the number of state psychiatric hospital patients decreased by 18.5 percent.

The representative of NRI noted that state policies addressing bed limits have shifted from a focus on reopening closed state hospitals to expanding services in community-based programs. This resulted in state hospitals primarily being used to treat severe psychiatric issues other than organic brain disease, intellectual disabilities, and substance abuse. Both representatives also noted that tracking of mental health beds is often incomplete because no single source tracks all psychiatric bed capacity.

Stakeholder Perspectives

Hospitals

The President of Ascension Via Christi St. Joseph (Via Christi) reviewed the need for mental health beds in south-central Kansas. The representative of Via Christi commented that the Via Christi emergency department cares for approximately 600 behavioral health patients each month and said that, when Via Christi's inpatient behavioral health beds are full, patients often must stay two days before they can be moved to a facility with the appropriate level of care. The representative noted the increasing pressure to find beds to accommodate inmates needing mental health evaluations and individuals needing treatment at OSH who are instead directed to Via Christi due to a lack of bed availability at OSH. The representative of Via Christi offered recommendations for adding mental health bed capacity, including adding inpatient behavioral-health beds at OSH and addressing workforce shortages.

The Vice President for Government Relations, Kansas Hospital Association (KHA), discussed the fiscal pressures faced by hospitals when they are required to provide accommodations for individuals in need of inpatient mental health treatment when an inpatient bed is not available. The representative of KHA noted that hospitals must often provide one-on-one observation and transportation of individuals who are waiting for a bed to become available at an inpatient facility, and hospitals do not receive reimbursement for these services.

The President and Chief Executive Officer (CEO) of NMC Health and the CEO of Kingman Healthcare Center also noted the challenges that hospitals face in providing observation and transportation services that are not reimbursed. The representatives noted that the time many of the patients wait for an inpatient bed is days, rather than hours.

The Associate Director of the Association of Community Mental Health Centers (CMHCs) said that CMHCs face similar challenges in requiring staff to address mental health needs of individuals as they await the availability of an inpatient bed. The representative offered recommendations to the Committee, including increasing state hospital capacity and building career pathways to enhance workforce development.

Kansas Counties

A representative of the Kansas Association of Counties (KAC) and a County Commissioner for Finney County testified that long wait times for beds in inpatient facilities impact the budgets of counties by increasing the funding needs for law enforcement and community mental health facilities. The KAC representative noted that this is particularly problematic for smaller communities.

Sedgwick County

Several individuals provided testimony specific to the needs of Sedgwick County, including the Chairman of the Sedgwick County Board of County Commissioners, the Sedgwick County District Attorney, and the County Manager and Deputy County Manager for Sedgwick County. All individuals spoke to the ways their respective agencies are impacted by the current

shortage of beds. The representative of the Board of County Commissioners noted that the county has been working on a plan to address mental health needs for several years; he stated the current proposed project is to build a Health Science Center in downtown Wichita that will house COMCARE and the community's crisis center and offer professional training for health care providers.

Law Enforcement

A representative speaking on behalf of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association and a representative of the Sedgwick County Sheriff's Department also noted the costs in staff time and in non-reimbursed services that are provided to individuals who are waiting for an assessment or inpatient mental health bed. The representative of the Kansas Association of Chiefs of Police recommended establishing a fund to reimburse agencies (such as law enforcement, hospitals, and community health centers) for costs incurred for providing observation and transportation for individuals who are waiting for inpatient beds.

Workforce Challenges

Sedgwick County

The Workforce Development Committee Chair for the Sedgwick County Mental Health and Substance Abuse Coalition (Coalition) presented the recommendations the Coalition has made to reduce barriers in recruiting and retaining staff. Recommendations shared include allowing reciprocity for out-of-state licensing, attracting students through professional workshops, offering incentives to bring retired professionals back to the workforce, granting emergency licenses for certain services, and increasing the use of paraprofessionals. The representative also addressed the mental and emotional toll that direct service work can have on individuals and noted that staff supports such as counseling services may help increase retention by preventing staff from becoming burned out.

State Hospitals

The Superintendent of LSH and the Acting Superintendent of OSH presented information

about the efforts OSH and LSH are taking to address the current workforce shortage. Efforts discussed included working with the University of Kansas and other state universities to provide practicum courses for master's level students and psychiatric rotations for nursing students. The representative from LSH also noted that the hospital maintains a relationship with the Fort Hays State University (FHSU) counseling program, offers paid practicums for students seeking applicable degrees, and helps foster relationships between students and workers to promote retention. The representative from LSH noted that the main challenge LSH faces is the distance between the LSH campus and the universities and housing availability near the LSH campus.

The Deputy Secretary of Hospitals and Facilities, KDADS, provided an overview of the direct-care staff at the two state hospitals, including vacancy rates, starting pay, and the use of contract companies to fill vacant positions. The representative noted that the cost to the hospital to fill a vacant position with contract staff can be three times the listed salary for the position.

The Commissioner of State Hospitals, KDADS, provided information on the training that is provided to staff at LSH and OSH. The Commissioner outlined the positions that receive specialized training and noted that training for the mental health developmental disability technician (MHDDT) position, an entry-level position at LSH and OSH, is provided by the state hospitals. It was noted there is no certificate for completion of the MHDDT trainings that can be transferred outside the state hospitals.

Community Mental Health Centers

Representatives from three CMHCs shared the challenges they have in staffing their centers. The Committee heard from representatives of Pawnee Mental Health Services, The Center for Counseling and Consultation (The Center), and High Plains Mental Health Center. Each of the representatives reported that staffing challenges have intensified recently, especially due to attrition as staff leave for private practices. The representatives noted that the transition of CMHCs to certified community behavioral health clinics (CCBHCs) may help them pay higher wages and

attract staff but also noted that the increased funding has not kept up with inflation. The representative from The Center reported that a lack of housing and day care in their community contribute to workforce shortages at both The Center and LSH.

The CMHC representatives shared recruitment methods they have tried, such as offering fellowship programs, attending job fairs, and talking with high school students about career options in mental health. When asked for ways to improve workforce challenges being faced by CMHCs, the representative from High Plains Mental Health Center recommended creating a scholarship pool for students pursuing degrees above the level of a bachelor's degree and creating an expedited licensing and credentialing process to accelerate recruitment.

Mental Health Workforce Pipeline

Universities

A representative of the State Board of Regents outlined the role universities play in the health care workforce. He noted that enrollment in social work and health professional programs is declining overall; however, enrollment in psychology programs is increasing. The representative referenced some of the financial incentives that encourage students to pursue careers in health care, such as federal Perkins funds and the Nursing Initiative, which provides competitive grants to public and private nursing programs. The representative also offered suggestions for the Legislature, such as reviewing the appropriation to the Nursing Initiative and comparing salary information for health care professionals in other states.

The Executive Dean of the University of Kansas (KU) School of Medicine (Dean) reviewed the medical school pathway for an individual to become a psychiatrist, which includes a four-year medical program, a four-year psychiatry residency, and a one-to-two-year post-residency specialty fellowship. The number of psychiatric residents has continued to climb nationally, but rural areas are having difficulty in attracting students to apply for residencies in their areas. The Dean recommended expanding the Rural Scholars program and starting a child-adolescent psychiatry

program in Wichita to facilitate more psychiatry students and doctors practicing in rural areas.

Community Colleges

The Executive Director of the Kansas Association of Community College Trustees (Director) reviewed the programs offered by community colleges that contribute to the mental health workforce. The Director referenced the Kansas Promise Scholarship as a channel for increasing the health care workforce, noting that 51 percent of the scholarship funds are awarded to individuals pursuing health care careers. The Director outlined a list of areas for exploration (e.g., allowing KDADS employees to receive college credit for their mental health training) and changes to avoid (e.g., decreasing the per-credit-hour reimbursement rate for health care programs).

Technical Colleges

A representative of the Kansas Association for Career and Technical Education noted that, although none of the technical colleges offer specific curricula related to mental health, seven of the Kansas technical colleges address a variety of basic health care services (e.g., health care administration, registered nurses, home health) that can serve as entry into the mental health field. The representative also noted that over 80 percent of the students who graduate from these programs continue to live and work in Kansas upon completing their programs.

Board of Nursing

The Executive Administrator of the Board of Nursing provided an overview of the educational and training requirements for the various levels of nursing. The Executive Administrator noted that having several levels of nursing certifications allows individuals to obtain the level that works for them at that time, with the option to return and continue working toward a higher level. She recommended that faculty and clinical sites for nursing students be increased so instructors can effectively teach more students.

How Other States are Addressing Workforce Challenges

Representatives from the Center for Health and Research Transformation presented highlights

from their report titled *The Behavioral Health Workforce in Rural America: Developing a National Recruitment Strategy*. This study includes interviews with subject matter experts in 47 states with the intent to learn successful recruitment and retention strategies for the behavioral health workforce. The representatives reported on key findings, including which types of recruitment and retention programs are most effective. They also found that most experts agreed that an increase in Medicaid reimbursement rates and higher wages will have a positive impact on the workforce, and that an investment in programs such as loan repayment, scholarships, and increasing residency slots may help support recruitment in rural areas. Other topics they addressed included changing certification requirements to encourage earlier entry into practice and adjustments to improve work-life balance.

Hospital Funding

Two individuals provided information on the differences between publicly funded hospitals and privately funded hospitals. The first individual, a retired hospital administrator, noted that staff recruitment in rural areas is difficult and should be considered when deciding where to place a hospital. The Lobbyist/Coordinator for the Kansas Mental Health Coalition offered several recommendations to consider when planning for inpatient hospital treatment, including investing in the current state hospitals, accelerating certification for Crisis Intervention Centers, and pursuing a complex, balanced program that will bring a wide range of resources and viewpoints.

Insurance Reimbursement for Services Provided

The Medicaid Institution for Mental Disease Exclusion

The Commissioner of Behavioral Health Services, KDADS, reviewed the Medicaid institution for mental disease (IMD) exclusion that prevents facilities that have more than 16 beds and are primarily serving individuals diagnosed with mental disease or substance use disorders (SUD) from receiving Medicaid reimbursement for their services for individuals between the ages of 21 and 65 years of age. KDADS and the Kansas Department of Health and Environment have successfully sought an exception for patients in SUD facilities but are still developing the

implementation and evaluation plans needed to submit an application for a similar exemption for IMD patients.

Reimbursement for Mental Health Services

The President of Via Christi provided information on the reimbursement rates of Medicaid, Medicare, and private pay insurance companies for inpatient mental health services. The representative noted that reimbursement rates for Medicaid do not cover the costs for providing the services and, while private insurance companies often pay higher rates, they have not been increased for several years, even as the cost of care has risen. The representative requested the Committee consider a 10.0 percent increase in Medicaid reimbursement rates for inpatient and outpatient mental health services.

The Executive Director of COMCARE provided testimony on insurance reimbursement for outpatient mental health services. The representative noted the time-consuming nature of paperwork required for Medicare and Medicaid, as well as the challenge that Medicare reimburses only for services provided by the highest level of degree, such as a Ph.D. or M.D. COMCARE is now reimbursed under a new CCBHC encounter rate but still relies on Medicaid rates for services not included in the encounter rate. The COMCARE official noted that Medicaid has the lowest reimbursement rates for services among private and public plans.

Committee Discussion on the Mental Health Workforce Pipeline

The Chairperson invited members to discuss the information provided by the conferees speaking about the workforce pipeline during the October 27 meeting. The Committee noted the different approaches needed when recruiting staff in rural areas versus urban areas, and a suggestion was made that the new 50-bed hospital be located in an urban area to help ensure staffing availability.

The importance of efforts to enhance the workforce pipeline was noted; however, the results of those efforts may be several years out, creating a need for additional resources to recruit and retain staff in the present and immediate future. It was noted that both current and newly created

programs require oversight and should be consistently reviewed to ensure they are being utilized and are effective. Developing a model to evaluate programs would help determine the effectiveness of present programs as well as provide parameters for redesigning ones that are ineffective.

The Committee expressed interest in supporting workforce programs in the community where the new hospital will be located to recruit local community members to remain in the area to work. Programs such as scholarships and grants were mentioned as important to workforce development, as well as reaching students when they are in junior high and high school. It was also recommended that information be sought to learn what other states are doing to meet mental health workforce needs.

The Committee also referenced testimony on the increasing needs for mental health beds and questioned whether a 50-bed unit will be enough to meet the ongoing needs of the state. The Committee discussed the importance of choosing a location that leaves room for growth to ensure that the hospital can be expanded to hold more than 50 beds in the future.

Roundtable Discussion on the Behavioral Health Workforce Pipeline

The Committee held a roundtable discussion on December 21 to hear stakeholder perspectives on various aspects of the behavioral health workforce. Attendees included representatives from the Board of Nursing, Behavioral Sciences Regulatory Board (BSRB), KU School of Nursing, FHSU Department of Social Work, Association of Community Mental Health Centers, KDADS, State Board of Regents, and Kansas Association of Community College Trustees.

License Accessibility and Transferability

The Executive Administrator of the Board of Nursing and a representative from the KU School of Nursing both reported on feedback they have received from licensed mental health technicians (LMHTs). These participants described the LMHT position as holding a lot of responsibility, often requiring long hours, and requiring ongoing continuing education. However, the rate of pay does not reflect the increased responsibility of the

LMHT position above other nursing levels or certifications with fewer responsibilities. The representative from the Board of Nursing did note that a new LMHT program is anticipated to open in Hays, associated with KVC Hospitals. The representative from the KU School of Nursing recommended creating a progression path from entry-level worker to LMHT certification, and making training more accessible for individuals who are currently working in behavioral health settings.

The Executive Director of the BSRB shared information on some of the changes the BSRB has made, as well as changes the BSRB anticipates making, to increase the accessibility of the licenses the BSRB oversees. Recent changes include decreasing the required number of hours of professional experience and supervision for clinical licensure and allowing individuals at the master's degree level to test for a lower level of addiction counseling licensure. In addition, the BSRB is exploring current reciprocity requirements between Kansas and other states and creating new levels of licensure for addiction counselors.

Retired Workforce

Roundtable participants identified several areas in which changes can be made to make it easier for retired professionals to re-enter the workforce, including offering continuing education and supervision focused on areas that may have changed since the retiree was last practicing (e.g., telehealth and other technological updates), finding ways to reduce the cost of licensure for this population, and creating a temporary license that allows individuals to work while accruing necessary continuing education hours.

Incentive Programs

Roundtable participants noted that many incentive programs provide incentives after an individual's education is complete and discussed the importance of providing incentives earlier in the educational system. Participants recommended enhanced efforts to provide high school students with information about career pathways in behavioral health. The representative from FHSU noted the importance of providing opportunities in the communities in which students live and noted

a program at FHSU that allows students guaranteed admission if they are sponsored by a local agency and agree to work there for a certain period of time following graduation.

Additional ideas highlighted by participants included relocation bonuses, including additional bonuses for buying a home in a rural area; partnerships between CMHCs and local community colleges to build workforce in small communities; expanding certification programs currently housed in state hospitals (LMHT and MHDĐT) to community and technical colleges; and finding ways for LMHT training to be used as college credit toward higher level degrees. The Behavioral Health Services Commissioner, representing KDADS, noted that the state hospitals have used bonuses as incentives for staff retention, particularly during the COVID-19 pandemic; however, current statutes limit the amount hospitals are able to provide.

Tracking and Evaluation of Incentive Programs

The President and CEO of the State Board of Regents noted that the Board can easily track student employment and whether students remain employed in Kansas, but it is more difficult to identify whether they are employed in the field they intended to enter. He also recommended that, when creating evaluation and tracking programs, a cost-benefit analysis be completed to ensure that the resources spent on tracking programs do not exceed the value of the actual program. The representative from the Kansas Association of Community College Trustees noted that current programs are housed under a variety of state agencies and recommended consolidating evaluation efforts under one agency or under the agency that oversees the particular license or degree being targeted by the incentive program.

Wage Disparities

The participants noted that efforts to raise wages in behavioral health must ensure that wages are competitive within the local community and within the behavioral health field, as well as within related industries in which the workforce would be qualified to work. It was recommended that a focus be placed on both recruitment and retention, ensuring that competitive wages are in place for entry-level positions as well as consistent pay increases to incentivize retention.

The representative from the Kansas Association of Community College Trustees noted that some nurse training programs require an individual to have health insurance, making it important that wages be at a level that make this, and other similar requirements, feasible. She also noted the importance of competitive wages for those teaching and supervising students and those working toward clinical licensure.

In discussion following the conclusion of the roundtable discussion, the Committee called attention to the importance of closely following the progress of the crisis intervention centers as KDADS navigates the rules and regulations processes needed for them to open. It was also noted that a recording of the meeting, including the roundtable discussion, can be viewed on YouTube, at the following link: <https://www.youtube.com/watch?v=VZ-PZM2GXog>.

CONCLUSIONS AND RECOMMENDATIONS

Following discussion, the Committee recommended:

- The State Finance Council release the \$15.0 million appropriated to KDADS for the purpose of opening a new state hospital. The funds should be utilized to develop a specific plan for the construction and operation of a new state hospital, including the issuance of a request for proposal.
- KDADS work with Sedgwick County to open a facility in the Sedgwick County regional area with a capacity of up to 50 state institution beds. The facility should be located in an area with room for expansion to ensure additional beds can be added if needed. The project should begin within calendar year 2023. In addition, KDADS and Sedgwick County should consider whether the facility should be publicly or privately operated.
- The State Finance Council allocate \$40.0 million from federal American Rescue Plan Act funds to open the 50-bed facility, as requested by Sedgwick County through

the Strengthening People and Revitalizing Kansas (SPARK) Task Force.

- The Committee hold a meeting with the Board of Nursing, BSRB, State Board of Regents, universities, community and technical colleges, state agencies, private colleges, and other stakeholders to discuss the following topics:
 - Increasing the accessibility and transferability of certifications such as the LMHT, MHDDT, and other mental health certificates used in state hospital settings;
 - Creating outreach and incentive programs to expand the mental health workforce pipeline, such as the creation of scholarships and public-private partnerships;
 - Reducing barriers that prevent workers from rejoining the workforce once they've retired;
 - Developing a method to track the use of programs designed to promote the mental health workforce and continually evaluate their effectiveness; and
 - Addressing wage disparities between mental health providers and other similar jobs.
- The Legislature appropriate up to \$5.0 million to KDADS for each fiscal year to begin a two-year pilot program to reimburse hospitals for the supervision and transfer of individuals who are waiting for a state hospital bed. KDADS should then provide the Legislature with an annual report on how the funds are being used.
- The Legislature, KDADS, and the Kansas Department of Health and Environment investigate available waiver and reimbursement options that can be used to pull down additional federal funds to reimburse providers of mental health services.

- The Legislature and KDADS research how technology, such as apps, can be used to reach those facing mental health challenges and investigate current practices being used to reach individuals in crisis via technology.

MINORITY REPORT

2022 Special Committee on Mental Health Beds

I do not agree with the recommendations formed by the Mental Health Beds Committee.

Representative Henry Helgerson

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Report of the Joint Committee on Child Welfare System Oversight to the 2023 Kansas Legislature

CHAIRPERSON: Representative Susan Concannon

VICE-CHAIRPERSON: Senator Richard Hilderbrand

RANKING MINORITY MEMBER: Representative Jarrod Ousley

OTHER MEMBERS: Senators Molly Baumgardner, Oletha Faust-Goudeau, Beverly Gossage, Cindy Holscher, and Kristen O’Shea; and Representatives Suzi Carlson, Charlotte Esau, Susan Humphries, Timothy Johnson, and Susan Ruiz

CHARGE

Review the Child Welfare System

Pursuant to KSA 2022 Supp. 46-3901, the Committee is directed to review:

- Data on child maltreatment and demographic trends impacting the child welfare system;
- The duties, responsibilities, and contributions of the Kansas Department for Children and Families (DCF), the Kansas Department for Aging and Disability Services (KDADS), the Kansas Department of Health and Environment (KDHE), the Department of Corrections, law enforcement, and the Judicial Branch that comprise and impact the child welfare system;
- The programs, services, and benefits offered directly or through grants or contracts by DCF, KDADS, KDHE, and the Judicial Branch that impact children and families at risk of becoming involved or who are involved in the child welfare system;

- Trends, performance outcomes, activities, and improvement plans related to the federal Child and Family Services reviews;
- Reports from child welfare-related groups;
- Implementation of the 2019 Child Welfare System Task Force report recommendations;
- Reports on concerns received from the DCF Ombudsman or customer service department or similar office;
- Data and trends on family foster home licenses issued pursuant to KSA 65-516(b);
- The exception to the State Child Death Review Board confidentiality for city or county entities with the express purpose of providing local review of child deaths (KSA 2022 Supp 22a-243); and
- Any other topic the Committee deems appropriate.

Joint Committee on Child Welfare System Oversight

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Child Welfare System Oversight (Committee) makes the following recommendations to the 2023 Legislature:

- Funding for an expansion of the Safe Families for Children Program to serve families in the McPherson, Fort Riley, and Manhattan areas should be appropriated in FY 2024;
- The Legislature should review and consider legislation relating to a Foster Parent’s Bill of Rights, as was originally introduced by the late Representative Gail Finney in the 2022 Legislative Session;
- A bill amending the definition of “kinship care placement” in the Revised Code for the Care of Children to encompass the definition of “kinship caregiver” found in Texas Family Code § 264.851 should be introduced;
- A bill codifying the budget proviso authorizing the Department for Children and Families to establish a Child Abuse Review and Evaluation (CARE) Provider Network pilot program should be introduced;
- The Governor and Legislature should collaborate to reach a consensus on a bill during the 2023 Legislative Session that would establish a true, independent, and transparent Office of the Child Advocate;
- Funding should be appropriated to community mental health centers for the purpose of developing school age youth mental health programs and related staffing and training within the Boys and Girls Clubs of Kansas;
- This Committee should review and consider the recommendations of the Judicial Council report, once it is published, on the consideration of attachment in the selection of an adoptive resource for a child in the child in need of care (CINC) system;
- The Legislature should explore codifying caseworker accredited standard caseloads in statute and add a statutory cap on the number of cases that caseworkers can have while maintaining accreditation standards;
- Law enforcement agencies should develop best practices to minimize emotional harm to a child when a CINC case requires an officer to physically remove a child from his or her home;
- The Legislature should appropriate \$350,000 for local court-appointed special advocate (CASA) programs for FY 2024, and between \$60,000 and \$75,000 should be appropriated for the Kansas CASA Association in FY 2024;

- Local CASA programs should enhance their recruitment efforts of minority advocate applicants and should increase their approval rates of minority advocate applicants; and
- This Committee should review any data that exists regarding the impact of fentanyl on youth in foster care.

Proposed Legislation: One bill. Legislation amending the Newborn Infant Protection Act to expand the options for legal surrender of infants to include the use of infant refuge bassinets, also known as baby boxes, (based on 2022 SB 490) should be introduced in the House of Representatives, with a suggested referral to the House Committee on Children and Seniors or successor committee.

BACKGROUND

Enacted 2021 HB 2158 established the Joint Committee on Child Welfare System Oversight (Committee), composed of 13 members, and charged the Committee to review:

- Data on child maltreatment and demographic trends impacting the child welfare system;
- The duties, responsibilities and contributions of the Kansas Department for Children and Families (DCF), the Kansas Department for Aging and Disability Services (KDADS), the Kansas Department of Health and Environment (KDHE), the Department of Corrections, law enforcement, and the Judicial Branch that comprise and impact the child welfare system;
- The programs, services, and benefits offered directly or through grants or contracts by DCF, KDADS, KDHE, and the Judicial Branch that impact children and families at risk of becoming involved or who are involved in the child welfare system;
- Trends, performance outcomes, activities, and improvement plans related to the federal Child and Family Services reviews;
- Reports from child welfare-related groups;

- Implementation of the 2019 Child Welfare System Task Force report recommendations;
- Reports on concerns received from the DCF Ombudsman or customer service department or similar office;
- Data and trends on family foster home licenses pursuant to KSA 65-516(b);
- The exception to the State Child Death Review Board confidentiality for city or county entities with the express purpose of providing local review of child deaths (KSA 2022 Supp 22a-243); and
- Any other topic the Committee deems appropriate.

COMMITTEE ACTIVITIES

The Committee met once during the 2022 Legislative Session, on April 19. The Legislative Coordinating Council approved five more meeting days during the 2022 Interim Session, and meetings occurred on September 12 and 13, October 26, and November 16 and 17.

April 19 Meeting

Public Comment on Child Welfare System from Individuals, Providers, and Organizations

The Chief Executive Officer (CEO) of the Kansas Children's Service League (KCSL) stated the focus of the organization is to intervene when

child abuse has occurred in a home, and to provide services to prevent additional abuse and avoid the need for the child to enter foster care. The CEO stated the cost of intervention services is approximately \$8,000 per year per family, in contrast to \$31,000 for the cost of foster care annually, and asked for additional funding for the services KCSL provides.

The Executive Director of Sunflower Children's Collective, a local Court Appointed Special Advocates (CASA) program, provided an overview of CASA services.

Three private citizens provided testimony regarding their experiences with the foster care system, each expressing various frustrations and disappointments in their interactions with case management providers, child placing agencies, or DCF. In addition, Representative Tarwater gave brief remarks introducing one of his constituents. The constituent provided an account of her experience having a child removed from the home and suggested various changes to the child-in-need-of-care (CINC) process.

Presentation from a Former Foster Child

A private citizen who grew up in the foster care system shared his experiences and responded to member questions. He stated while he was able to take advantage of the tuition support offered through DCF, the application process was difficult. In exploring alternatives to talk therapy (such as art therapy) during his time as a foster child, he found that alternatives were not always feasible due to lack of insurance coverage for those services. He also stated it would have been useful to have a mentor as he approached aging out of the system.

Audit Presentation: Reviewing Foster Care Services for the Health and Safety of Children

A Senior Auditor from the Legislative Division of Post Audit (LPA) provided an overview of its March 2022 report reviewing foster care services for the health and safety of children. The audit answered two questions: "Are foster care stakeholders following adequate policies and procedures to ensure the safety of children in foster care?" and "Do foster care case management providers have sufficient capacity to provide necessary foster care services?" In

response to the first question, the audit found DCF's policies were generally "adequate," but the implementation of these policies by case management providers and child placing agencies, as well as DCF's enforcement of policies, was not adequate. In response to the second question, the audit found the system does not currently have capacity to meet the needs of foster care children. While there are enough total homes, they are not in the communities where they are necessary, so placements are often made outside a child's home community. Further, no therapeutic foster homes exist in the state and caseloads for providers average approximately double what is considered best practice.

Presentation on Children's Advocacy Centers

The Executive Director of Children's Advocacy Centers of Kansas explained the services provided by the 17 child advocacy centers (CACs) located in the state, serving children who have experienced sexual or emotional abuse, violence, drug endangerment, or human trafficking. DCF may refer a child to a CAC to conduct a recorded forensic interview for use in a criminal case. The goal of the recording is to prevent the child from repeatedly recounting traumatic experiences.

Department for Children and Families Update

The Secretary for Children and Families provided an update on numbers of children in foster care as of January 2022, reviewed performance outcomes, and addressed LPA's report on foster care. The Secretary noted the agency has begun outreach to foster parents to assess quality of services and will add therapeutic foster homes starting in July 2022. The Secretary also shared updates on the agency's Kinship Interdisciplinary Navigation Technologically Advanced Model (KIN-TECH) pilot program offered in six counties and the We Kan Drive pilot program that is currently available in the DCF east region.

Child Welfare Presentations from Case Management Providers

Representatives of Cornerstones of Care; DCCCA, Inc.; KVC Kansas; Saint Francis Ministries; and TFI Family Services provided information regarding organizational structure;

performance outcomes; average caseload sizes; and efforts to improve workforce recruitment, retention, and safety.

September 12-13 Meeting

Public Comment on Child Welfare System from Individuals, Providers, and Organizations

A private citizen provided comments concerning the impact of the continued criminalization of cannabis on families, stating that if it were decriminalized, the need for foster care services would decrease.

A couple attempting to adopt a child they fostered since infancy expressed their frustrations with the adoption process. The couple explained when they could not adopt the foster child's siblings as well, their adoption was not recommended by Cornerstones of Care and they faced, in their view, continual retaliation from the organization.

Presentation on Foster Youth Mental Health Needs

The Executive Director of the Association of Community Mental Health Centers of Kansas, Inc. expressed gratitude to the Legislature for authorizing the implementation of the certified community behavioral health clinic (CCBHC) model in Kansas, and introduced three CCBHC leaders. Each leader gave brief remarks on the benefits of the CCBHC model in providing mental health services to foster youth.

A Vice President of Residential Services of EmberHope Youthville outlined its services as a psychiatric residential treatment facility (PRTF) and provided client testimonials regarding its services.

Case Management Provider Updates

Representatives of Cornerstones of Care; DCCCA, Inc.; KVC Kansas; Saint Francis Ministries; and TFI Family Services provided updates on their respective organizations' performance, current caseload numbers, and noteworthy initiatives and programs offered. Representatives of Cornerstones of Care answered questions posed by Committee members in relation to the foster parent couple that testified earlier in the meeting. The Cornerstones of Care

representatives committed to conducting a thorough review of the couple's case.

Presentation on Runaway Foster Youth Study

A representative of TFI Family Services and an associate research professor at the University of Kansas School of Social Welfare presented an overview of a recent study the two entities conducted in collaboration to identify and correct factors that contribute to foster youth absences from care. They stated a crucial finding from the study was that maintaining connections with important family members was a key factor to preventing foster youth running away from care.

Presentation on Baby Boxes

A representative of Safe Haven Baby Boxes, an organization dedicated to raising awareness of the illegal abandonment of infants, provided testimony emphasizing the importance of providing mothers an anonymous option to surrender their child through the use of a secure, climate-controlled "baby box." She stated 121 baby boxes are used in seven states currently.

The Fire Chief of McPherson, Kansas, recounted how the discovery of an abandoned infant impacted his community. He stated current Kansas law is inadequate to address these kinds of situations and suggested relevant legislation be introduced in the 2023 Legislative Session.

Presentation on CARE Providers

A pediatrician specializing in child abuse from Children's Mercy Kansas City reported progress on the development of the Child Abuse Review and Evaluation (CARE) provider network, a medical model to address child abuse and neglect that was authorized by a 2022 budget proviso. She urged the Legislature to consider legislation in the 2023 Legislative Session that would codify the program in statute.

Update on Behavior Intervention

A Vice President of Kansas Programs from FosterAdopt Connect outlined the intensive services provided to children experiencing trauma through its Behavior Intervention Program in the Kansas City metropolitan area.

Overview and Status of Committee-related Legislation

An Assistant Revisor of Statutes reviewed six bills considered by the 2022 Legislature related to the charge of the Committee, and provided each bill's status at the end of the 2022 Session.

Department for Children and Families Update

The Secretary for Children and Families provided an overview of current oversight activities of the agency. The Secretary also presented the annual report of cases of suspected child sexual abuse reported by abortion providers, as well as back-dated data to 2011. She stated she accepted responsibility for the agency's failure to compile these reports in previous years going back to 2011. The Secretary also outlined programs offered by the agency focusing on prevention and provided a brief update regarding legislative priorities of the agency.

Division of the Child Advocate Presentation and Annual Report

The Child Advocate provided background on the Division of Child Advocate within the Office of Public Advocates, reviewed the Division's strategic plan, and presented its first annual report.

Childcare Provider Appreciation Bonus Program

The Interim Director of the Bureau of Family Health, KDHE, provided information on the Child Care Workforce Appreciation Bonus Program, answering several questions from Committee members regarding eligibility for the program.

October 26 Meeting

Discussion of DeHaven Foster Family Case

The Committee met to discuss in more detail the circumstances leading to the negative outcome described by the foster parent couple that presented testimony at the September meeting. Due to the nature of confidential records needing to be referenced, the Committee recessed for executive session for the majority of the meeting.

Committee Comments and Recommendations

When the public meeting reconvened, several Committee members expressed their frustrations with the outcome of the case and recommended a

“vote of no confidence” regarding DCF's transition plan in this case.

November 16-17 Meeting

Public Comment on Child Welfare System from Individuals, Providers, and Organizations

A private citizen recounted her experience with DCF and law enforcement when her child was deemed a child in need of care (CINC) and expressed her belief in the need for a separate oversight agency to ensure policies and procedures are being followed by DCF and law enforcement.

A former foster parent shared the difficulties navigating the child welfare system while caring for a high-needs foster child due to a lack of accessible and affordable resources.

Another former foster parent expressed frustration that a child they cared for from a young age was eventually reintegrated with a biological father, an action the former foster parent did not believe to be in the child's best interest.

A grandmother of a child who was removed from her custody explained that she remains on the Child Abuse Registry despite the allegations of abuse being unsubstantiated and appealed multiple times. She expressed frustration over the fact that neither she nor her husband have been allowed visitation since the last hearing in the CINC case.

Two private citizens shared concerns regarding the handling of a case in their community in which two children were removed from a positive placement to be reintegrated with a relative they had never met and who had a history of child neglect.

The Executive Director of the Association of Community Mental Health Centers of Kansas, Inc. provided an update of efforts to certify community mental health centers (CMHCs) as CCBHCs, stating nine CMHCs have achieved provisional certification as CCBHCs. Eight more CMHCs are expected to be certified prior to the July 2024 statutory deadline.

A representative of the Boys and Girls Club Alliance of Kansas (Alliance) asked the Committee's support for funding for school age

youth mental health programs, youth development professionals, and training for Boys and Girls Club staff, and expressed optimism the Alliance may form partnerships with CMHCs to provide needed services for youth attending Boys and Girls Clubs in the state.

A representative of the Sisters of Charity of Leavenworth presented her thoughts on best practices in caring for children in the child welfare system and proposed four questions that should be answered before a child is removed from a home.

The State Director of the Kansas CASA Association asked the Committee for increased state funding for its programs due to increasing volatility in local program funding.

Presentation on Mental Health Intervention Team Program

The Director of the Safe and Secure Schools Unit of the Kansas State Department of Education presented information on efforts to connect at-risk youth, including students in foster care, with mental health services in schools through its Mental Health Intervention Team Program.

Presentation on Safe Families for Children Program Expansion

The Kansas State Director of Safe Families for Children provided an overview of the organization's services and an update on plans to expand its program in southeast Kansas, the Kansas City metropolitan area, and the Wichita metropolitan area. She also requested funding to expand Safe Families programming in the communities of McPherson and Manhattan and at Fort Riley.

Division of the Child Advocate Update

The Child Advocate provided an overview of the Division's case investigation process and shared preliminary results of a survey conducted by the Division in collaboration with DCF and child placing agencies to identify factors contributing to licensed foster parents' decisions to stop fostering, as was requested by the Committee at the September meeting.

Foster Care Caseloads

The Managing Fiscal Analyst, Kansas Legislative Research Department, provided foster care caseload estimates for FY 2023 and FY 2024.

DCF Update

The Secretary for Children and Families presented follow-up information to questions asked by the Committee at the September meeting and also provided information on the following topics related to foster care case management provider contracts: how foster care funding works; performance measures and expectations, including the use of performance improvement plans and incentive and penalty funding; and the timeline and process for rebidding existing foster care case management grants.

Case Management Provider Updates

Cornerstones of Care; DCCCA, Inc.; KVC Kansas; Saint Francis Ministries; and TFI Family Services provided data on their organizations' placement stability, permanency, and average length of stay for children in care. In addition to these data points, Saint Francis Ministries also provided data on employee turnover and distributed copies of the organization's financial statements and audit reports for the past three fiscal years.

Presentations on Permanency and Adoption

A parent shared her experience in adopting a CINC in Kansas, and noted five observations she made in the nine years it took to successfully adopt her child.

A private adoption attorney provided an overview of the CINC process, including: phases of a CINC case; entities involved in a CINC case; determinations of parental rights, including termination and reintegration; interested party status; reasonable efforts made by DCF to achieve permanency for the child; orders for direct placement; sibling splits; and appeals.

An Associate Research Professor from the University of Kansas School of Social Welfare and a Court Program Specialist from the Office of Judicial Administration presented an overview of the Adoption Tracking Tool developed through a public-private-university initiative. The speakers

stated the tool was designed to speed up permanency by tracking key benchmarks and time schedules for children legally free for adoption.

An adjunct faculty member of Wichita State University presented research illustrating the importance of a child forming bonds with caretakers early in life, and how adoption can impact a child's mental and emotional well-being throughout his or her life.

The Vice President of Kansas Programs of FosterAdopt Connect presented information regarding the organization's advocacy efforts for adoptive children and families in the state through its two awarded contracts for the Kansas Adoption Exchange (also known as Adopt Kansas Kids) and the Kansas Post Adoption Resource Center (K-PARC). A representative of Adopt Kansas Kids provided additional information regarding its efforts to recruit adoptive families through social media.

The Assistant General Counsel for Prevention and Protection Services, DCF, provided adoption data for FY 2022 and recent significant changes in adoption rates; information on the Best Interest Staffing process; and agency policies related to adoption, including sibling split placements. Committee members asked several questions regarding DCF's policies and requested additional research regarding sibling splits in adoption.

State Child Death Review Board Annual Report

The Chairperson of the State Child Death Review Board presented on the continuing work of the Board, providing an overview of the most recent annual report of child fatalities. A Committee member inquired about the timeliness of the data, to which the Chairperson noted the data is on a two-year delay, meaning fatalities reported in the 2022 report occurred in 2020.

Committee Discussion and Recommendations for Interim Committee Report to the 2023 Legislature

Committee members discussed a number of potential recommendations to the 2023 Legislature, and agreed to several by consensus. A few recommendations to which Committee members objected received a formal vote.

The Committee proposed legislation amending the Newborn Infant Protection Act to expand the options for legal surrender of infants to include the use of infant refuge bassinets, also known as baby boxes, (based on 2022 SB 490) be introduced in the House of Representatives, with a suggested referral to the House Committee on Children and Seniors or successor committee. In addition to proposing this legislation, the Committee agreed to adopt the following recommendations:

- Funding for an expansion of the Safe Families for Children Program to serve families in McPherson, Fort Riley, and Manhattan areas should be appropriated in FY 2024;
- The Legislature should review and consider legislation relating to a Foster Parent's Bill of Rights, as was originally introduced by the late Representative Gail Finney in the 2022 Legislative Session [2022 HB 2469];
- A bill amending the definition of "kinship care placement" in the Revised Code for the Care of Children to encompass the definition of "kinship caregiver" found in Texas Family Code § 264.851 should be introduced;
- A bill codifying the budget proviso authorizing DCF to establish a Child Abuse Review and Evaluation (CARE) provider network pilot program should be introduced;
- The Governor and Legislature should collaborate to reach a consensus on a bill during the 2023 Legislative Session that would establish a true, independent, and transparent Office of the Child Advocate;
- Funding should be appropriated to CMHCs for the purpose of developing school age youth mental health programs and related staffing and training within the Boys and Girls Clubs of Kansas;
- This Committee should review and consider the recommendations of the Judicial Council report on the

consideration of attachment in the selection of an adoptive resource for a child in the CINC system after that report is published;

- The Legislature should explore codifying caseworker accredited standard caseloads in statute and add a statutory cap on the number of cases that caseworkers can have while maintaining accreditation standards;
- Law enforcement agencies should develop best practices to minimize emotional harm to a child when a CINC case requires an officer to physically remove a child from his or her home;
- The Legislature should appropriate \$350,000 for local CASA programs for FY 2024, and between \$60,000 and \$75,000 should be appropriated for the Kansas CASA Association in FY 2024;
- Local CASA programs should enhance their recruitment efforts of minority advocate applicants and should increase their approval rates of minority advocate applicants; and
- This Committee should review any data that exists regarding the impact of fentanyl on youth in foster care.

Report of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight to the 2023 Kansas Legislature

CHAIRPERSON: Representative Brenda Landwehr

VICE-CHAIRPERSON: Senator Richard Hilderbrand

OTHER MEMBERS: Senators Michael Fagg, Beverly Gossage, Pat Pettey, and Mark Steffen; and Representatives Barbara Ballard, Will Carpenter, Susan Concannon, Megan Lynn, and Susan Ruiz

CHARGE

Oversee Long-term Care Services and KanCare

KSA 2022 Supp. 39-7,160 directs the Joint Committee to oversee long-term care services, including home and community based services (HCBS). The Joint 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 Joint Committee is to oversee the Children's Health Insurance Program, the Program for All-Inclusive Care for the Elderly, 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.

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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 (Joint Committee) recommends:

- The Legislature consider the recommendations of the 2022 Special Committee on Intellectual and Developmental Disability (I/DD) Waiver Modernization (Special Committee) regarding consideration of the development of a Community Support Home and Community Based Services (HCBS) waiver to serve individuals with I/DD needing fewer services and supports than those provided on the existing comprehensive I/DD waiver. [*Note:* The Special Committee’s approved, detailed recommendations are available in the Special Committee’s report. The recommendations are summarized at the end of this report.];
- The Legislature consider the recommendations of the 2022 Kansas Senior Care Task Force (Task Force) pertaining to KanCare issues. [*Note:* The Task Force’s approved, detailed recommendations may be found in its committee report. The recommendations are summarized at the end of this report.];
- The Kansas Department for Aging and Disability Services (KDADS) look into establishing a Dementia and Alzheimer’s Disease Coordinator position, as recommended by the Alzheimer’s Association;
- The Kansas Department of Health and Environment (KDHE) and the KanCare managed care organizations (MCOs) discuss and provide the Joint Committee with information regarding the cost to cover dentures under KanCare;
- The Legislature encourage the Strengthening People and Revitalizing Kansas (SPARK) Executive Committee to allocate federal American Rescue Plan Act (ARPA) funds for expansion of the Midland Care Connection Program of All-Inclusive Care for the Elderly (PACE);
- KDHE and the Department for Children and Families provide the history of the National Voter Registration Act of 1993, the reason the agencies sent out 277,000 letters containing voter registration applications, and the cost of such mailings;
- The KanCare MCOs provide information on the interpreter services available to KanCare members for scheduled medical appointments and non-scheduled emergency medical services;
- The Legislature consider increased funding for targeted case management;

- The legislative standing committees look into rebasing the specialized medical care (SMC 1000) rate each year to avoid falling behind the market rate, an issue brought to the Committee's attention by Maxim Healthcare Services;
- KDHE report on existing programs that use state and federal Medicaid funds to meet the health needs of newborns and the prenatal health needs of pregnant mothers;
- The Legislature consider increased funding for centers for independent living;
- The Joint Committee consider requesting a bill be drafted giving certified medication aides (CMAs) insulin administration authority, after receipt of research information on other states' actions on such CMA authority;
- The Legislature consider legislation to address the expiration of the TNAs' ability to work after January 20, 2023;
- KDADS give serious consideration to escalating the timeline of community mental health centers seeking certified community behavioral health clinic status that will be ready to be certified in spring 2023;
- The Mental Health Intervention Team (MHIT) Program work with the Kansas State Department of Education to request introduction of legislation to place the MHIT Program in statute;
- The Behavioral Sciences Regulatory Board (BSRB) request introduction of legislation to create a new type of temporary license under the BSRB for bachelor's- and master's-level social work applicants who graduate from programs that are in candidacy for accreditation, similar to the model used in Minnesota; and
- The Legislature consider legislation to reduce regulatory barriers in PACE by allowing mid-month enrollment, replacing the application requirement for a currently operating PACE program to add a new PACE center in its existing service area with a notification requirement, removing the quarterly restriction for submission of new PACE organization applications, removing the quarterly restriction for applications for service area expansions; and allowing PACE organizations to have multiple applications for service area expansions and new center applications, or both, under simultaneous review by the federal Centers for Medicare and Medicaid Services.

The Joint Committee also acknowledges the statement by the Secretary of Health and Environment that the recently enacted home health regulations that have created concerns would not be enforced and that KDHE would work to amend the regulations based on feedback from home health agencies and home health providers.

Proposed Legislation: Two bills. The Joint Committee requests the following two bills be drafted:

- A bill to be introduced in the House of Representatives based on the language of 2022 SB 407 to address the statutory Children's Health Insurance Program eligibility threshold percentage that is tied to the 2008 federal poverty level; and
- A bill to allow for discussion on the potential benefit and detriment of reducing the 90 hours required in Kansas for certification as a certified nurse aide to the 75 hours required under federal law.

BACKGROUND

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services (HCBS) and KanCare Oversight (Joint Committee) operates pursuant to KSA 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 (LTC) 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 Joint 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 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 Joint 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 LTC and HCBS, as well as to review and study other components of the State's LTC system. Additionally, the Joint 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 KSA 39-1,160, at the beginning of each regular session, the Joint 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. [*Note: See Appendix A for the 2022 report.*]

The report also is to include information on the KanCare Program regarding:

- 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 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 Joint 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 Joint Committee report, the Joint 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 Joint 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 LTC system to the Governor and the Legislature during the first week of each regular session.

COMMITTEE ACTIVITIES

The Joint Committee met twice during the 2022 Session (February 4 and April 20) and twice during the 2022 Interim (September 26-27 and November 2-3). In accordance with its statutory charge, the Joint Committee's work focused on the specific topics described in the following sections.

KDHE KanCare Overview and Update

At the February 4, 2022, meeting, the Acting Secretary of Health and Environment (Secretary) provided an overview of the department as part of the KDHE update. The Secretary noted an Acting State Health Officer had been appointed. The Secretary stated KDHE was looking at innovative ways to recruit and retain staff, and the focus during her first nine weeks had been on agency strengths, challenges, and opportunities.

At the April 20, 2022, meeting, the Secretary reviewed the agency's goals and priorities related to KanCare. Regarding key goals, she identified recruitment and retention, response to legislation, financial management, reaccreditation of the state public health office, effective communication, and building relationships with stakeholders. She announced the recruitment of a new Medicaid Medical Director, a request for proposal (RFP) being developed to replace the MCOs' contracts expiring in December 2023, and the implementation of a new information technology (IT) system.

At the September 26-27, 2022, meeting, the Secretary noted KDHE was working in collaboration and alignment with the Health Care Access Improvement Program (HCAIP) Committee and the Kansas Hospital Association (KHA) to complete the work on the HCAIP. KDHE was working with KDADS in waiver assessment and review. In-person meetings of KDHE, KDADS, and the MCOs were reconvening. KDHE was reviewing how community health workers could tie into the Medicaid program more formally. The Secretary said KDHE would continue planning for the termination of the public health emergency (PHE).

The Secretary provided an overview of KDHE's May 2022 home health regulations, which are a broad set of regulations to provide structural elements for use by the KDHE survey team. Kansas home health agencies and HCBS providers raised concerns about the new requirements, particularly the cost for compliance. Although the regulations had gone into effect, the Secretary stated KDHE will not enforce the regulations in the areas of concern while it reviews and amends them using feedback from providers. The Secretary described the process moving forward for amendments to the home health

regulations. The new Medicaid Medical Director was also introduced.

KanCare Managed Care Waiver Options

At the February 4, 2022, meeting, a KDHE representative said the current MCO contracts would expire December 31, 2023. She outlined the time involved in the lengthy procurement process, the required review and approval of the RFP by the federal Centers for Medicare and Medicaid Services (CMS) prior to posting, posting the RFP, the State's review of the bids and awarding of the contract, and the MCO readiness reviews and implementation. The representative noted KDHE was studying managed care options, including renewing the waiver under Section 1115 of the Social Security Act or switching to another source of federal authority, such as a Section 1915(b) managed care waiver.

At the April 20, 2022, meeting, a KDHE representative noted MCO RFP planning activities were underway, with the first series of formal stakeholder input sessions held in March 2022. She explained the differences between a Section 1115 waiver and a 1915(b) waiver. A Section 1915(b) waiver would remove the spending cap restrictions. The representative noted Kansas could operate under more than one managed care waiver, and KDHE officials did not think the agency could put all the Section 1115 waiver programs into a Section 1915(b) managed care waiver.

For example, the Support and Training to Employ People Successfully (STEPS) program could be done only under a Section 1115 waiver. The STEPS program could remain under a small Section 1115 waiver, and the remainder of the Medicaid programs could be under another federal authority. She noted there would be no difference in member or MCO experience under a new waiver authority, but the State would have a reduced administrative paperwork burden and not have a hard spending cap under a Section 1915 (b) waiver.

The KDHE representative explained the Section 1915(c) HCBS waivers fell under the umbrella Section 1115 waiver, resulting in all HCBS spending being under the budget neutrality cap that is federally required. If the State had a Section 1915(b) managed care waiver, it could be

the umbrella authority, with the section 1915(c) HCBS waivers under it. Under that scenario, the HCBS waivers would not be bound by the concrete spending caps set by CMS, rather the State would be allowed to spend as it sees fit. She noted the Section 1115 waiver had the most complex paperwork and the toughest financial rules. The Section 1915(b) waiver also requires regular reports to CMS but, without the concrete spending caps, the administrative paperwork burden is less.

The KDHE representative stated, if renewal of the Section 1115 waiver is sought, the process would take approximately 12 months, and preparations would need to begin in the summer of 2022. If another authority is pursued, the agency also would need to begin preparations later in 2022. The decision on which waiver to pursue would not have to be made before the RFP was issued. The representative noted the MCOs do not have a preference as to the waiver under which they provide services.

If a Section 1915(b) waiver was selected, the State would have to show that its program was more cost-effective than fee-for-service, and that standard would be easy to meet, the KDHE representative stated. Under a Section 1915(b) waiver, the State could increase provider rates as it saw fit, without concern for budget neutrality caps.

At the September 26-27, 2022, meeting, further details were provided regarding the differences between the Section 1115 waiver and the Section 1915(b) waiver and the benefit in switching to the Section 1915(b) waiver.

At the November 2-3, 2022, meeting, further clarification was provided by a KDHE representative regarding the renewal of the Section 1115 waiver and the public information sessions KDHE had been conducting. The representative stated KDHE and KDADS have determined the state should move away from an umbrella Section 1115 waiver and instead operate the same Medicaid managed care under different sources of authority, while keeping a small Section 1115 waiver to include only those parts of the KanCare program that can be implemented only under Section 1115 waiver authority. In mid-November 2022, KDHE planned to publicly post the draft of the Section 1115 waiver renewal application.

The steps KDHE must follow regarding the Section 1115 waiver renewal application were provided.

KanCare Clearinghouse

At the February 4, 2022, meeting, a KDHE representative provided the Joint Committee with updates on the status of the KanCare eligibility applications, referrals from the federally facilitated marketplace open enrollment, and staffing at the KDHE Clearinghouse. Continuing efforts were being made to recruit to fill vacant positions. A remote working staff pilot program was initiated to recruit qualified staff from any location in the state. The transition in eligibility operations from Maximus to Conduent was progressing smoothly. As of the meeting date, preparations for the eventual end of the PHE and transitioning back to normal operations were ongoing.

At the April 20, 2022, meeting, a KDHE representative provided updates on the status of the KanCare eligibility applications, indicating the number of applications over 45 days from receipt to determination were at record lows. Efforts to fill vacant positions continued, with an 8.0 percent reduction in the vacancy rate over the previous quarter. Preparations for the end of the PHE continued, including refresher training for staff on processing renewals. She explained the plan for the renewal applications and that, during the PHE, members could not have been removed from KanCare unless the person was deceased, the member requested an end to their eligibility, or the member moved out of the state. She stated messaging has been sent out through multiple venues to encourage members to provide updated contact information to assist in the eligibility determination after the PHE ends.

Another KDHE representative updated members on the April 4, 2022, deployment of the Kansas Modular Medicaid System, the state's Medicaid Management Information System (MMIS). An MMIS is a system of software, hardware, or both used for claims processing and information retrieval, required by CMS for state Medicaid programs to be eligible for federal funding.

At the September 26-27, 2022, meeting, a KDHE representative reported on the total number

of applications in-house, with less than 10.0 percent of the applications taking more than 45 days to process. Information regarding the current Clearinghouse staffing situation was presented, with 38 vacancies reflecting about a 12.0 percent vacancy rate. She noted there is turnover, but it is low enough the work can be covered. The representative presented the steps being taken in preparation for the end of the PHE and said the agency would be able to handle the large number of assessments to determine eligibility for Medicaid benefits. When the PHE ends, all current Medicaid beneficiaries will have to return forms for redetermination. Individuals have several modalities for submission of the forms, including the KanCare interactive voice response system.

A KDHE representative provided an update on KanCare eligibility at the November 2-3, 2022, meeting. She stated, as of the meeting date, there were 3,663 Medicaid eligibility applications in-house, with 352 taking more than 45 days to process. Of the 352 applications over 45 days, 46 applications were in active status and ready to be processed. Additionally, 306 applications were over 45 days in pending status, meaning they are waiting for more information. Regarding Clearinghouse staffing, she noted 28 staffing vacancies, or approximately 9.0 percent, as of the meeting date. The representative provided a summary of the preparation for the end of the PHE, noting the Kansas Integrated Eligibility Reporting Assistant (KIERA), a chatbot feature on the KanCare website for members to submit update contact information, had been implemented, with 400 address changes reported to date. The KDHE representative noted approximately 100,000 to 125,000 Medicaid members may lose eligibility when the PHE ends. Some may be eligible for affordable health coverage through the federal Marketplace.

KanCare Rate Increases

At the April 20, 2022, meeting, a KDHE representative noted KDHE increased a rate for obstetric delivery codes that had not been raised since 1994. KDHE was also pursuing a similar increase for durable medical equipment providers. She noted various rate increases included in 2022 House Sub. for SB 267 (appropriations bill) that would take effect July 1, 2022: pediatric primary care, ground and air ambulance rates, Intellectual and Developmental Disability (I/DD) Waiver

service providers, and the rebasing of nursing facility rates.

A review of increased rates for air and ground ambulance emergency medical services (EMS) passed by the Legislature in 2022 was provided at the September 26-27, 2022, meeting.

KanCare Benefits

At the September 26-27, 2022, meeting, a KDHE representative presented information on the addition of adult dental coverage to the base Medicaid coverage received, including restorations (crowns and fillings), periodontal services (planning and scaling), and silver diamine fluoride treatment.

Extended Postpartum Coverage

At the February 4, 2022, meeting, a KDHE representative noted, effective April 1, 2022, states could extend Pregnant Women coverage to 12 months postpartum through a Medicaid state plan amendment. The fiscal impact of the extension was given as \$10.5 million annually, including \$4.2 million in State General Fund (SGF) moneys.

At the April 20, 2022, meeting, the KDHE representative stated the extended postpartum coverage would be under the State Medicaid plan and could be under either a Section 1115 waiver or a Section 1915(b) waiver.

At the September 26-27, 2022, meeting, a KDHE representative said the State Plan amendments on the postpartum extension had been approved in early August 2022. KDHE was developing initiatives to improve the health outcomes of both babies and mothers.

At the November 2-3, 2022, meeting, the representative said the postpartum extension was backdated with an effective date of April 1, 2022.

Additional Funding for HCBS and PACE

At the February 4, 2022, meeting, a KDHE representative reviewed the federal American Rescue Plan Act (ARPA), which provided an additional 10.0 percent Federal Medical Assistance Percentage (FMAP) increase to supplement HCBS and PACE. Funds must be spent by March 30, 2024. KDHE and KDADS submitted a joint

spending plan to CMS in July 2021. Formal notice of approval was received on January 31, 2022. A list of KDHE projects for which ARPA funds are to be used was provided.

Health Care Access Improvement Program

At the February 4, 2022, meeting, a KDHE representative stated a technical amendment was submitted to CMS concerning the Section 1115 waiver asking to adjust the budget neutrality cap to accommodate an increased HCAIP assessment. As of the meeting date, CMS was actively working the request.

At the April 20, 2022, meeting, a KDHE representative stated legislation passed in 2020 increased the provider assessment and expanded its scope to include outpatient services, contingent on CMS approval. CMS approval would be needed by June 22 to publish the law in the *Kansas Register* and implement on July 1, 2022.

At the September 26-27, 2022, meeting, a KDHE representative reported KDHE had received notice in June 2022 that CMS had approved an amendment to the state's Section 1115 waiver that raised the budget neutrality cap to accommodate the influx of federal dollars generated by the new HCAIP. The tax waiver was also approved by CMS. The state was awaiting approval on other items before the new plan could be implemented. After the HCAIP change, the program will generate approximately \$300.0 million per fiscal year for the state, compared to approximately \$100.0 million previously.

Support and Training to Employ People Successfully Program

At the February 4, 2022, meeting, a KDHE representative updated the Joint Committee on the STEPS program. As of the meeting date, 14 people were enrolled in the program, 9 from the I/DD population and 5 from the behavioral health population. There had been 118 referrals to the program. The first STEPS participant had secured competitive, integrated employment.

At the April 20, 2022, meeting, a KDHE representative updated the Joint Committee on the enrollment in the program, noting the program was doing well.

An update at the September 26-27, 2022, meeting provided a breakdown of the STEPS program participants and indicated 36 individuals were enrolled.

At the November 2-3, 2022, meeting, a KDHE representative reported the STEPS program had 38 individuals enrolled, up from 36 in September 2022. Of the 38 individuals enrolled, 24 were on the I/DD Waiver waitlist, 2 on the Physical Disability (PD) Waiver waitlist, and 12 in the behavioral health population. There had been 181 referrals to the program.

Working Healthy Program

At the November 2-3, 2022, meeting, a KDADS representative explained the Working Healthy Program (WH), Kansas' "Medicaid Buy-in" program, which allows individuals with disabilities to keep Medicaid coverage while on the job. Participants can earn up to 300 percent of the federal poverty level (FPL) and keep Medicaid coverage. In a typical month, 1,250 KanCare recipients participate in the WH program.

Participants earning at least 100 percent of the FPL pay monthly premiums. After the 2021 increase to the HCBS protected income level, some WH participants on the HCBS waiver waitlists considered moving to a waiver because they would have a \$0 client obligation under a waiver versus a monthly WH premium, the KDADS representative stated. In some cases, choosing WH was more expensive for the member. KDHE was reviewing current WH premium rules that would keep employment an attractive option.

COVID-19 Update

At the February 4, 2022, meeting, a KDHE representative provided a COVID-19 update of recent highlights, special authorities exercised across the KanCare program, and an overview of the changes to KanCare.

At the April 20, 2022, meeting, a KDHE representative noted the following COVID-19 additions to Medicaid coverage: at-home COVID-19 testing kits, monoclonal antibody treatment, and remdesivir antiviral medication.

PHE Extension

At the April 20, 2022, meeting, a KDHE representative stated the Secretary of the U.S. Department of Health and Human Services extended the PHE until July 15, 2022, which would permit Kansas to draw down an additional 6.2 percent FMAP, about \$65.0 million per quarter through the end of September 2022. She noted the State had drawn down approximately \$519.0 million in additional federal dollars through December 31, 2021, offsetting other costs to the State. At the end of the PHE, the eligibility redetermination process for the approximately 60,000 individuals whose eligibility status must be redetermined would take place gradually over a 12-month period, as allowed per CMS guidance.

At the September 26-27, 2022, meeting, a KDHE representative stated the PHE was set to expire on October 13, 2022, but would probably be extended as no notice of the expiration was provided 60 days in advance of the expiration.

At the November 2-3, 2022, meeting, a KDHE representative stated the PHE was extended to January 11, 2023. If the PHE were to expire on January 11, 2023, a 60-day advance notice of such expiration must be received by November 12, 2022. If the notice is not received, the PHE would extend another three months.

KanCare Metrics

KanCare metrics were provided at each Joint Committee meeting. A KDHE representative provided KanCare metrics at the February 4, 2022, meeting, including the overall enrollment in KanCare in 2021; a review of claims, denials, and grievances; and customer service efforts.

At the April 20, 2022, meeting, a KDHE representative reviewed the updated data on KanCare, including the financial status of each MCO per National Association of Insurance Commissioners filings, for the quarter ending December 31, 2021. Joint Committee members requested additional metrics for future reporting, such as the number of denied claims ultimately resolved and the reasons for the denials.

At the September 26-27, 2022, meeting, a KDHE representative provided KanCare enrollment data, a review of some of the MCO

value-added benefits (VABs), data regarding the final resolution of claims denied by the MCOs, and information on the MCOs' profit or loss for the third quarter of 2021 through the second quarter of 2022.

Section 1115 Waiver Neutrality

At the April 20, 2022, meeting, a KDHE representative said the State received verbal notice from CMS on April 13, 2022, that the State's proposal to correct what the State saw as an error in the budget neutrality cap and to add additional cushion to its Section 1115 waiver budget neutrality spending caps had been approved. The KDHE finance team determined the budget neutrality cushion amounted to about \$375.0 million. She noted, once the new investments in Medicaid for FY 2023 are finalized, KDHE would work with the State's actuary to determine the impact of those investments on the Section 1115 waiver budget neutrality.

KanCare Ombudsman

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

At the February 4, 2022, meeting, the KanCare Ombudsman provided an overview of the 2021 KanCare Ombudsman Annual Report. An overview of the results of the Office services to KanCare members, applicants, and stakeholders was provided. She said the Office has a strong partnership with providers and community organizations through its outreach efforts. As of this meeting date, there were six new satellite offices in various stages of training.

She said a survey conducted in October and November of 2021 provided valuable feedback. A concern found in the survey results indicated, despite Office outreach efforts over the past eight years, a significant number of people still were not aware of the Office and did not know how to contact it. A meeting was planned for February 2022 to focus on more effective outreach going forward. She described some options for making community resource information available.

The KanCare Ombudsman also reviewed a list of enhancements and changes to the Office. These

included the Office's move from KDADS to the Kansas Office of Public Advocates (KOPA); both the Office and KOPA were established by executive order, and new and significantly revised resources were acquired in 2021. The KanCare Ombudsman stated other state agencies would be prohibited from interfering with the work of the KanCare Ombudsman in the KOPA. The Division of the Child Advocate was also created by executive order and is within the KOPA.

At the April 20, 2022, meeting, the KanCare Ombudsman reviewed the Quarter 1, 2022, KanCare Ombudsman Report. She said the number of Office volunteers has increased, allowing more timely responses for those who contact the agency. She noted the impact of COVID-19, which caused an initial decrease in the number of calls. She referenced the KanCare General Information Fact Sheet for psychiatric residential treatment facilities (PRTFs). The fact sheet explains a PRTF and its services and outlines the appeals process for discharge and the parent's right to an appeal, which previously was not easily accessible information.

The KanCare Ombudsman presented her report for Quarter 2, 2022, at the September 26-27, 2022, meeting. She said initial contacts to the Office continued to be lower due to the maintained Medicaid coverage during the PHE. As of July 1, 2022, KOPA is an independent agency attached to the Department of Administration. A grievance process for the Office has been created in cooperation with KDHE and is on the KanCare Ombudsman website. The Office worked with the KDHE Eligibility Team to create new training on the application used for elderly and persons with disabilities and the Medicaid Savings application. She stated the Office met with the three MCOs to discuss ways to provide information to their members and providers about the Office. The Office is using a new online software program for staff and volunteer training.

At the November 2-3, 2022, meeting, the KanCare Ombudsman stated staffing issues were affecting activity response within the Office. She noted the changes from the second calendar quarter of 2022 to the third calendar quarter of 2022, including a drop in the rates for initial responses and case closings. Some projects were being put on hold until the beginning of 2023,

including transitioning to a new online volunteer training software and beginning the contract for an online tracker/case management system. A survey was conducted in October 2022 for feedback on how the office was doing, with more than 600 responses received at the time of the meeting.

Medicaid Inspector General

At the February 4, 2022, meeting, the Medicaid Inspector General stated the Office of the Medicaid Inspector General (OMIG) continued to oversee an increasing number of complaints of fraud, waste, abuse, and illegal acts concerning the Kansas Medicaid program (KanCare), the MediKan program, and the state CHIP. The OMIG concluded its audit of the HCBS program and was preparing a draft report that would be sent to KDHE and KDADS for comment.

The Medicaid Inspector General said an area of continued review is that of Medicaid beneficiaries not reporting financial windfalls, particularly those of lottery or casino winnings. The focus is on individuals with winnings greater than \$10,000. As of the meeting date, three individuals had been identified and investigations had been opened. He stated legislation may be needed to deal with individuals receiving benefits who have won lotteries or have casino winnings. On January 5, 2022, OMIG conducted an engagement meeting with KDHE concerning the start of a performance audit of eligibility determinations for Medicaid recipients who have moved out of Kansas. He also stated a looming problem of eligibility fraud was anticipated after the PHE ends and KDHE begins to conduct eligibility determinations.

At the April 20, 2022, meeting, the Medicaid Inspector General announced the OMIG planned to conduct one scheduled review or audit each quarter starting with the current quarter. The scheduled review for the second quarter of 2022 would be focused on the billing practices of personal care attendants while Medicaid beneficiaries were in the hospital in calendar year 2021. The OMIG concluded an audit of the HCBS program related to redetermination of Medicaid beneficiaries that found KDHE did not have an effective system for tracking redeterminations of Medicaid beneficiaries on the HCBS program and the MCOs were not exercising their oversight function of the Medicaid beneficiaries' use of

services. He stated the OMIG also continued to review Medicaid beneficiaries not reporting financial windfalls, particularly windfalls from lotteries and casino winnings, to KanCare. A proviso added to the appropriations bill [2022 House Sub. for Sub. for SB 267, Section 58(e)] requires the Kansas Lottery to provide to the OMIG information for all persons who claim a lottery prize of \$10,000 or more.

The Medicaid Inspector General noted the OMIG was continuing an audit tracking eligibility determinations for Medicaid recipients who had moved out of the state. When the PHE ends, an audit will examine eligibility fraud as KDHE begins the process of conducting eligibility redeterminations. He stated the Legislature included two additional auditor positions and a corresponding budget increase to cover the salaries for FY 2023 and the remainder of FY 2022. This would bring the OMIG office staffing to six positions, including three auditors.

At the September 26-27, 2022, meeting, the Medicaid Inspector General stated the OMIG continues to oversee an ever-increasing number of complaints of fraud, waste, abuse, and illegal acts concerning the Kansas Medicaid program, the MediKan program, and the state CHIP. The OMIG was concluding its audit concerning eligibility determinations for Medicaid recipients who have moved out of the state, with a report to be available in November 2022. The OMIG initiated a performance audit of eligibility determination for Medicaid recipients on the Transitional Medical Assistance (TransMed) program and another on Medicaid beneficiaries with multiple identification numbers. The OMIG continued to review the issue of Medicaid recipients not reporting financial windfalls.

He stated the Legislature should consider increasing the State's capacity for Medicaid eligibility fraud investigations by either amending the OMIG's statute or providing additional resources in other agencies to combat eligibility fraud.

At the November 2-3, 2022, meeting, the Medicaid Inspector General stated the OMIG had concluded its audit concerning eligibility determinations for Medicaid recipients who have moved out of the state. The report had been given

to KDHE, with the response to be published by the end of November 2022. Additionally, in cooperation with KDHE, a fraud awareness training was developed and would be provided to KDHE employees on an annual basis and for all new KDHE employees to help employees be better prepared to identify fraud schemes and how to report. He noted the need for additional staff to address the increase in complaints received.

The Medicaid Inspector General also reported law enforcement agencies were required to have a court order or subpoena for online access to information on K-TRACS, the prescription drug monitoring program for the State of Kansas administered by the Kansas Board of Pharmacy. He stated the Kansas Board of Pharmacy had stated a court order or subpoena was required by statute to access K-TRACS records, and a statutory change would be needed to amend that requirement. He requested changes be made to grant law enforcement agencies ease of access to K-TRACS data so it can be a greater resource to law enforcement when making drug-related investigations.

KDADS Overview and Updates

At the February 4, 2022, meeting, the Secretary for Aging and Disability Services (Secretary) provided an initial overview of the department's priorities and issues including the ARPA HCBS 10.0 percent FMAP enhancement for Medicaid HCBS, the implementation of certified community behavioral health clinics (CCBHCs), the nursing facilities for mental health (NFMHs) settlement agreement implementation, and recruitment and staff retention at state hospitals.

The Secretary provided a breakdown of the \$29.3 million budget enhancement to increase mental health services across the state, which would go toward adding 50 new regional beds, expanding the provider pool for mobile competency evaluations, implementing crisis intervention centers, and implementing the State's Suicide Prevention Plan. Other KDADS budget enhancements included establishing a behavioral crisis unit at Parsons State Hospital, equalizing reimbursement rates across all HCBS waivers and providing a 2.0 percent increase for Personal Care Services (PCS) for each waiver, and adding 8.0

health facility surveyor full-time equivalent (FTE) positions.

At the April 20, 2022, meeting, the Secretary said approximately \$51.0 million of the \$80.3 million in the ARPA 10.0 percent FMAP enhancement for Medicaid HCBS would be used for workforce recruitment and retention bonuses for direct service workers and their direct supervisors. The Workforce Recruitment and Retention Program was launched March 28, 2022, and provider applications were due by April 29, 2022.

The Secretary reported cost estimates of about \$23.0 million more in SGF moneys than the appropriated amounts have delayed implementation of CCBHCs. The increased estimate resulted from a combination of the actual costs of community mental health centers (CMHCs) and the anticipated costs they had built in for the service expansion needed. Committee members expressed disapproval of a KDADS-proposed cost cap. The Secretary noted talks with CMHCs regarding the cost estimates continued.

The Secretary explained the State's decision not to enforce the federal health care worker vaccine mandate. Governor Kelly reached an agreement with the U.S. Secretary of Health and Human Services not to use the KDHE and KDADS surveyors to enforce the mandate. CMS assumed the mandate responsibilities and reduced funding to the State by \$350,000 for assuming those responsibilities.

The Secretary also noted KDADS contracted with private hospitals across the state to take state hospital patients, but this measure would not add capacity to the system. To add capacity, the Governor recommended \$15.0 million to add 50 regional beds: 25 psychiatric beds and 25 forensic beds in Sedgwick County. KDADS was working with Sedgwick County leadership regarding the county taking the lead and responsibility for site location and securing a site prior to the RFP process.

At the September 26-27, 2022, meeting, the Secretary stated \$51.0 million of the ARPA HCBS 10.0 percent FMAP enhancement funds for Medicaid HCBS services was distributed to the MCOs under the Workforce Recruitment and

Retention Bonus program, directly impacting 28,000 direct-support professionals in the state. Funds would also be used for an I/DD waitlist study. Progress continued on the implementation of the CCBHCs with additional grant money received from the federal Substance Abuse and Mental Health Services Administration (SAMHSA). KDADS also received a \$5.0 million grant to be used for a Money Follows the Person program. Planning continued for regional psychiatric and forensic beds in partnership with Sedgwick County. The Secretary noted recruitment and retention continued to be a priority at the state hospitals, and KDADS was reviewing the impact of the 24/7 Facility Pay Plan. The 24/7 Facility Pay Plan included a raise in the base pay rates for nursing staff at state hospitals and Kansas Department of Corrections staff at facilities operating 24 hours per day, 7 days per week. The State Finance Council approved Strengthening People and Revitalizing Kansas (SPARK) funds for the FY 2022 costs of these increases. Funding for FY 2023 was included in the FY 2023 approved budget.

At the November 2-3, 2022, meeting, the Secretary provided agency updates on the spending plan for the 10.0 percent FMAP enhancement, CCBHC certification, state hospital staffing, and ARPA funds for adult care homes. She also noted she was reviewing recommendations from the Governor's Behavioral Health Services Planning Council subcommittees, the Senior Care Task Force, and other interim committees to begin planning for the 2023 Legislative Session.

She also reported receipt of CMS approval of the State Plan to implement a new work requirement for able-bodied adults without dependents on the Supplemental Nutrition Assistance Program (SNAP) [2022 Senate Sub. for HB 2448]. The work requirement does not apply to Temporary Assistance to Needy Families (TANF) recipients. She provided clarification on the design of the Workforce Retention and Recruitment Program and the payments provided to full-time and part-time staff.

HCBS

At the February 4, 2022, meeting, a KDADS representative provided a summary of the HCBS waiver enrollment. A list of initiatives KDADS is

focused on was provided. KDADS is expected to draw down approximately \$80.3 million in additional federal match for HCBS, which would result in SGF savings to be reinvested in HCBS-related initiatives. A plan has been submitted to CMS, and a conditional approval letter was received on January 31, 2022. Projects will focus on workforce, employment, and access to care.

Regarding the HCBS reimbursement rate, a KDADS representative noted items in the Governor's January 2022 budget recommendation, including an increase in the specialized medical care (SMC) rate for the I/DD Waiver, an increase in the lifetime limit for Assistive Services, and standardized PCS rates.

At the April 20, 2022, meeting, a KDADS representative noted the numbers of beneficiaries had increased for all waivers. She highlighted current-year HCBS waiver projects, which include the 10.0 percent FMAP enhancements; compliance with the CMS Final Settings Rule; Brain Injury (BI) Waiver policies; waiver amendments, including telehealth, paid family caregivers, and waiver quality performance measures; and Autism and Serious Emotional Disturbance (SED) Waiver renewals, for which applications have been submitted to CMS. She discussed how another FMAP enhancement project, Strategic Intercept Model (SIM) Mapping, is designed to bring together key stakeholders to explore how behavioral health and criminal justice systems intersect in serving individuals with behavioral health needs who are involved in the criminal justice system.

At the September 26-27, 2022, meeting, a KDADS representative provided updates on the HCBS waiver enrollment, HCBS waiver initiatives, 10.0 percent FMAP enhancement projects, and the I/DD waitlist study.

At the November 2-3, 2022, meeting, the Secretary provided an update on the HCBS waiver enrollment and waitlists, the waitlist study, HCBS-related initiatives, the SIM, the Employment First Act Initiative, the HCBS Final Settings Rule, and the foster care population with I/DD. The highest priority project, the Workforce Recruitment and Retention Bonus Program, was reviewed. Community developmental disability organizations and other HCBS providers will be

asked to complete an exit survey in March 2023 to measure the impact of the increase in pay to direct support workers.

The Secretary also provided an overview of the Employment First Act Initiative that KDADS is developing with the assistance of stakeholders. The initiative would require competitive and integrated employment to be considered the first option when serving persons with disabilities who are of working age to obtain employment. Competitive employment would be full time or part time in an integrated setting, with compensation being at or above minimum wage. The wages and benefits would be the same as for someone without a disability performing the same or similar work. Competitive employment and integrated setting were defined.

The Secretary provided follow-up information from the September 2022 meeting regarding the number of children in foster care with I/DD by disability and the number who are on the I/DD Waiver. The process for addressing children in foster care with I/DD whose behaviors result in interaction with the criminal justice system was described.

HCBS Waiver Waitlists and Waitlist Study

A KDADS representative provided an update on the HCBS waiver waitlists at every Committee meeting.

At the September 26-27, 2022, meeting, a KDADS representative stated the I/DD waitlist study will assist the State in gathering information on current needs and anticipated needs during the next five years for individuals on the I/DD waitlist. It was noted that a significant number of people were moving off the waitlist because of crisis. A list of the benefits of the study was provided. A goal of the waitlist study is to collect data from the time an individual is put on the waitlist; KDADS then will be able to predict future needs, not just for the individual, but for system capacity.

At the November 2-3, 2022, meeting, the Secretary reviewed a chart showing the HCBS waiver enrollment, I/DD and PD Waiver waitlists, and the Autism Waiver proposed recipient list. As of October 11, 2022, there were 4,840 persons on

the I/DD Waiver waitlist, 2,427 on the PD Waiver waitlist, and 428 on the Autism Waiver proposed recipient list. The Kansas University Center on Developmental Disabilities had started work on the study. A review of the research questions for the waitlist study was provided.

HCBS Final Settings Rule

At the February 4, 2022, meeting, a KDADS representative provided a review of the HCBS Final Settings Rule. [*Note: This CMS rule requires states to review and evaluate HCBS settings, including residential and nonresidential settings.*]

At the April 20, 2022 meeting, compliance with the HCBS Final Settings Rule was reported at 75.0 percent. The remaining 25.0 percent of providers and settings were required to submit remediating documents to KDADS by June 1, 2022. By September 2022, KDADS expected to know which of the 25.0 percent would be able to comply by the deadline of March 17, 2023.

An update was provided at the September 26-27, 2022, meeting.

At the November 2-3, 2022, meeting, the Secretary provided an update on compliance with the HCBS Final Settings Rule indicating, as of October 21, 2022, 91 percent of the settings engaging with the Community Connections Project were in compliance. The Community Connections Project will be phased out by December 31, 2022, with KDADS bringing the required ongoing compliance monitoring activities in-house.

Brain Injury Waiver Transition Plan

Recommendations from the BI Waiver Policy Workgroup were summarized by a KDADS representative at the February 4, 2022, meeting. KDADS was working on a report on the BI Waiver. The agency added staff to assist in reviewing the BI waiver.

The KDADS representative stated the BI Waiver transition plan would integrate a review process and evidence-based assessment to determine progress and be wrapped up into one continual plan to ensure needed rehabilitation services were being provided to meet the goals of

the person receiving the services and the services are appropriate; the person receiving services would then move on to either another more long-term waiver or potentially drop off of waiver services. If progress was not seen on the BI Waiver, the person might be moved to the PD or Frail Elderly (FE) Waiver. However, if a person was still improving on some therapies on the BI Waiver, the individual would not be moved to a different waiver.

Telehealth

A KDADS representative stated at the February 4, 2022, meeting, that the waivers did not allow for telehealth. An amendment would need to be sent to CMS for approval. KDADS was working with a technical assistance provider to work out the details. It is anticipated CMS will approve the telehealth amendment. Not all waiver services will be included in the telehealth amendment, as some of the HCBS waiver services do not lend themselves to telehealth.

Behavioral Health

Psychiatric Residential Treatment Facilities

At the February 4, 2022, meeting, a KDADS representative stated 152 individuals were on the PRTF waitlist as of January 27, 2022. Of these individuals, 42 were in foster care. Of the current 424 licensed PTRF beds, 161 were not being used due to staffing shortages and COVID-19 protocol shrinkage. KDADS continued to meet with MCOs and the Kansas Department for Children and Families (DCF) to review individual cases awaiting PRTF services. KDADS was analyzing referral data to determine whether SED Waiver services were being applied for and provided prior to referral to PTRFs.

Addressing the needs of children on the PRTF waitlist, a KDADS representative stated KDADS tracked the children on the list by their CMHC and looked to identify whether the CMHC is providing SED Waiver services while the children are awaiting admission to a PRTF. Children with a more acute need than the sub-acute facility for the PRTF would go to an acute children's hospital if a bed is available. There are multiple acute children's hospitals in the Wichita and Kansas City areas. The medical necessity to go into acute

psychiatric hospitals is different than the medical necessity to go into a PRTF.

At the April 20, 2022, meeting, a KDADS representative reported 168 on the waitlist for PRTFs, an increase of 16 from the previous quarter. Of the 168, 51 were children in foster care, an increase of 9 from the previous report. Of the 424 available PRTF beds, 154 were unoccupied due to staff shortages.

At the September 26-27, 2022, meeting, a KDADS representative reported that as of September 15, 2022, 58 individuals were on the MCO waitlist for PRTFs, down 110 from the previous report. Of those on the waitlist, 24 were in foster care, which was down 27 from the previous report. Of the 424 PRTF licensed beds, 157 were not being used by providers mainly due to staffing shortages. KDADS officials continued to meet weekly with the MCOs to review individual cases on the waitlist. The representative said the MCOs continued to make good progress in connecting members with community services. A chart reflecting changes in waitlist numbers by MCO, PRTF waitlist and census trends, and information regarding the use of SED Waiver services prior to PRTF waitlist determination by the MCOs or CMHCs was provided.

At the November 2-3, 2022, meeting, a KDADS representative reported that as of October 20, 2022, 68 individuals were on the MCO PRTF waitlist, with 25 of those individuals in foster care. Of the 424 PRTF licensed beds, 155 were not being used by providers due to staffing shortages and COVID-19 protocols shrinkage. The census was 269, of which 74 were foster care youth.

Qualified Residential Treatment Programs

At the February 4, 2022, meeting, a KDADS representative said KDADS received guidance from CMS that any qualified residential treatment program (QRTP) with more than 16 beds would be considered an institution for mental disease (IMD) and would be unable to bill Medicaid. KDADS was working with DCF to transition QRTPs with more than 16 beds to PRTFs to allow for Medicaid billing.

Institutions for Mental Disease

A KDADS representative stated at the February 4, 2022, meeting that there was a waiver from CMS for IMDs. CMS had approved the substance use disorder portion, but approval for the mental health side was pending. Officials expected the waiver process would probably take a year.

Certified Community Behavioral Health Clinics

At the February 4, 2022, meeting, a KDADS representative provided an update on the implementation of the CCBHC program. A timeline was provided noting the May 1, 2022, go-live date.

At the September 26-27, 2022, meeting, a KDADS representative reported the agency had certified nine CCBHCs to date. Of the nine new CCBHCs, six were operative in May 2022. Onboarding of the next scheduled group of CMHCs to become CCBHCs by July 1, 2023, continued. The remaining eight are scheduled for July 1, 2024. The Medicaid State Plan amendment for CCBHC services had been approved by CMS. Baseline reviews for the current CCBHCs would begin in October 2022 for technical assistance and performance assessments. According to MCO claims data, 127,264 CCBHC service claims had been received since the go-live date of May 1, 2022. Work continued on the CCBHC model, including working on necessary regulations and policies to sustain the program.

At the November 2-3, 2022, meeting, a KDADS representative said the first baseline review with one CCBHC was in mid-October. The main service delivery constraint for the facility was having crisis services available 24 hours per day, 7 days per week. The baseline reviews for the other eight CCBHCs were expected to be completed in January 2023. KDADS was working on the recent SAMHSA planning grant opportunity in hopes Kansas can become a demonstration state for the CCBHC model. For the SAMHSA grant, 15 states would be selected as pilot states, and 10 would be selected for the demonstration status.

Hays Children's Psychiatric Inpatient Hospital

At the April 20, 2022, meeting, a KDADS representative highlighted the 14 new beds for children's psychiatric inpatient hospital treatment to be available in January 2023 in Hays. KDADS contracted with KVC Hospitals to open and maintain operation of this new facility through June 30, 2027. The new facility will operate in the State Institution Alternative Program. A status update was provided at each subsequent meeting.

Nursing and Long-Term Care Facilities

At the February 4, 2022, meeting, a KDADS representative provided a list of the areas over which the Nursing Facility Program had oversight. A summary of the Medicaid monthly average caseload at nursing facilities was provided. In calendar year 2021, 15 long-term care facilities closed and 16 opened.

At the April 20, 2022, meeting a KDADS representative reported that no facilities closed during the third quarter of FY 2022, and one new facility opened in March 2022, in Ford County. She noted the nursing facilities' Medicaid monthly average caseload had been trending downward.

A KDADS representative reported at the September 26-27, 2022, meeting, that the Nursing Facility Cost report reviews have been completed. The FY 2023 nursing facility and nursing facility for mental health rates had been finalized and sent to the providers and the MCOs. Nursing facilities were completing and submitting beneficiary agreements needed prior to payment in conjunction with the \$15.0 million in federal ARPA funds allocated by the 2022 Legislature. A chart was provided noting the monthly average caseload for nursing facilities. The number of nursing facility residents has decreased overall. A slight increase in the number of nursing facility residents was seen in the fourth quarter of FY 2022. Information regarding the number of long-term bed closures and openings over the past five years was provided. In response to questions regarding surveys, the representative noted KDADS had 33 surveyor vacancies out of 65 positions.

At the November 2-3, 2022, meeting, a KDADS representative noted the FY 2023 nursing facility and NFMH rates have been finalized and

the notices have been sent to the nursing facility providers and the MCOs. A chart reflecting the nursing facilities' Medicaid monthly average caseloads was reviewed, showing caseloads continue to decline.

Adult Care Home Receiverships

At the February 4, 2022, meeting, a KDADS representative reviewed the facilities KDADS took into receivership. Only 1 facility, out of 22, remained on the market for sale.

The KDADS representative reported at the April 20, 2022, meeting that one facility in Topeka remained in receivership. Updates at the September 26-27, 2022, and November 2-3, 2022, meetings confirmed the one receivership remained unresolved.

Client Assessment Referral and Evaluation

At the February 4, 2022, meeting, a KDADS representative noted a Client Assessment Referral and Evaluation (CARE) report was available on the KDADS website. A breakdown of the members of the CARE team and the Level II evaluations was provided. An update on the status of the CARE assessments was provided.

At the November 2-3, 2022, meeting, a KDADS representative reported KDADS continued to recruit temporary staff and current Behavioral Health Services KDADS staff to work on the Medicaid and non-Medicaid nursing facility admission assessments still pending data entry into the system. Additional information was provided on steps KDADS was taking to address the backlog.

Long-term Care Facility Staffing

At the February 4, 2022, meeting, a KDADS representative provided an overview of how long-term care (LTC) staffing was being addressed under the authority of 2022 HB 2477 in conjunction with the current federal Section 1135 waiver, including allowing temporary aides to provide resident care with eight hours of training through January 20, 2023; extending any renewal deadline for licensing, certification, or registration through January 20, 2023; allowing temporary credentials for people previously licensed by KDADS; and allowing temporary licenses for

facilities needing to respond to disease outbreaks by properly grouping residents based on certain characteristics, such as separating those with and without the disease.

Two exceptions authorized for certified nurse aide (CNA) and certified medication aide (CMA) courses that began on or before January 1, 2022, were noted. These exceptions were authorized per the 2019 COVID-19 Guidance issued by KDADS pursuant to the Governor's Emergency Declaration and Executive Orders. Charts were provided reflecting a yearly comparison on the number of courses approved by start date and initial certification for CMAs, CNAs, and home health aides (HHAs).

At the April 20, 2022, meeting, a KDADS representative commented on the impact of enacted 2022 SB 453, which updates the requirements for CNA course instructors, the experience requirement for registered nurses (RNs) who evaluate the skills demonstration portion of a CNA course, and the time frame for unlicensed employees to complete CNA training to provide direct care to residents, and expands the entities allowed to be CNA course sponsors. She reviewed the termination dates for the CMS COVID-19 Emergency Declaration Waivers for LTC facilities, skilled nursing facilities, and nursing facilities. She noted KDADS was working with CMS to clarify the termination dates for in-service training and certification of nurse aides as they apply in Kansas.

The KDADS representative also noted the federal government had waived certain requirements regarding RNs under certain circumstances. Kansas state regulations match federal regulations, but KDADS does not have the authority to waive state regulations to accommodate the temporary changes to federal requirements. The representative noted KDADS sought a budget proviso to allow the Secretary, on a case-by-case basis, to allow these waivers of federal requirements that are in the best interest of the health and safety of residents served in a nursing facility.

The KDADS representative also noted the State is not within the required timeline for federal recertification surveys due to a backlog in surveys

and complaint investigations and an increase in complaint investigations the agency performs.

A KDADS representative provided an update on the CMS course instructor requirements at the September 26-27, 2022, meeting. The CMS COVID-19 Emergency Waiver was updated on August 29, 2022, to allow requests to extend waivers allowing facilities to utilize CNAs with minimum training as long as need is shown using a series of qualifying criteria. The representative provided data on the number of CNA, CMA, and HHA courses based on start date with comparisons from 2020 and 2021. Data was also provided reflecting certifications for CNAs, CMAs, and HHAs; initial certifications by region; and CNA course cancellations.

At the November 2-3, 2022, meeting, a KDADS representative stated the Division of Health Occupations Credentialing within the KDADS Survey, Certification, and Credentialing Commission was working with Stormont Vail Health to complete the pilot Nurse Aide Training and Competency Evaluation Program. Enactment of 2022 SB 453 allowed hospitals, among other facilities, to provide CNA training.

She said several Section 1135 blanket waivers tied to the public health emergency (PHE) were to expire 30 to 60 days from the April 7, 2022, CMS notice. However, CMS announced on August 29, 2022, that requests could be made to extend the waiver allowing facilities to utilize the CNAs with minimum training if the State or facility could show need using qualifying criteria. In total, 2 facilities in Kansas were approved for the individual facility waiver, and 17 states were approved for the statewide waiver.

These CNAs with minimum training would be expected to proceed with completing the full CNA training required. Federal law required 75 hours of CNA training for certification. Kansas law requires 90 hours for certification.

The KDADS representative stated the current state waiver authorization for temporary nurse aides (TNAs) enacted in 2022 HB 2477 expires on January 20, 2023. Even if the PHE is extended, the State would no longer have a mechanism after January 20, 2023, to allow for the continued use of TNAs.

Promoting Excellent Alternatives in Kansas Nursing Homes Program

A review of the Promoting Excellent Alternatives in Kansas Nursing Homes (PEAK) program was provided by a KDADS representative at the February 4, 2022, meeting, with a further overview provided at the April 20, 2022, meeting.

At the September 26-27, 2022, meeting, a KDADS representative reported PEAK was working with over 50 homes on person-centered care education. Several PEAK trainings occurred during the month of September.

At the November 2-3, 2022, meeting, a KDADS representative reported PEAK resumed full activity after reevaluation of the program. There were 134 homes participating. During September 2022, six Mentor Home Experience trainings were scheduled at higher performing PEAK homes.

Use of Antipsychotic Drugs in Nursing Facilities

At the February 4, 2022, meeting, a KDADS representative provided information regarding the level of use of antipsychotic drugs in residential facilities other than certified nursing facilities, such as state-licensed-only facilities and home plus; the medical conditions excluded in reporting totals for antipsychotic drug use (including schizophrenia, Huntington's disease, and Tourette syndrome); and the steps MCOs were taking to track the diagnoses excluded from antipsychotic drug measurements. He stated there is no survey measure or reportable measure of antipsychotic use for these facilities. A summary of the MCOs' activities in tracking these excluded diagnoses was provided.

At the April 20, 2022, meeting, the KDADS representative reviewed improvement in Kansas' ranking in the use of antipsychotic drugs in nursing facilities from 51st and 42nd in the nation in 2011 and 2018, respectively, to 39th in the nation. She said the state was ranked 37th two years ago but has dropped in ranking due to an increase in antipsychotic use evident since the beginning of the PHE. She noted a decrease in the number of direct-care staff could be a contributing factor. An update was provided at the September 26-27, 2022, meeting, noting KanCare MCOs

have a pay-for-performance measure tied to reducing inappropriate antipsychotic drug use in nursing facilities.

Impact of COVID-19 on LTC Facilities and Surveys

A review of the visitation guidance for nursing homes updated on November 22, 2021, was presented by a KDADS representative at the February 4, 2022, meeting. It was noted that facilities can no longer limit the frequency or length of visits for residents, or the number of visitors, or require advance scheduling of visits.

At the April 20, 2022, meeting, a KDADS representative stated the adult care home visitation and testing guidance was updated, as well as surveyor testing and personal protection equipment guidance to correspond with federal guidance. Surveyors who perform surveys at federally certified nursing facilities must be vaccinated; for those not fully vaccinated or who do not want to divulge vaccination status, weekly surveillance testing was required. Surveyors may apply for both medical and religious exemptions. As there was sufficient survey work to do on state-licensed-only facilities, state surveyors who did not meet the federal vaccine requirement continued to survey those facilities.

Revisions to the Adult Care Home Testing and Visitation guidelines were presented and updates to the guidance for survey testing and personal protective equipment were provided at the September 26-27, 2022, meeting.

At the November 2-3, 2022, meeting, a KDADS representative reported new CMS COVID-19 guidance removed the vaccination requirement for state survey staff to survey federally licensed facilities on behalf of CMS. The visitation and testing guidance for adult care homes and the surveyor testing and masking requirements were updated.

State Hospitals

At the February 4, 2022, meeting, a KDADS representative reported on state hospital staff recruitment and retention. He reviewed the 24/7 Facility Pay Plan, which included both permanent and temporary pay increases for state employees. KDADS received \$9.6 million from the

Strengthening People and Revitalizing Kansas (SPARK) Committee for the FY 2022 costs of these increases. Funding for FY 2023 was included in the Governor's Budget recommendation. He reported recruiting and retention of staff had stabilized.

At the April 20, 2022, meeting, a KDADS representative highlighted the flexibility in the 24/7 Facility Pay Plan for staff recruitment and retention and the additional funding that supplements the budgetary allocations. The pay increase began in January 2022, and continued funding for the pay plan was approved in the FY 2023 budget. He provided data on the vacancy rate for state hospital direct-care workers and all worker positions.

At the September 26-27, 2022, meeting, a KDADS representative provided an update on the 24/7 Facility Pay Plan, including historical information on staff vacancies at state hospitals, efforts to recruit and retain staff, and results of recruiting efforts at Larned State Hospital for 2022.

At the November 2-3, 2022, meeting, a KDADS representative reviewed the number and percentage of employee vacancies by state hospital and efforts to recruit and retain staff. He provided a list of the State Institution Alternatives (SIAs) and their utilization and a map noting the locations of the adult inpatient psychiatric beds.

Osawatomie State Hospital Moratorium

A KDADS representative reported at the February 4, 2022, meeting that the moratorium at Osawatomie State Hospital (OSH) was lifted for voluntary admissions on January 3, 2022. A list of the SIAs and their locations was provided. An update on the remodeling of the Biddle Building at OSH was provided. The Biddle B2 remodel was complete with the addition of 14 certified beds. The East Biddle remodel has a projected date to occupy renovated space of September 2023. There is a continued effort to recruit additional staff at state hospitals through wage increases. The Governor's January 2022 budget proposal includes the addition of five FTE positions to create a Social Detox Program, and three beds at Adair Acute Care would be reserved for this program. KDADS implemented census management to

avoid filling the hospital above capacity and risking losing certification.

At the April 20, 2022, meeting, a KDADS representative reported lifting of the moratorium at OSH allowed admission of ten voluntary patients through April 5, 2022. Three social detox beds had been reserved but had not been used as anticipated, when compared to use prior to the moratorium. The representative noted the medical screening and COVID-19 test requirement prior to admission could be creating an obstacle, and a resolution was being considered.

He noted the implementation of census management to avoid filling the hospital beyond capacity had been working. Three, four, or five individuals daily are on a waitlist for admission. He noted the SIAs have helped keep numbers on the waitlist down.

At the September 26-27, 2022, meeting, a KDADS representative stated 17 voluntary patients had been admitted through September 15, 2022. He also provided a list of the SIAs, a map reflecting the locations of adult inpatient psychiatric beds, and an update on the remodeling efforts at OSH.

A KDADS representative provided an update on the Biddle remodeling efforts at the November 2-3, 2022, meeting. He addressed questions regarding several SIA hospitals not taking patients, stating one facility had a change of ownership and the other had a change in operational model. The representative said agreements with the two hospitals are active, so there will be no issues when they reopen. He provided reasons the SIA hospital facilities are not used more often.

Larned State Hospital

At the February 4, 2022, meeting, a KDADS representative stated there was a backlog to be admitted to Larned State Hospital. In some situations, the evaluation has been done on a local level. There has been discussion to have the CMHCs, courts, and law enforcement agencies assist with completion of the competency evaluations. There had been discussion to amend state law to expand the pool for community-based competency evaluations to alleviate some of the issues.

Quarterly HCBS Report

An appendix with additional data on HCBS waiver enrollment, census, and caseload and state hospital census was provided at each meeting.

Presentations on KanCare from Individuals, Providers, and Organization Representatives

Written and oral testimony was presented at each quarterly Joint Committee meeting by individuals, providers, and representatives of organizations.

Some individuals, providers, and organization representatives gave positive feedback for the following: the I/DD provider rate increase for FY 2023, extending the emergency staffing waivers for another year, increasing the SMC rate, giving advance practice registered nurses (APRN) full practice authority, extending Medicaid coverage for pregnant women to 12 months postpartum, the full nursing facility rebase and capture of expenses for the most recent three years, and increased funding for ground-based EMS.

Concerns and suggested solutions presented by conferees are summarized below.

Concerns

LTC. The closure of multiple LTC facilities in the state has resulted in fewer beds available to care for Kansans. Delays in Medicaid application processing are occurring again and are often in the CARE score needs assessment or processing stage at the state level, resulting in a large number of pending applications affecting the daily operations of adult care homes and contributing to facilities denying admissions. Appeals from an involuntary discharge or transfer from a residential care facility should be made available. Legislation should be enacted to require written informed consent before administering antipsychotic medication to an adult care resident. A Dementia Services Coordinator position should be established.

Technology Assisted Waiver. There is a lack of nurses to provide specialized medical care (SMC).

Waitlists. The requirement to exhaust available resources to qualify for a crisis exemption to come off the waitlist, even when the available resources do not fit the individual's needs, makes it difficult to be approved for crisis services. The waitlist needs to be addressed as many individuals have been waiting for services for ten years. Parents should be able to know when their child will come off the waitlist.

HCBS. A more person-centered approach for services is needed. There is an inconsistent managed care process of supporting those who move from an institution to a community-based setting. A regular review of HCBS reimbursement rates and workforce is needed. Independent case management for the FE, PD, and BI Waiver populations needs to be reestablished or expanded. Service coordination or case management is needed under some of the waivers for individuals who self-direct care. Centers for independent living should be a line item in the budget and funding should be increased. The SMC 1000 rate needs to increase each year. There is a lack of respite assistance. There is a need to strengthen Assistive Services and Kansas should adopt language similar to Technology First states to accomplish this. Supported employment for individuals with disabilities needs to increase.

I/DD. Dental services to persons with I/DD are lacking. There is a lack of services provided to families with children with complex medical needs and I/DD. A disproportionate number of children with I/DD are entering foster care. Competitive integrated employment must be expanded for all individuals regardless of whether they are on the waitlist. Unemployment rates for individuals with I/DD need to be addressed.

Targeted case management. There is a lack of consistency regarding prior authorizations for extra targeted case management (TCM) services. The current rate for TCM covers less than half of the real cost of providing the service, and TCM is a critical resource for those on the waitlist to assist them in navigating life and finding available resources. TCM did not receive the reimbursement I/DD Waiver increase approved by the Legislature in 2022 because it is not a waiver service and, as a result, the state has begun to lose vital TCM provider capacity and talent.

KanCare benefits. KanCare member access to primary birth options should be increased. Fee-for-service reimbursement should be moved to a value-based outcomes reimbursement. The availability of dental services for children should be increased. KanCare benefits should be expanded to include dentures.

Appeals process. The appeals and fair hearing process is complicated and difficult to maneuver.

Workforce. Gaps in HCBS exist due to the inability to secure nurses to provide SMC services and to find personal care attendants. High turnover rates exist for direct-care workers. Due to underfunding, I/DD providers are struggling to offer competitive wages and benefits. State reimbursement rates for personal care attendants do not allow them to earn a living wage. Speech-language pathologists are needed to provide services to the children on the Autism Waiver. There is a nursing facility staffing shortage. There is a shortage of EMS personnel and equipment. EMS agencies face competition with non-traditional entities, such as hospitals and clinics, for certified Kansas EMS professionals.

Oversight. There is an increased need for quality oversight of services for people with disabilities, and there is fragmented reporting around quality issues, such as abuse, neglect, and exploitation (ANE).

Crisis services. There is a need for system improvements to the statewide crisis support program for individuals with I/DD. The lack of I/DD crisis response services has resulted in a high number of crisis exceptions to access waiver services by individuals on the waitlist. A relatively high number of adults with I/DD are being incarcerated or ordered to Larned State Hospital for competency restoration.

Behavioral health admissions. Consistency is lacking in the admission process for admitting behavioral health patients, with approvals being delayed with no reimbursement or safe discharge plan in place. Delays in transferring individuals from a hospital to involuntary admissions to OSH can last days. The hospitals are required to maintain 24-hour observation for these individuals while in their care, but the hospitals are unable to

provide the services the patients need so there is no reimbursement for those hospital stays.

BI Waiver. A uniform process among the MCOs is needed for people on the BI Waiver to obtain equipment and treatment and to implement home modifications. Due to increasing costs, the current reimbursement rate that was set in 2002 makes it impossible to continue to provide the same level of care at a hospital licensed to provide medical rehabilitative treatment to individuals with brain injuries.

Network adequacy. Accountability for network adequacy is lacking. The MCOs and providers should be held accountable for furnishing services. Several conferees said providers had engaged in retaliation for filing grievances regarding the lack of service delivery or discussing wages with in-home nurses..

End of the PHE. There is concern for the potential negative impact on families as the PHE ends and the redetermination processes are reinstated, as children may be disenrolled for administrative or procedural reasons while still eligible for CHIP or Medicaid. Parent pay will cease at the end of the PHE. There is concern KDHE would not have the resources to deal with the large influx of renewals.

Staffing facility rates. The high rates nursing facilities pay to the staffing agencies are unsustainable.

One Care Kansas. Confusion exists for individuals with I/DD who are unaware they lose TCM services when on One Care Kansas.

KanCare contract. There is a lack of public consultation or input regarding the upcoming negotiations for MCO contracts. Before new MCO contracts are approved, the following service processes need to be improved: the approval process for assistive services, durable medical equipment, and home modifications; the conflict of interest inherent in the MCO service and payment process; workforce parity; and possible changes as the PHE is terminated. The unnecessary bureaucracy within the KanCare system related to the use of subsidiary behavioral health companies by the MCOs should be addressed in the new KanCare contracts.

Housing. There is a lack of affordable housing with wheelchair accessibility for those wishing to live independently.

Home health regulations. KDHE should revise the home health regulations to make them less burdensome for home health providers.

CHIP. There has been no update in the CHIP eligibility threshold percentage since the legislation that tied CHIP eligibility to the 2008 federal poverty level guidelines.

Recommended Solutions

Conferees offered comments on potential solutions for the topics below.

HCBS. A return to the Money Follows the Person program was recommended. Rate parity across all HCBS waivers is needed. A billing solution to enable the HCBS and Children's Residential option for families in crisis pending PRTF admission is needed.

Staffing agency rates. Staffing agency reform and oversight is needed. Price gouging and restrictive labor practices of staffing agencies should be limited.

Senior services. A review of the rated calculation methodology of the Medicaid daily reimbursement rate for senior services is needed.

Waitlists. The *Olmstead* decision should be revisited to help alleviate the waitlist for I/DD services. [Note: The U.S. Supreme Court's 1999 decision in *Olmstead v. L.C.* found the unjustified segregation of people with disabilities is a form of unlawful discrimination under the Americans with Disabilities Act.]

LTC. Options for increased reimbursement rates for adult care homes should be considered. Medicaid reimbursement rates should be fully funded.

Family caregiver pay. Parent pay should continue after the PHE ends to help address the lack of workers to provide the services needed for individuals with disabilities.

One Care Kansas. A better explanation of One Care Kansas would be helpful.

Crisis services. Systemwide crisis prevention and intervention training, specialized service delivery programs, and an ongoing system-level research and training team are needed to address the needs of the I/DD population.

Workforce. The rate for SMC for the Technology Assisted (TA) Waiver and the rate of personal care services for all other waivers should be increased. Additional benefits, reimbursing travel, and providing access to health care would help with the direct-care workforce staffing shortage. TA Waiver services, specifically SMC, should be allowed to become self-directed services. The credentialing of speech-language pathologists with temporary licenses would address Autism Waiver needs and keep qualified clinicians in Kansas. Employee retention funding granted to hospitals through SPARK should be expanded to other health care settings.

The HCBS provider rates should be increased across all waivers. A career ladder for personal care attendants would create a path for advancement and make the positions more attractive. Wages, benefits, education, and training are critical. An increase in the daily reimbursement rate for NFMHs is needed. A state-funded training program for direct support professionals working with persons with disabilities would create a highly trained staffing pool for persons with disabilities. Direct support professionals should be paid based on the level of care provided. Direct support professionals should be allowed to join the state health and retirement plans to receive benefits.

Oversight. Increased access to data on ANE and critical incidents of persons with disabilities is needed.

Maternal care. Add “maternity center” as a defined health care provider, allowing these centers to access the Availability Plan and Health Care Stabilization Fund as a malpractice insurance line of last resort.

KanCare contract. Regarding the upcoming RFP for selecting MCOs, consider the North

Carolina structure as an ideal for performance measures in the managed care process.

Behavioral health admissions. Outpatient services could help avoid hospitalization stays. A Medicaid rate increase to cover outpatient therapy for the continuum of care after a patient is discharged from a hospital is needed to avoid readmittance.

Housing. More housing options should be provided to allow individuals with disabilities to live in the community.

CHIP. The year-specific language in the CHIP statute for the CHIP eligibility threshold percentage should be removed.

BI Waiver. The rates for services for BI patients at a specialty hospital providing BI rehabilitation treatment should be raised to ensure long-term sustainability of these services.

TCM. The Legislature should consider an adjustment to the TCM rate during the 2023 Legislative Session.

CCBHCs. All CMHCs should be allowed to certify as CCBHCs when they are ready, to help address workforce challenges and ensure more Kansans have access to CCBHC services. A data and outcomes reporting system should be implemented to report on system- and clinic-level outcomes.

Conferees

Private citizens and representatives of the following organizations and providers testified or provided written-only testimony before the Joint Committee: Alzheimer’s Association; Arc of Douglas County; Association of Community Mental Health Centers of Kansas; Bluestem PACE; Case Management Services, Inc.; Disability Rights Center of Kansas; Haviland Care Center; Heartspring; InterHab; International Rett Syndrome Foundation; KanCare Advocates Network; Kansas Action for Children; Kansas Adult Care Executives; Kansas Advocates for Better Care; Kansas Association of Area Agencies on Aging and Disabilities; Kansas Association of Centers for Independent Living; Kansas Council on Developmental Disabilities; Kansas Emergency

Medical Services Association; Kansas Health Care Association/Kansas Center for Assisted Living; Kansas Hospital Association; Kansas State Nurses Association; LeadingAge Kansas; Maxim Healthcare Services; Midland Care Connections; Minds Matter, LLC.; New Birth Company; Oral Health Kansas, Inc.; Recover-Care; Riley County Emergency Medical Services; Self Advocate Coalition of Kansas; Southeast Kansas Independent Living Resource Center, Inc.; and Topeka Independent Living Resource Center.

Responses from Agencies and MCOs

Representatives of KDHE, KDADS, and the three MCOs provided responses to concerns expressed by individuals, stakeholders, and organization representatives at each Joint Committee meeting. A spreadsheet prepared by KLRD staff was used to track issues presented to the Joint Committee and the resolution of those concerns.

The agencies and MCOs used the spreadsheet to respond to the concerns. Each conferee concern was identified by name, the issue was noted, and the response or resolution from the agency, the MCO, or both was provided. Issues determined by the Joint Committee to have been addressed were noted as closed and removed from future tracking spreadsheets. The spreadsheet included several recurring topics.

KDHE Responses

At each meeting, a KDHE representative reviewed the agency's responses to unresolved Medicaid issues identified by conferees at previous Joint Committee meetings.

At the February 4, 2022, meeting, the representative addressed the general issues pertaining to KDHE. Regarding EMS code rate increases, the representative provided the fiscal impact as a percentage of 2021 rural Medicare rates, with the exception of ground ambulance mileage, which was calculated at 100 percent of the rural Medicare rate. She stated she would appreciate legislation increasing the rate. Regarding low Medicaid rates for pediatric primary care, she stated the Legislature could decide the number of codes it wished to cover at 100.0 percent of the Medicare rate. She provided an estimate of the cost of raising the

reimbursement rate for 93 codes to 100.0 percent of the Medicare rate.

At the April 20, 2022, meeting, regarding the need for additional funding for ground ambulance services, increased Medicaid reimbursement rates for pediatric primary care services, extending Medicaid coverage for pregnant women to 12 months postpartum, and funding for adult dental services for Medicaid beneficiaries, the representative noted all items were included in 2022 House Sub. for Sub. for SB 267 (appropriations bill) as signed by the Governor.

At the September 26-27, 2022, meeting, regarding the 90846 billing code to allow therapists to bill for work with parents without the child present, the KDHE representative stated the State Plan Amendment was approved by CMS, retroactive to May 1, 2022. Regarding concerns expressed about extending the KanCare MCO contracts without going through the RFP and procurement process, legislation enacted in 2022 (HB 2387) delayed the issuance of the KanCare RFP until February 2023 or later.

On the need for maternity centers to be added as a defined health care provider in statute to provide access to the Availability Plan and Health Care Stabilization Fund, a proviso in Section 15 of enacted 2022 HB 2510 addressed the definition issue for one year.

At the November 2-3, 2022, meeting, regarding KanCare contracts being structured such that they institutionalize a level of conflict, the representative stated the MCOs are not financially incentivized to reduce HCBS. If MCOs do not provide the HCBS, the option becomes a nursing facility at a higher cost. Low utilization would cause the future rates to decrease. On the MCOs' contract requirements regarding the availability of interpreters for crisis services, the MCO contracts do not cover interpreter services only when scheduled. The contract requires the MCOs to provide 24/7 language lines in multiple languages. If the MCOs are paid for the 24/7 language lines, CMS rules do not allow payment to also be made to the hospital for interpreter services for the Medicaid member.

Regarding the need to invest in more workforce-friendly initiatives while also removing

unnecessary regulatory barriers, KDHE asked state boards and agencies, as the experts, to provide possible solutions to address the workforce shortage. On reimbursement for EMS calls, Medicaid does not allow reimbursement if the individual is not transported. This falls under the category of treatment in place.

KDADS Responses

At each meeting, a KDADS representative reviewed the agency's responses to unresolved Medicaid and HCBS issues identified by conferees at previous Joint Committee meetings.

At the February 4, 2022, meeting, the representative stated the RFP for a study of the I/DD and PD waitlists was still being developed. KDADS was working to add resources to help move the 10.0 percent FMAP enhancement projects forward, including the waitlist study. Regarding the need to develop models for intensive community support as an alternative to incarceration for Kansans with I/DD, the representative noted identifying service gaps through the use of the Strategic Intercept Model (SIM) was a key part of identifying alternatives to incarceration. The SIM was included the FMAP enhancement projects. On the workforce shortage, KDADS included initiatives aimed at improving workforce shortages in its FMAP enhancement plan and was working on a workforce recruitment and retention bonus program. Regarding the adoption of an insulin administration training program for CMAs, KDADS was soliciting stakeholder involvement to form a CMA regulations working group to review and revise current regulations.

At the April 20, 2022, meeting, on funding nursing homes in accordance with the statutory formula, the KDADS representative noted 2022 House Sub. for Sub. for SB 267 (appropriations bill) contains full rebasing of rates for nursing facilities based on calendar years 2021, 2020, and 2019. Regarding the need for interim services for individuals having a mental health crisis along with their I/DD diagnosis, the FY 2023 budget for Parsons State Hospital contained funding to establish a Behavioral Health Crisis Stabilization Unit as a new inpatient option. The mobile crisis services in the bill implementing the 988 Suicide Prevention and Mental Health Crisis Hotline in

Kansas [2022 House Sub. for SB 19] would be a key component in addressing this issue.

Regarding the need for increased access to mental health services, progress had been made in this area, including CCBHC elimination of catchment areas to allow families to choose where they receive services, development of a KanCare Fact Sheet on PRTFs, to inform parents; and creation of a Family Crisis Response Helpline. Regarding assisting TNAs, as allowed under the emergency waiver, to receive full CNA status once the PHE has ended, 2022 HB 2477 was signed into law to address the completion of CNA coursework by temporary aides to attain full CNA status.

On increasing the lifetime purchase limit for Assistive Services and increasing the SMC rate, the appropriations bill included funding to increase the limit from \$7,500 to \$10,000 and to increase the SMC rate for the I/DD and TA Waivers to \$47.00 per hour. Regarding state hospitals being understaffed and staff underpaid, moneys for the 24/7 Facilities Pay Plan were included in the budget enacted in House Sub. for Sub. for SB 267. Funding in the past four years raised those wages to a competitive level, but other reasons for the staffing issue include the location of the state hospitals and the physically, mentally, and emotionally demanding work performed by the staff.

At the September 26-27, 2022, meeting, regarding insulin injections by a CMA, the KDADS representative stated the Board of Nursing was included in the review of the curriculum for CMAs and agreed these injections were beyond the scope of CMAs. The Joint Committee requested KDADS come up with a path to address this issue—either a change in the scope of practice or a new course.

On the three different MCO home processes for home modifications and for equipment on the BI Waiver, KDADS was unbundling the current Assistive Services into three separate services to comply with a CMS directive. KDADS was preparing to submit amendments to be able to work with the MCOs to streamline the process. Regarding plans of care being developed with fewer than ten hours of service that could mean individuals do not receive enough services or the individuals should not be on the HCBS waiver, the

current language in each of the HCBS waivers requires that a functionally eligible participant receive at least one HCBS service per month to remain on the waiver. Regarding TNAs transitioning to becoming CNAs with limited work experience, 2022 HB 2477 allowed for the use of CNAs who have completed minimal training (or TNAs) through January 20, 2023.

At the November 2-3, 2022, meeting, regarding KDADS workforce recruitment and retention efforts, KDADS provided information on its Workforce Recruitment and Retention Bonus Initiative and reported it was working on draft RFP language for another HCBS FMAP enhancement project, Study and Design Career Ladder, with stakeholder input; the RFP was to be submitted to procurement at the end of November 2022. On the lack of community-based service providers and the need for pay parity across the HCBS waivers, KDADS will continue to look for opportunities to promote parity between HCBS waivers. KDADS recently closed the public comment period for the HCBS waiver amendment package that included continuing the flexibility for paid family caregivers and virtual service delivery options, and it was expected the amendment would be submitted to CMS in December 2022.

On the transitioning of individuals out of nursing homes or institutional settings, KDADS will be receiving \$4.97 million to reinstate the federal Money Follows the Person grant program over a five-year period. During the planning period, KDADS will meet with stakeholders and CMS to design a program. KDADS developed a Director of Money Follows the Person position within Human Resources. Regarding delays in completing the CARE data entry and nursing facility assessment referrals, KDADS reported both the Level I and Level II referrals were lagging. On the need to improve and better coordinate long-term care for those suffering from dementia and for a Dementia Services Coordinator, KDADS was asked to look into a three-year grant from the U.S. Department for Health and Human Services Administration for Community Living and to speak with the Alzheimer's Association. Regarding an increase in the adult care home reimbursement rate, the agency's estimated cost for a full rebase for FY 2024 was provided and will be discussed in the

budget process during the 2023 Legislative Session.

MCO Responses

A representative from one MCO provided responses to issues on behalf of all three MCOs at each Joint Committee meeting.

At the February 4, 2022, meeting, an Aetna Better Health of Kansas (Aetna) representative presented the issue responses for the MCOs. Regarding inconsistency in the process for home modification authorization, the MCOs proposed a standardized checklist for home modification and Assistive Services requests. KDADS was in the process of unbundling Assistive Services and needed to complete that work before moving forward on a standardized process. On the lack of network adequacy, specifically related to sedation dentistry for individuals with I/DD and durable medical equipment providers, the MCO representative described efforts to grow and improve the networks. Regarding the delay in the crisis exception process, the MCO representative explained the process and indicated the MCOs were willing to collaborate to establish a standardized process to ensure crisis request were addressed timely and consistently.

At the April 20, 2022, meeting, a Sunflower Health Plan (Sunflower) representative offered responses on behalf of the MCOs. On the issue of MCO network adequacy, the Sunflower representative stated each MCO was addressing network adequacy as it related to its network providers, and there are provisions for single-case agreements with all three MCOs. KDADS was in the process of amending Assistive Services for the applicable waivers to comply with a CMS request. According to the Sunflower representative, KDADS would be willing to work with the MCOs to streamline the approval process as the agency worked on the amendment process. Regarding the streamlining of processes for MCOs with community developmental disability organizations, TCM, and the KDADS program manager, she said the MCOs were collaborating to develop a central point of contact for emergency I/DD crisis requests and were streamlining the processes internally. A KDADS representative noted state policy outlines the process for crisis management; if all documentation was in order, the process would be expedited.

An Aetna representative responded to an unresolved issue specific to Aetna, and a UnitedHealthcare Community Plan (UHC) representative responded to two general issues specific to UHC.

Aetna. An Aetna representative addressed a specific issue regarding a wrongful assessment of a client obligation, stating the case was reviewed back to 2019 and no errors were found.

UHC. A UHC representative addressed delays in prior authorizations for extra TCM units indicating UHC was reviewing how the process can be streamlined to allow a quicker turnaround time while continuing to ensure appropriate authorization of TCM services. He did not think this was a systemic issue. Regarding long-term services and supports (LTSS) correspondence going to a general email, he stated UHC utilized a centralized email and an administrative support team to respond to inquiries regarding authorizations and service plans. He said the centralized mail was checked daily and allowed for timely response.

At the September 26-27, 2022, meeting, a UHC representative reviewed the responses from all three MCOs. On unpaid reimbursement and fees for transitioning services provided by the Topeka Independent Living Resource Center and concerns about the lack of coordination with community providers on the transition process, the MCOs with pending claims worked with the Center and resolved the issues. Regarding delays in prior authorization for extra TCM units, UHC staff spoke with the individual to address the concern and explain the process to request additional TCM units. On the UHC centralized mail process for LTSS correspondence, UHC's system had worked daily and was up-to-date on all requests. Regarding the need for a consistent prior authorization process, the MCO contracts allow each MCO to establish its own prior authorization process, which is approved by the State. Sunflower was working internally to develop a new process for the management of therapies and would inform all providers once the new process was implemented.

At the November 2-3, 2022, meeting, a Sunflower representative reviewed the responses for all three MCOs. Regarding the different

criteria and processes with each MCO for obtaining a pay rate change for attendant care through the single case agreement process, each MCO has its own process for specialized payment agreements that are outside of the standard contracting process and need to be individualized to the situation. On the transition processes in place by the MCOs, the MCOs follow the KDADS Institutional Transitions Policy for transitioning members from nursing facilities. Each MCO also offers its own transitional coordination services, transition funds, and additional services to help members transition successfully.

Concerning the need for MCOs to make person-centered care coordination a priority as the PHE ends, the MCOs continue to prepare to assist members during the redetermination process when the PHE ends. On the MCOs not providing medically necessary nursing care for children on the TA Waiver, the Sunflower representative stated the issue was the ability to recruit nurses. Enhanced rates were offered to recruit additional nursing staff. Parents are paid to provide the needed care when a nurse is not available, during the PHE. Regarding a lack of care coordination by the MCOs, the MCOs provide care coordination for all members in HCBS in accordance with the state contract and CMS requirements.

MCO Updates

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

Aetna Better Health of Kansas

At the February 4, 2022, meeting, the Aetna representative stated that the MCOs' areas of focus in 2022 included delivering a more enhanced, customized experience to its members by utilizing digital tools, strengthening its partnerships with providers, continuing commitment to improve health outcomes, implementing population health programs, and enhancing care delivery with social determinants of health programs. Two national social determinants of health pilot programs had been implemented: Core Maternity + Early Childhood Outreach and High Risk Pregnancy. Aetna is also working to create an environment that promotes healthier outcomes. A review of community commitments that took place in the fourth quarter of 2021 was provided.

At the April 20, 2022, meeting, the Aetna representative outlined an initiative to complement care management and combat loneliness, depression, and social determinants of health. He explained an interactive chatbot can interact with a client 24/7, can screen the person's needs, and can provide self-management tools, offer other appropriate resources, or both. He reported members were overwhelmingly satisfied with the new service. A link was provided for transportation services, and a support team was available to respond to emergencies.

At the September 26-27, 2022, meeting, the Aetna representative provided a list of the value added benefits (VABs) offered by Aetna. The impact of the benefits is monitored for effectiveness and usage. The focus is on eliminating barriers and providing access to services that contribute to members' health and wellness. A VAB task force reviews the benefits to see which are working and which are not. She reviewed changes to the VAB program and considerations for 2023. A review of the Healthcare Effectiveness Data and Information Set (HEDIS) measures was provided, and results of a member satisfaction survey were presented.

Another Aetna member provided information on the After School Engagement VAB and the use of gift cards to reward members for healthy activities using claims data collected after the service is provided. A representative noted the prenatal incentive was not doing as well as Aetna would like. Aetna wanted to make sure women were going to their appointments but was struggling to get notifications of pregnancies. The various ways the VAB sheet was distributed to members were described.

At the November 2-3, 2022, meeting, Aetna representatives provided an update on the VABs offered, with a list of the 2022 VABs included in testimony. The transportation support available to members was described. A representative noted the VABs are part of a multi-faceted approach to support members with social determinants of health. Examples of the impact of the VABs were provided. An update on the KanCare Quality Management Strategy and a summary of the Aetna member satisfaction surveys also were provided.

Sunflower Health Plan

At the February 4, 2022, meeting, the Sunflower representative stated Sunflower and its parent company, Centene Corporation, participated in interviews for the Emergency Practices Roadmap. The purpose was to investigate issues related to emergency backup planning for persons with disabilities and provide a roadmap for strengthening and embedding emergency practices into member-centered plans. Sunflower was also entering a pilot program with Kinsa to gather community-level data to assist in forecasting waves of influenza or COVID-19 that could act as an early warning system for predicting spikes in infections an average of three weeks earlier. The goal was to encourage better health outcomes by arming providers with predictive analytics.

Highlights from the Member Satisfaction Survey were provided. The 2022 initiatives were presented and included the expanded use of technology, expanded service models, alternative service solutions, and I/DD dual diagnosis services. Information was provided on COVID-19 vaccinations by members by dose sequence, and on PRTF admissions, average length of stays, and the waitlist.

At the April 20, 2022, meeting the Sunflower representative outlined direct-care workforce solutions: distribution of FMAP funds, expanded use of technology and service models, and alternative service solutions. She elaborated on the SIM, the proposed program that integrates behavioral health and the criminal justice system. The program identifies gaps in service and promotes strategic planning adapted for the I/DD population.

At the September 26-27, 2022, meeting, a Sunflower representative provided an update on efforts regarding the direct-care workforce. A social media campaign to increase interest in the field of direct caregiving was created in a partnership with InterHab and HCBS providers. A pilot for alternative technology and Assistive Services for members was being developed in partnership with a HCBS provider and KDADS. Centene Corporation provided a platform to ADvancing States (Connect to Care Jobs) that can be used to manage the direct care workforce.

A review of the VABs available to members was included in the testimony. An area of focus was dealing with food insecurity. Sunflower initiated the Start Smart for your Baby (Smart Start) program for pregnant members, babies, and families. The program information is available in multiple languages, and translators are available for additional languages. The representative said the program offers nursing support, education, and helpful gifts. A presentation on the HEDIS was provided, and results of a member experience survey were included in the testimony.

Regarding the number of clients using VABs and the VAB success rate and health benefits, the Sunflower representative stated Sunflower could provide outcomes data for some VABs; however, for some, only a count of members who used the VAB was available. Another Sunflower representative noted the transportation VAB was for job interviews and not for ongoing transportation to jobs.

At the November 2-3, 2022, meeting, a Sunflower representative provided an update on the VABs offered by Sunflower and reviewed a graph reflecting the amount it had spent on VABs in 2022, with the majority spent on “My Health Pays.” Members earn My Health Pays rewards when they complete activities that can help protect their health. The representative reviewed the Start Smart VAB program and the Connection to Career Readiness Program, which is a VAB addressing employment, which was the most utilized benefit in 2022.

A review of the VABs for members receiving HCBS FE, PD, and I/DD Waiver services also was provided, as was information regarding fetal and maternal outcomes. The representative noted a disparity in neonatal intensive care unit length of stay and prenatal and postpartum engagement HEDIS metrics between Black and white birthing parents. He described the influenza prevention messaging campaigns being conducted and the results of a 2022 member experience survey and a LTSS survey. The Sunflower representative stated a dental VAB is offered that may need to change to fill in gaps with the new Medicaid dental benefits for adults.

UnitedHealthcare Community Plan of Kansas

At the February 4, 2022, meeting, the UHC representative provided an update on the MCO, noting the focus has been on providers and clients through building community and community partnerships. As of February 2021, UHC had invested approximately \$4.0 million in Kansas.

At the April 20, 2022, meeting, the UHC representative reviewed the Maternal Community Health Worker pilot program being conducted in cooperation with the University of Kansas Medical Center in Sedgwick County and the Center for Research for Infant Birth and Survival. After reviewing background factors, such as how socioeconomic and behavioral aspects affect an individual’s access to health care, she traced how the program will provide more comprehensive maternal health services for underserved individuals. She said the program would be deployed in Wyandotte County and offered in English and Spanish. In response to a member’s request, information regarding the number of non-emergency medical transportation services was provided.

At the September 26-27, 2022, meeting, a UHC representative provided testimony on the importance of VABs in the selection process of a MCO by Medicaid participants. He provided a review of the steps taken by UHC in determining VAB products, the development cycle for creation and measurement of VAB success, and the process of how VABs work. An overview of the VABs was highlighted. A list of the new VABs for 2023 was provided. A UHC representative described the MCO’s VAB promotion process. In response to questions from the Joint Committee regarding transportation to cooking classes, another UHC representative stated the members are given 12 round-trip rides anywhere in a year. UHC partnered with the Kansas State University Extension Service for this program.

At the November 2-3, 2022, meeting, a UHC representative provided an update on the VABs offered by UHC and reviewed the process for VAB product planning and the product development lifecycle of a VAB. UHC analyzes market feedback to determine viability of a VAB. VAB listening tour meetings were held at various locations in the state, and a VAB survey was conducted. The survey results of the VAB

percentage interest poll were presented. A chart reflecting the VAB utilization for 2021 and 2022 by type, total units, total unique members, and total value was provided.

The representative provided an overview of the various member surveys it conducts. Regarding surveys to areas that lack broadband, there is a VAB for internet access to utilize hot spots. AT&T provides wireless service for the VAB. UHC has the following interpreter services: Spanish-speaking individuals who go to events, a language line service, and interpreter service available where and when needed. Interpreter services are not considered a VAB.

Human Services Caseload Estimate

Staff from the Division of the Budget, DCF, KDHE, KDADS, and KLRD met April 14, 2022, to revise the estimates for human services consensus caseload expenditures for FY 2022 and FY 2023. Expenditures include TANF, reintegration and foster care, KanCare Regular Medical Assistance, and KDADS Non-KanCare. The Human Services Consensus Caseloads Estimating Group met again on October 24, 2022, to revise estimates on caseload expenditures for FY 2023 and develop estimates for FY 2024.

Spring Estimate

At the April 20, 2022, meeting, a KLRD analyst reported the combined estimate for FY 2022 and FY 2023 (from all funds) is an increase of \$331.9 million, including an increase from the State General Fund (SGF) of \$48.7 million, above the approved amount. For FY 2022, the revised estimate for all human services caseloads was \$4.1 billion from all funding sources, including \$1.1 billion SGF. This was an all funds increase of \$110.4 million, including a \$12.6 million decrease in SGF, compared to the budget approved by the 2022 Legislature. For FY 2023, the revised estimate was \$4.4 billion from all funding sources, including \$1.4 billion SGF. This is an increase from all funds of \$221.5 million, including an increase of \$61.3 million SGF, compared to the amount approved by the 2022 Legislature.

Fall Estimate

At the November 2-3, 2022, meeting, a KLRD analyst said the revised total consensus caseloads

estimate for FY 2023 was \$4.6 billion from all funding sources, including \$1.3 billion SGF. This represented an all funds increase of \$259.5 million, including a \$198.2 million decrease in SGF, from the budget approved by the 2022 Legislature. The FY 2024 revised estimate was \$4.8 billion from all funding sources, including \$1.5 billion SGF. This represented an all funds increase of \$7.9 million, including an increase of \$163.0 million SGF, above the FY 2023 revised estimate.

Status of 2020 and 2021 Special Committee on Kansas Mental Health Modernization and Reform Recommendations

At the September 26-27, 2022, meeting, KLRD staff provided a spreadsheet of the recommendations from the 2020 and 2021 Special Committee on Kansas Mental Health Modernization and Reform, which contained updates from state agencies and departments on the status of the recommendations. The following agencies and departments provided an update pertaining to their respective agency or department: KDADS, KDHE, DCF, Behavioral Sciences Regulatory Board, Kansas Department of Corrections, the Judiciary Branch, and the Kansas State Department of Education.

Provision of Voter Registrations

At the September 26-27, 2022, meeting, the Secretary of Health and Environment and the Secretary for Children and Families provided information regarding the National Voter Registration Act of 1993 and the federal requirement that anyone applying for public assistance benefits be provided voter registration information. The information was sent whenever an initial application for benefits was received, at reassessment, and at change of address. The information would not be sent if the applicant opted out.

PACE Presentations

At the November 2-3, 2022, meeting, presentations on the PACE program were given by representatives of Bluestem PACE and Midland Care Connections. PACE is a community-based care provider program providing Kansas seniors considered medically frail with person-centered care needed to remain living in their homes and

avoiding premature nursing facility placement. Fully integrated care is coordinated and delivered by primary caregivers. One capitated rate covers all health care for the individual's needs from hospitalization care to in-home services. PACE is also a Medicare Part D provider at no additional cost for prescriptions. PACE providers are fully accountable and responsible to their enrollees, their families, and the State and the federal government for the quality of care provided.

The conferees stated PACE providers will be working closely with KDADS leadership to explore options for moving from a rebasing of their Medicaid rates every three years to an annual rebasing, as is done for the MCOs and other senior organizations, to provide more timely inflationary adjustments.

K-TRACS

At the November 2-3, 2022, meeting, the Executive Secretary, Kansas Board of Pharmacy, provided testimony regarding access to K-TRACS data by law enforcement. The presentation was made in response to a request from the Office of the Medicaid Inspector General (OMIG) for ease of access to the K-TRACS data. She stated a valid search warrant is required for law enforcement, including the OMIG, to access K-TRACS data. This presents a barrier to access, but the requirements in statute (KSA 65-1685) set out in the original K-TRACS legislation were designed to protect patient privacy. She noted other states are split between allowing regular active access to law enforcement and a process like that of Kansas, and the issue is not without controversy or litigation in other states.

CONCLUSIONS AND RECOMMENDATIONS

At its meeting on November 2-3, 2022, Joint Committee members discussed their conclusions and recommendations to the 2023 Legislature.

The Joint Committee recommends:

- The Legislature consider the recommendations of the Special Committee on Intellectual and Developmental Disability (I/DD) Waiver Modernization (Special Committee) regarding consideration of the

development of a Community Support HCBS waiver to serve individuals with I/DD needing fewer services and supports than those provided on the existing comprehensive I/DD Waiver, as summarized below [*Note:* The Special Committee's approved, detailed recommendations may be found in its committee report.]:

- KDADS provide a fiscal note for each service discussed by the Special Committee for possible inclusion in the Community Support Waiver. These services include transportation, supported employment, individual directed goods and services, personal care, respite, therapy (including behavioral support), assistive technology, independent living or community engagement skills, family/caregiver support and training, financial management services and support brokers; and benefits counseling;
- The Community Support Waiver have an annual individual cap of \$20,000 and include "individual directed goods and services" as a service;
- The Special Committee support the transition of the Medicaid managed care system from the Section 1115 waiver to the Section 1915(b) waiver;
- KDADS and KDHE continue to study strengths-based assessments, such as the Supports Intensity Scale or the Medicaid Functional Eligibility Instrument, as alternatives to the deficit-based Basic Assessment and Services Information System assessment tool for HCBS I/DD Waivers;
- The Community Support Waiver include "individual budget authority" across all services; and
- KDADS and KDHE identify a process to prevent individuals being removed

from the Autism Waiver Proposed Recipient list without notification;

- The Legislature consider the tier 1 recommendations of the 2022 Senior Care Task Force (Task Force) pertaining to KanCare issues, as summarized below [Note: The Task Force's approved, detailed recommendations may be found in its committee report.]:
 - The Legislature support provider training and a framework for person-centered planning, especially for those with dementia, in which an individual's own wishes, strengths, and relationships are respected. This includes recognizing each person's strengths, abilities, and choices related to using technology or accessing community-based and other formal or informal support and ensuring trauma-informed, person-centered care policies for older adults who have experienced abuse, neglect, and exploitation are being followed;
 - KDADS establish a workforce clearinghouse, including direct-care worker registries, and a Coordinator position between DCF, KDADS, and the Kansas Bureau of Investigation to increase accessibility and enhance safeguards and oversight of guardians, conservators, and caregivers to which the facilities and individuals can refer as a resource when questions about an appropriate hire arise;
 - KDADS, with the Kansas Association of Area Agencies on Aging, expand flexibility to incentivize providers via raising reimbursement rates to use the Senior Care Act program for services that promote choice, increase independence, and assist with overcoming unique challenges in rural and urban areas;
 - The Legislature provide appropriations to increase the rates for service providers to increase worker pay, support safe staffing standards,
- and ensure a stable workforce, minimizing waitlists;
- The Workforce Subgroup recommend formation of a coalition at the regional level with statewide leadership;
- Collaboration to invest in housing options to increase the availability of accessible, affordable housing options for older adults; and
- KDADS establish a permanent, full-time Dementia and Alzheimer's Disease Coordinator position with the following roles and responsibilities: serving as federal and state liaison and training administrator at KDADS; using civil monetary penalty funds to provide advanced dementia care training for all full-time and temporary staff in all facilities, including those not participating in Title 18 and Title 19 programs; overseeing the implementation and updating of the State Alzheimer's Disease Plan; coordinating Alzheimer's and dementia work groups and task forces to establish and maintain relationships with all relevant state agencies and community organizations to meet community needs and prevent duplication of services; evaluating existing programs and services; identifying service gaps within the state government; and collaborating with the Alzheimer's Association;
- KDADS look into establishing a Dementia and Alzheimer's Disease Coordinator position, as recommended by the Alzheimer's Association;
- KDHE and the KanCare MCOs discuss and provide the Joint Committee with the cost to cover dentures under KanCare;
- The Legislature encourage the SPARK Executive Committee to allocate ARPA funds for expansion of the Midland Care PACE;

- KDHE and DCF provide the history of the National Voter Registration Act of 1993, the reason the agencies sent out 277,000 letters containing voter registration applications, and the cost of such mailings;
- MCOs provide information on the interpreter services available to KanCare members for scheduled medical appointments and non-scheduled emergency medical services;
- The Legislature consider increased funding for TCM;
- The legislative standing committees look into rebasing the SMC 1000 rate each year to avoid falling behind the market rate, an issue brought to the Committee's attention by Maxim Healthcare Services;
- KDHE report on existing programs that use state and federal Medicaid funds to meet the health needs of newborns and the prenatal health needs of pregnant mothers;
- The Legislature consider increased funding for centers for independent living;
- The Joint Committee consider requesting a bill be drafted giving CMAs insulin administration authority, after receipt of research information on other states' actions on such CMA authority;
- The Legislature consider legislation to address the expiration of the TNAs' ability to work after January 20, 2023;
- KDADS give serious consideration to escalating the timeline of CMHCs seeking CCBHC status that will be ready to be certified in spring 2023;
- The Mental Health Intervention Team (MHIT) program work with the Kansas State Department of Education to request introduction of legislation to place the MHIT program in statute;
- The Behavioral Sciences Regulatory Board (BSRB) request introduction of legislation to create a new type of temporary license under the BSRB for bachelor's- and master's-level social work applicants who graduate from programs that are in candidacy for accreditation, similar to the model used in Minnesota; and
- The Legislature consider legislation to reduce regulatory barriers in PACE by allowing mid-month enrollment, replacing the application requirement for a currently operating PACE program to add a new PACE center in its existing service area with a notification requirement, removing the quarterly restriction for submission of new PACE organization applications, removing the quarterly restriction for applications for service area expansions, and allowing PACE organizations to have multiple applications for service area expansions and new center applications, or both, under simultaneous review by CMS.

The Joint Committee requested this report include the statement by the Secretary of Health and Environment that the recently enacted home health regulations that have created concerns would not be enforced, and that KDHE would work to amend the regulations based on feedback from home health agencies and home health providers;

The Joint Committee also requested the following Committee bills be drafted:

- A bill to be introduced in the House of Representatives based on the language of 2022 SB 407 to address the existing statutory CHIP eligibility threshold percentage that is tied to the 2008 federal poverty level; and
- A bill to allow for discussion on the potential benefit and detriment of reducing the 90 hours required in Kansas for certification as a CNA to the 75 hours required under federal law.

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

ANNUAL REPORT FOR THE 2023 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 2018 Supp. 39-7,159) creating a comprehensive and coordinated statewide system for long-term care services became effective July 1, 2008.

The Joint Committee's annual report is to be based on information submitted quarterly to the Joint 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 Joint 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 summarizes the number of individuals transferred from intellectual/developmental disability (I/DD) institutional settings into HCBS during state fiscal year (SFY) 2022, together with the number of individuals added to HCBS due to crisis or other eligible program movement during SFY 2022. 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 2022	44
State I/DD Hospitals: Average Monthly Caseload SFY 2022	271
I/DD Waiver Community Services: Average Monthly Caseload SFY 2022	9,062
*Monthly averages are based upon program eligibility. Sources: SFY 2022—Medicaid eligibility data as of October 2022. The data include people coded as eligible for services or temporarily eligible.	

The following summarizes the average monthly caseload. These additional abbreviations are used in the table:

- FE — Frail Elderly Waiver
- PD — Physical Disability Waiver
- BI — Brain Injury Waiver

FE / PD / BI INSTITUTIONAL SETTINGS AND WAIVER SERVICES*	
Nursing Facilities: Average Monthly Caseload SFY 2022	9,049
Head Injury Rehabilitation Facility: Average Monthly Caseload SFY 2022	54
FE Waiver: Average Monthly Caseload SFY 2022	6,088
PD Waiver: Average Monthly Caseload SFY 2022	6,079
BI Waiver: Average Monthly Caseload SFY 2022	829
*Monthly averages are based upon program eligibility. Sources: SFY 2022—Medicaid eligibility data as of October, 2022. 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

SFY 2016 – 141
SFY 2017 – 142
SFY 2018 – 140
SFY 2019 – 138
SFY 2020 – 132
SFY 2021 – 126
SFY 2022 – 126

PARSONS STATE HOSPITAL AND TRAINING CENTER: AVERAGE DAILY CENSUS

SFY 2016 – 163
SFY 2017 – 159
SFY 2018 – 160
SFY 2019 – 162
SFY 2020 – 157
SFY 2021 – 151
SFY 2022 – 149

PRIVATE ICFS/MR: MONTHLY AVERAGE*

SFY 2016 – 137
SFY 2017 – 133
SFY 2018 – 137
SFY 2019 – 119
SFY 2020 – 110
SFY 2021 – 103
SFY 2022 – 44

NURSING FACILITIES: MONTHLY AVERAGE*

SFY 2016 – 10,235
SFY 2017 – 10,047
SFY 2018 – 10,049
SFY 2019 – 10,226
SFY 2020 – 10,500
SFY 2021 – 9,571
SFY 2022 – 9,049

*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 realized only 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, which does have the effect of cost avoidance, the savings resulting from moving the individuals to HCBS during the preceding 12 months, as of September 30, 2022, 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 September 30, 2022, was \$0.

Report of the Legislative Budget Committee to the 2023 Kansas Legislature

CHAIRPERSON: Senator Rick Billinger

VICE-CHAIRPERSON: Representative Troy Waymaster

OTHER MEMBERS: Senators J.R. Claeys and Tom Hawk; and Representatives Will Carpenter, Kyle Hoffman, and Kathy Wolfe Moore

CHARGE

Review 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 review the following:

- Impact of the 24/7 Pay Plan on correctional facilities and state hospitals;
- Extraordinary transfers to the Kansas Public Employees Retirement System Trust Fund;
- Construction and remodeling of the Docking State Office Building and the Kansas Department of Health and Environment Forensic Science Laboratory;
- Receipts of federal COVID-19 relief funding; and
- The independent audit of the State Unemployment Trust Fund and report to the Legislative Coordinating Council in September 2022.

January 2023

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Legislative Budget Committee

ANNUAL REPORT

Conclusions and Recommendations

The Legislative Budget Committee (Committee) makes the following recommendations:

- The Legislative Coordinating Council should recommend the State Finance Council approve the transfer of an additional \$107.9 million from the Legislative Employment Security Fund to the Unemployment Trust Fund from federal funds. This is in addition to the \$250.0 million transferred to the Unemployment Trust Fund in FY 2022, for a total of \$357.9 million. [Note: The report to the Legislative Coordinating Council concerning the transfer is contained in the appendix.]
- The House Committee on Appropriations and the Senate Committee on Ways and Means should receive updates regarding and consider the following items:
 - Providing additional funding to the Budget Stabilization Fund; and
 - Reevaluating investment priorities for the \$167.0 million from the State Fiscal Recovery Fund in FY 2022, for a total of \$357.9 million that may be recouped and reallocated from other purposes.
- The Kansas Department of Transportation should consider conducting a cost analysis study to construct or enhance mass transit systems in Johnson, Sedgwick, and Wyandotte counties to address economic growth in those areas and changing travel behaviors. The study should propose what such transit systems would look like and account for any federal funds estimated to be available in future years.

Proposed Legislation: None.

BACKGROUND

The Legislative Budget Committee (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 authorized six meeting days for the Committee during the 2022 Interim. The Committee met five times in 2022, on August 25, September 20, October 28, November 22, December 19, and once in 2023 on January 6.

Revenues

State General Fund Profile, State General Fund Receipts, and Economic Indicators

At the August 25, 2022, meeting, staff from the Kansas Legislative Research Department (KLRD) provided an update on the FY 2022 actual receipts and a revised State General Fund (SGF) profile through FY 2026. Actual receipts for FY 2022 exceeded the estimate by \$221.0 million, or 2.9 percent. The KLRD staff also provided the quarterly economic indicators report. High levels of inflation were the most noteworthy economic variable for the second quarter of 2022. The three-month period saw the national consumer price index increase at an average year-over-year rate of 8.6 percent.

At the November 22, 2022, meeting, KLRD staff provided an update on the revised consensus revenue estimates. The overall estimate for FY 2023 was increased by \$794.2 million. Of this amount, the estimate for total tax revenues was increased by \$773.0 million, while the estimate for other revenues was increased by \$21.2 million. The initial estimate for FY 2024 revenues was \$10.124 billion. The forecast for FY 2024 represents a 4.4 percent increase above the newly revised FY 2023 total.

At the January 6, 2023, meeting, KLRD staff provided an update on SGF receipts through December 2022. The KLRD analyst indicated that Kansas receipted \$110.2 million SGF in excess of estimates; however, the majority of the excess income was attributable to changes in taxpayer behavior associated with the SALT Parity Act that was enacted through 2022 Senate Sub. for HB 2239. The Act allows for certain income taxes that would otherwise be paid by individuals to be paid by business entities. Individual business owners then receive a tax credit equal to the amount of tax paid. Accordingly, receipts under the Act will reduce individual income tax receipts by an equal amount during individual income tax filing season.

Budget Stabilization Fund Balance

At the August 25, 2022, meeting, KLRD staff provided an update on the Budget Stabilization Fund balance. During the 2022 Legislative Session, \$750.0 million was transferred to the Budget Stabilization Fund in FY 2022 by the

appropriation bills. In addition to these transfers, 50.0 percent of SGF tax-only receipts in excess of the consensus revenue estimates adjusted amount are to be transferred to the Budget Stabilization Fund in FY 2022, FY 2023, and FY 2024. The actual transfer for FY 2022 under this provision was \$219.1 million.

The result of all transfers to the Budget Stabilization Fund for FY 2022 totals \$969.1 million. The statute also provides that the Budget Stabilization Fund receive interest earnings on a monthly basis. The balance in the Budget Stabilization Fund in August 2022 was \$970.5 million.

SGF Reappropriations from FY 2022 to FY 2023

At the September 20, 2022, meeting, KLRD staff provided an overview of the reappropriation process and discussed the \$315.9 million in SGF reappropriations for FY 2023. The majority of the reappropriations were for human services caseloads and the Department of Corrections Evidence-based Programs.

Caseloads

Education Consensus Caseloads Estimate

At the November 22, 2022, meeting, KLRD staff provided an update on the revised consensus caseloads estimate for education. For FY 2023, the estimate was reduced by \$70.2 million, including \$65.3 million SGF, below the previous estimate. The decrease was predominantly in State Foundation Aid due to revised student enrollment estimates. For FY 2024, the estimate increased by \$48.3 million, including \$21.6 million SGF, above the revised FY 2023 estimate.

Human Services Caseloads

At the December 19, 2022, meeting, KLRD staff provided the updated fall estimate of the human services caseloads. The revised estimate for FY 2023 was \$4.8 billion, including \$1.3 billion SGF. This is an all funds increase of \$259.5 million, including an SGF decrease of \$198.0 million, from the approved amount. The initial estimate for FY 2024 was \$4.8 billion, including \$1.5 billion SGF. This is an all funds increase of \$7.9 million, including an SGF increase of \$163.0 million, above the FY 2023 revised estimate.

Agriculture

Water Supply Storage Debt

At the September 20, 2022, meeting, the Director of the Kansas Water Office presented an update on water supply storage debt. She provided a brief overview of the agency and the Water Planning and Implementation program. The Public Water Supply program administers programs to ensure an adequate supply of water to Kansans who receive water from state-owned storage in federal reservoirs. Customers pay the Kansas Water Office for use of the water. The customers are primarily municipal and industrial users, but there are some irrigation customers as well. These funds help pay for the water supply storage debt with the federal government.

State Fair Capital Improvements Update

At the October 28, 2022, meeting a representative of the Kansas State Fair reviewed the \$14.5 million SGF in estimated FY 2023 capital improvements, \$10.0 million of which is for Bison Arena renovations. The full renovation costs for the Bison Arena are estimated to be \$20.0 million.

Bipartisan Infrastructure Law for Wildfires

At the December 19, 2022, meeting, the Secretary of Agriculture provided an update on the Governor's Wildfire Task Force. The Task Force had met four times, with another meeting scheduled for January 5, 2023, at which time the Task Force would make recommendations. The Secretary discussed possible recommendations related to mitigation projects, weather monitoring, response plans, mapping, and challenges to local firefighting entities.

Commerce

Panasonic Agreement and APEX Legislation

At the August 25, 2022, meeting, representatives of the Department of Commerce provided an update on the APEX agreement with Panasonic. According to the Department of Commerce, the Panasonic Agreement includes a \$4.0 billion capital investment, 4,000 planned new jobs, 4,000 additional jobs that could be created by suppliers and community businesses, and 16,500 construction jobs.

Build Up Kansas

At the September 20, 2022, meeting, the Executive Vice President, Associated General Contractors (AGC) of Kansas, Inc., presented information on the Build Up Kansas program, which is a collaborative effort between the State and private industry designed to educate and attract young people into careers in construction and industry. He said the 2022 Legislature provided funding to help build on the success of the program. The Executive Vice President noted that approximately 40 years ago, the federal government encouraged people to attend college, which dismantled the vocational training system. Twenty years ago, AGC noticed the impact of the lack of vocational training and began working with high schools, community colleges, and vocational technical centers to ensure that vocational training systems remained in place in Kansas. The AGC also started a program with selected prisons to train low-risk inmates; approximately one-third of those inmates have been hired into industry after their release. The Executive Vice President noted that in recent years, there has been a recognition that skilled workers are needed; therefore, four years ago, AGC started the Build Up Kansas program.

Kansas Infrastructure Hub

At the October 28, 2022, meeting, a representative of the Kansas Department of Transportation reviewed the the federal Bipartisan Infrastructure Law, which provides \$3.8 billion of funding for Kansas over five years. The bill also included \$145.7 million in additional funding for highways, bridges, electrical vehicle infrastructure, and rural transit. The representative also presented on the Kansas Infrastructure Hub, which assists local governments in applying for federal infrastructure grants.

American Rescue Plan Act Grants for Higher Education and Economic Development

At the November 22, 2022, meeting, a representative of the Department of Commerce presented on federal American Rescue Plan Act (ARPA) grants in 2022 HB 2510 and 2022 House Sub. for Sub. for SB 267, which designated funding for State Board of Regents universities, Washburn University, community and technical colleges, private and independent colleges, and Regents University Challenge Grants. According

to the Department of Commerce, all entities have been informed of the requirements for the grants, and the agency is currently accepting requests for proposals. Recipients are required to have the funds expended by June 30, 2024, with extensions on a case-by-case basis up to June 30, 2026.

Broadband Expansion

At the November 22, 2022, meeting, a representative of the Office of Broadband Development, Department of Commerce, presented on the Broadband Acceleration Grant program started in 2020. The program is funded through the Eisenhower Legacy Transportation Program and will grant \$85.0 million over 10 years. The program requires a 50.0 percent match with a minimum grant of \$1.0 million.

The Department of Commerce representative also reviewed federal capital projects funds within ARPA; the Infrastructure Investments and Jobs Act; the Broadband, Equity Access, and Deployment Act; the Digital Equity Act; and the Enabling Middle Mile Broadband Infrastructure Initiative. As of May 2022, the Department of Commerce had awarded \$11.1 million in Broadband Acceleration Grants and \$15.8 million in Capital Project Funds Grants.

The representative noted the remaining programs were still being rolled out.

Update on Digital Transformation Fund

At the December 19, 2022, meeting, a representative of Wichita State University presented an update on the digital transformation funds provided to the university by the 2022 Legislature. He explained there are two ongoing projects, the National Institute for Aviation Research (NIAR)/WERX program and the Wichita Biomedical Campus.

COVID-19

COVID-19 Expenditure Update

At the September 20, 2022, meeting, a Principal Auditor from the Legislative Division of Post Audit (LPA) provided an overview of the performance audit concerning COVID-19 relief funding distribution. The audit's objective was to answer the following questions:

- What is Kansas' process for distributing COVID-19 relief funding?
 - The auditors determined that Kansas used a special task force and legislative appropriations to distribute certain COVID-19 relief funding.
- Have Kansas' distributions of COVID-19 relief funding been appropriate?
 - The auditors determined that the State's distribution of Coronavirus Aid, Relief, and Economic Security (CARES) Act funding appears appropriate, but some spending may be problematic.

At the December 19, 2022, meeting, the Secretary of Administration explained that a plan would be presented to the State Finance Council on December 20, 2022, to distribute the remaining ARPA funds provided for discretionary purposes.

The Secretary stated that all ARPA funds must be encumbered by December 31, 2024, and expended by December 31, 2026. The Secretary reported the Office of Recovery will continue to monitor the status of projects to maximize the use of any unspent funds.

General Government

Kansas Public Employees Retirement System Trust Fund Transfers, Rate of Return, and Modernization

At the August 25, 2022, meeting, a representative of the Kansas Public Employees Retirement System (KPERs) presented on the status of the KPERs Trust Fund.

As of December 31, 2021, the KPERs Trust Fund funded ratio was 71.6 percent, which is a decrease below 72.5 percent in the previous year. The decrease is attributable to the KPERs Board reducing the estimated rate of return from 7.75 percent to 7.00 percent.

The KPERs representative also reviewed various other elements of the KPERs system.

Judicial Branch Operations and Docket Fees Credited to State General Fund

At the September 20, 2022, meeting, the Special Counsel to the Chief Justice, Judicial Branch, provided an update on Judicial Branch operations and docket fees credited to the SGF. He noted there have been historic changes in the Judicial Branch that would not have been possible without the partnership of the Legislature.

During the 2022 Legislative Session, HB 2541 was passed, which moved the funding of core Judicial Branch operations to the SGF. In return, the Judicial Branch deposits some fees into the SGF instead of court-specific funds. For FY 2022, \$27.7 million was collected. For FY 2023, the Judicial Branch estimates that \$28.3 million will be collected. Accounts that flow to counties and agencies were not impacted by this action.

The representative also noted that the 2021 Legislature provided funding to hire 70 additional court services officers (CSOs). Those positions have been filled, and the retention rate for those positions, and CSOs in general, is high.

Sports Wagering

At the September 20, 2022, meeting the Executive Director of the Kansas Lottery provided a presentation on the rollout of sports wagering in Kansas and stated the rollout has gone well. The 2022 Legislature passed a bill to authorize sports wagering at the four state-owned and -operated gaming facilities, which became law on July 1, 2022. Each gaming facility is authorized to have up to 12 mobile platforms such as FanDuel and DraftKings.

The Executive Director said the agency went through many steps including negotiating amendments to the existing casino contracts to provide for in-house sports wagering. Two of the four facilities offer in-house sports wagering. The agency promulgated various rules and regulations related to sports wagering that have been approved by the Office of the Attorney General.

The Executive Director noted the agency would provide updated estimates that include sports wagering revenues during the consensus revenue estimates process in fall 2022.

State Employees Health Care Commission Update

At the October 28, 2022, meeting, a representative of the Department of Administration presented on the 2023 State Employee Health Plan. For calendar year 2023, the employee rates will remain unchanged, and dental rates will decrease. The agency has also developed new flexible spending account (FSA) options including a mass transit FSA and a parking FSA with the ability to carry over deposits.

Docking State Office Building and Kansas Department of Health and Environment Laboratory Construction Status

At the meeting on December 19, 2022, the Secretary of Administration provided an update on the renovation of the Docking State Office Building and the construction of the new Kansas Department of Health and Environment (KDHE) Laboratory. The Secretary reported the Docking State Office Building renovation was on schedule to be completed in FY 2025, and the new KDHE Laboratory was on schedule to be completed in calendar year 2024. The Secretary also noted that 87 percent of the supplies and labor for the Docking State Office Building renovation is Kansas-based. The Secretary provided a timeline and map reflecting the impact of the projects on the Capitol Complex. The Secretary clarified that Parking Lots 1 and 8 contain enough spaces to accommodate construction.

Safe and Secure Schools Update

At the October 28, 2022, meeting, a representative of the Kansas State Department of Education presented on the implementation of the Safe and Secure Schools program provisions. Senate Sub. for HB 2567 (2022) provides \$5.0 million, including \$1.0 million in federal funds, for the acquisition and installation of security cameras and other safety equipment in K-12 schools with at one-to-one dollar match requirement. The representative noted the program has established nine safety standards and requires four fire drills, two tornado drills, and three crisis drills per school year.

Housing Programs

At the November 22, 2022, meeting, a representative of the Kansas Housing Resources

Corporation presented on various housing initiatives passed by the 2022 Legislature. For FY 2023, the State provided \$62.0 million in new and enhanced programs for rural and moderate income housing, including the Moderate Income Housing Program (\$42.0 million) and a rural housing loan program (\$20.0 million).

A variety of policy adjustments were also enacted, such as the Affordable Housing Tax Credit, the Kansas Housing Investor Tax Credit, and the Rural Home Loan Guarantee.

Federal Cybersecurity Grant Program

At the November 22, 2022, meeting, a representative of the Kansas Information Security Office presented on the State and Local Security Grant program. Kansas was allocated \$2.8 million in federal funding for federal fiscal year 2022 as the first of four years of funding with a 10.0 percent match requirement. The funds are to build a state cybersecurity plan that must be submitted by September 2023.

Three-year IT Security Summary Report

At the December 19, 2022, meeting, a representative of LPA presented the Three-year Summary of Security Controls report summarizing the findings of information technology (IT) security audits on several agencies. The representative noted that half of the entities did not substantially comply with IT security standards and best practices.

Update on Funds Distributed by Governor's Grants Office

At the December 19, 2022, meeting, a representative of the Kansas Governor's Grants program provided an overview on Victims of Crime Act Victim Assistance program funds.

The representative indicated the federal Crime Victims Fund had a declining balance due to fewer deposits during court closures related to the COVID-19 pandemic. The representative noted the program is able to spend funds over three years, which has allowed the program to manage fluctuations in the fund; however, the program will need to cut approximately 40.0 percent of its subgrants if federal awards in FY 2022 are similar to FY 2021 award levels.

Review of Unemployment Insurance Certification

At the meeting on December 19, 2022, the Director of Legislative Research, KLRD, provided an update on the audit concerning improper unemployment insurance payments. The Unemployment Modernization and Improvement Council was tasked with recommending to the Committee an amount to transfer from the Legislative Coordinating Council's Legislature Employment Security Fund to the Employment Security Fund of the Department of Labor. The Council recommended a total transfer of \$108.0 million.

The Committee voted to recommend the Legislative Coordinating Council transfer \$108.0 million from the Legislative Employment Security Fund (of the Legislative Coordinating Council) to the Unemployment Fund (of the Department of Labor).

Materials relating to the audit and certification of improper payments can be found in the appendix, including:

- The Fraud Investigation Services Report prepared by FORVIS, LLP;
- A supplement to the FORVIS, LLP report;
- Certification of the amount of improper payments; and
- The full report of this Committee to the LCC regarding the amount of improper payments and the transfer to the Unemployment Fund.

Board of Indigents' Defense Services Salaries

At the December 19, 2022, meeting, the Executive Director of the Board of Indigents' Defense Services presented an update on public defender salaries following the salary increases approved by the 2022 Legislature. The Executive Director reported fewer vacancies and a decreased turnover rate. The Executive Director further indicated the agency will request \$600,000 from the 2023 Legislature to avoid stagnating pay rates.

Performance-based Budgeting

At the January 6, 2022, meeting, a representative of KLRD briefed the Committee on performance-based budgeting. For FY 2023, agencies have submitted performance-based budgets in compliance with the request by the House Committee on Appropriations. The performance-based budgets are available on the KLRD website.

Public Safety

24/7 Pay Plan Update

At the August 25, 2022, meeting, a representative of the Kansas Department of Corrections provided an update on the 24/7 Pay Plan. According to the agency, the plan had the effect of immediately reducing the vacancy rate for correctional officers. The representative noted that despite stopping the attrition as of August 15, 2022, the average vacancy rate remains at 22.0 percent, and four adult facilities have a vacancy rate above 25.0 percent.

Evidence Based Juvenile Initiatives Account

At the October 28, 2022, meeting, a representative of the Kansas Department of Corrections presented on the Evidence Based Programs Account of the SGF. For FY 2023, the account has \$63.5 million in resources and a budget of \$18.2 million. The representative presented a plan to expend the Fund through FY 2030 through 22 different grant programs.

Forensic Laboratory Bond Early Payoff and Kansas Incident Based Reporting System Upgrade

At the November 22, 2022, meeting, a representative of the Kansas Bureau of Investigation (KBI) presented on the retirement of the Forensic Science Laboratory bond. The Forensic Science Center is located on the Washburn University campus. The 2022 Legislature appropriated \$41.5 million SGF to retire the bonds on the building early, saving approximately \$10.0 million in interest. The representative then reviewed the Kansas Incident Based Reporting System (KIBRS). KIBRS is the mechanism by which the KBI gathers and reports a statistical profile of state crime data. The KBI

proposed a \$3.5 million project over five years to update the system.

Law Enforcement Aircraft Purchase Update

At the October 28, 2022, meeting, a representative of the Kansas Highway Patrol (KHP) presented on the acquisition of new aircraft for state use. The 2022 Legislature appropriated \$13.8 million to purchase a new helicopter and Cessna Caravan aircraft. The Legislature also appropriated \$9.0 million for a new Executive Aircraft. The KHP estimated that the Cessna upgrades will be operational in February 2023, the Cessna Caravana and Executive Aircraft will be operational by January 2024, and the helicopter will be operational by March 2024.

Firefighter Recruitment and Safety Grant

At the January 6, 2023, meeting, a representative of the State Fire Marshal briefed the Committee on the Firefighter Recruitment and Safety Grant program. Funding of \$1.3 million was granted from the program in June 2022 with the majority of the funds used for purchasing new fire fighting gear. Eight departments were found to be noncompliant due to lacking the National Fire Incident Reporting System.

Human Services

Provider Rates

At the September 20, 2022, meeting, the Commissioner for Financial and Information Services Commission, Kansas Department for Aging and Disability Services (KDADS), presented information on Medicaid reimbursement rates. He discussed reimbursement rates and enhancements that have been implemented since the 2022 Legislative Session. The Medicaid rates are paid as part of KanCare. The Division of Health Care Finance within KDHE is the State's Medicaid agency, and the State contracts with three managed care organizations (MCOs). The MCOs are paid a per-member per-month rate and contract with service providers. The floor rate is set by the State, and the MCOs pay at least that rate to the providers; however, there are exceptions that offer flexibility regarding other payment models. KDADS is responsible for long-term care and behavioral health rates, which can either be cost-based, which are facility-specific, or fees for service rates.

At the December 19, 2022, meeting, a representative of KDADS; the Executive Director of InterHab; and the Executive Director of Developmental Services of Northwest Kansas, Inc., provided an update on wages for direct support workers following the 2022 Legislature's approval of a 25.0 percent increase in I/DD waiver rates. InterHab conducted a survey of its members and reported that 100.0 percent of respondents had increased their direct support worker wages. The average hourly wage increased from \$11.30 per hour in October 2021 to \$15.19 per hour in October 2022.

Waitlist for Services on the Home and Community Based Services Intellectual/Developmental Disability Waiver

At the September 20, 2022, meeting, the Commissioner for Long Term Services and Supports Commission, KDADS, provided a presentation on the waitlist for services on the home and community based services (HCBS) Intellectual/Developmental Disability (I/DD) Waiver. Waivers allow states to tailor services to meet the needs of a particular target group and may be targeted by issues such as age or diagnoses. Kansas has seven HCBS waivers, including the I/DD Waiver. The I/DD Waiver delivers services to people aged five and older who have an intellectual and/or developmental disability.

TANF Data Mining Results

At the December 19, 2022, meeting, a representative of LPA reviewed an audit of the Temporary Aid for Needy Families (TANF) program. The representative stated there was no evidence of unauthorized point of sale purchases, but the agency was unable to identify how recipients used cash benefits.

Report on Mental Health Intervention Team Pilot Program

At the December 19, 2022, meeting, a representative of the Kansas State Department of Education provided an update on the Mental Health Intervention Team pilot program. The program started during the 2018-2019 school year

with funding for 45 liaisons for 9 pilot school districts. In the 2022-2023 school year, the program has expanded to 150 liaisons for 67 school districts.

CONCLUSIONS AND RECOMMENDATIONS

The Committee made the following recommendations:

- The Legislative Coordinating Council should recommend the State Finance Council approve the transfer of an additional \$107.9 million from the Legislative Employment Security Fund to the Unemployment Trust Fund from federal funds. This is in addition to the \$250.0 million transferred to the Unemployment Trust Fund in FY 2022, for a total of \$357.9 million. The report to the Legislative Coordinating Council concerning the transfer is contained in the appendix.
- The House Committee on Appropriations and the Senate Committee on Ways and Means should receive updates and consider the following items:
 - Providing additional funding to the Budget Stabilization Fund; and
 - Reevaluating investment priorities for the \$167.0 million from the State Fiscal Recovery Fund that may be recouped and reallocated from other purposes.
- The Kansas Department of Transportation should consider conducting a cost analysis study to construct or enhance mass transit systems in Johnson, Sedgwick, and Wyandotte counties to address economic growth in those areas and changing travel behaviors. The study should propose what such transit systems would look like and account for any federal funds estimated to be available in future years.

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FRAUD INVESTIGATION SERVICES REPORT FOR UNEMPLOYMENT COMPENSATION MODERNIZATION AND IMPROVEMENT COUNCIL ON BEHALF OF THE KANSAS LEGISLATURE ("COUNCIL")

SEPTEMBER 1, 2022

FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office

Version 6.22

FORVIS

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September 1, 2022

Sean Tarwater, Chairperson
Unemployment Compensation Modernization and Improvement Council
300 SW. 10th Ave., Ste. 551
Topeka, KS 66612

Dear Mr. Tarwater:

Thank you for the opportunity to provide investigation services for the Unemployment Modernization and Improvement Council (the Council) in connection with the effects on the Kansas Department of Labor (KDOL) and the unemployment insurance system of fraudulent claims and improper payments during the period of March 15, 2020, through March 31, 2022. For our analysis, we relied upon information provided to us in the form of electronic unemployment insurance claims files, documents, as well as conversations and interviews with relevant parties. This report is based on work completed to date.

Our services were provided in accordance with the Statement on Standards for Forensics Services promulgated by the American Institute of Certified Public Accountants and, accordingly, do not constitute a rendering by **FORVIS, LLP** (FORVIS) or its partners or staff of any legal advice, nor do they include the compilation, review, or audit of financial statements. Because our services were limited in nature and scope, they cannot be relied upon to discover all documents and other information or provide all analyses that may be of importance in this matter. We were asked to analyze certain designated files, data, and information and, based on the scope of work, we identified matters discussed in this report, including an estimate of potential fraudulent payments based on data analytics procedures. This is a factual report of our findings, and we do not make a determination on if specific claims are fraudulent or comment on legal culpability.

This report is the property of FORVIS and has been prepared solely for use by the Council and should not be used by any other party or for any other purpose, without our written permission in each specific instance.

The validity of this report is predicated on the extent to which full, honest, and complete disclosure was made by all parties. We reserve the right to supplement this report if additional information becomes available.

FORVIS, LLP

FORVIS, LLP



Robert R. Sprague, CPA

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Overview of Project and Data

During the COVID-19 pandemic, additional federal funding and flexibility were provided to state unemployment insurance agencies to help address the increase in unemployment insurance claims. These state unemployment insurance agencies became a target for potential fraud, and the Kansas Department of Labor (KDOL) was no exception. We have been asked to gain an understanding of the effects of these potentially fraudulent claims on KDOL's unemployment insurance system as well as KDOL's response during the period March 15, 2020¹ through March 31, 2022 (the "Period"). A complete listing of the Scope of Work can be found in Attachment A of this document. The items covering KDOL's information technology security included in the scope of services were previously covered by FORVIS in two reports issued to the Council on May 11, 2022.

We received data from KDOL representing 1,540,957 million claims representing 1,086,195 million unique claimants, and payments totaling \$3,554,882,327 for the Period. Our understanding is that the Lost Wages Assistance program is out of scope for purposes of this report, as that is not an unemployment insurance program. As such, we have excluded those payments, which total \$130,565,088, from our analysis. As further described below, our data analysis indicates an estimated range of between approximately \$441 and \$466 million potentially fraudulent claims were paid during the Period².

Self-Reported Fraud

We received 329,553 records of data representing claimants who had self-reported a fraudulent claim, or had someone, such as their employer, report fraud on their behalf. KDOL collected this data from the online Kansas unemployment insurance fraud reporting tool at <https://reportfraud.ks.gov/>.

KDOL Potential Fraud Flag

KDOL flags claimants as potentially fraudulent for several reasons, such as if a claimant self-reported fraud or if that claimant used the same bank account as a significant number of other claimants. While there were many different reasons why KDOL flagged a claimant as potentially fraudulent, the reasons why specific claimants were flagged as potentially fraudulent were not tracked consistently. We received two files that contained, in addition to other information, information regarding which claimants had been flagged by KDOL as potential fraudulent claimants, but not the specific reason why the claimant had been flagged. Between these two files, 350,137 claimants were flagged as potential fraud and had not been subsequently cleared as legitimate.

IP Addresses

Each time a claimant logs into the KDOL system, their IP address is recorded. We obtained a data set of 24,664,279 logins that provided the IP addresses for claimants that filed online claims.

Deceased Claimants

KDOL provided a listing of deceased claimants which provided date of death for 8,901 claimants.

Incarceration Records

KDOL provided a listing of 70,468 records identifying claimants who had been incarcerated at some point in time according to data KDOL had matched against Kansas Department of Corrections data. This data included claimants with claims in our scope period, but also claimants outside of our scope period. We noted many claimants appeared in this data multiple times with the same incarceration date. We considered this duplication in our analysis.

¹ The scope period outlined in the Agreement for Fraud Investigations Services was March 15, 2020 to March 31, 2022; however, FORVIS received unemployment insurance claim and payment data from January 1, 2020, to March 31, 2022.

² Our initial estimate of potentially fraudulent claims was between approximately \$486 million and \$511 million. As further described below, we have reduced this estimate to account for the possibility that legitimate claims were filed at a later date by claimants that were the victim of an earlier fraudulent claim filing using their stolen personal information.

Summary Claim Information by Employer

KDOL provided a summary of claims by employer, program, month, and year for January 2015 through March 2022, containing 1,320,176 records. In addition, KDOL provided a summary of payments by employer, program, month, and year for January 2015 through March 2022, containing 1,295,415 records.

Self-Reported Fraud Analysis

We utilized the self-reported data from the online Kansas unemployment insurance fraud reporting tool at <https://reportfraud.ks.gov/> to identify claimants who had self-reported a fraudulent claim, or had someone, such as their employer, report fraud on their behalf. This data did not contain a claimant ID to enable us to link directly with the claimant data we had been provided, but did include names, some full SSNs, some partial SSNs, and birth dates. We used various combinations of these data elements to match the data between these disparate data sets. After accounting for duplicate reports for the same claimant, we were able to match this self-reported fraud claimant database with 227,918 claimants in the claims database. Of these 227,918 claimants, 115,812 had received payments, totaling \$282,469,430. The average total payments to claimants who had self-reported fraud was \$2,439.

Overview of Data Analytics Methodology

We used the self-reported fraud claims as our starting point for assessing potentially fraudulent claims and then built additional detection methods on top of that to increase the probability of identifying potential fraud. We employed the following three additional methods:

- Egregious Flag Method
- Machine Learning Method
- Cumulative Risk Score Method

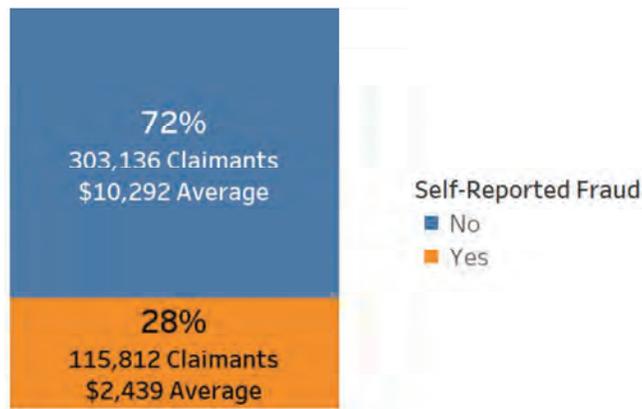
All three of these methods were based on a series of potential fraud flags, such as **claimant shares a bank account with other claimants** or **claimant with a high email address risk score**. The egregious flag method identified specific potential fraud flags that, by themselves, appeared to indicate a high probability that the claim was fraudulent.³ The machine learning method identified claimants with combinations of potential fraud flags that were consistent with those associated with self-reported fraud claims. The cumulative risk score method assigned a value to each potential fraud flag, summed those scores, and assigned a total risk score to each claimant.

To inform these methods, we started by studying the population of claimants who had received at least one payment, split between claimants with self-reported fraud and those without. By doing so, we learned two key pieces of information we used throughout our analysis.

First, we learned that claimants with self-reported fraud made up **28%** of the population of claimants with payments. This was a helpful baseline in our assessment of the efficacy of various procedures we performed, as well as in our assessment of the efficacy of KDOL's potential fraud flags.

Second, we learned that the average of payments to claimants with self-reported fraud, **\$2,439**, was considerably lower than the average to claimants without self-reported fraud, **\$10,292**. Intuitively, this makes sense given our understanding from discussions with KDOL that the Department was considering all information that was available regarding potential fraudulent claimants and stopping payments when they became aware of a potentially fraudulent claimant. Therefore, a claimant may have started to receive payments but been stopped midway through the expected payment stream.

Figure 1 – All Paid Claimants



³ As further described below, our analysis determined that 66% to 70% of the claimants that were flagged by an egregious procedure also had self-reported fraud, suggesting a strong correlation between the egregious flags and claimants with self-reported fraud.

Potential Fraud Flags

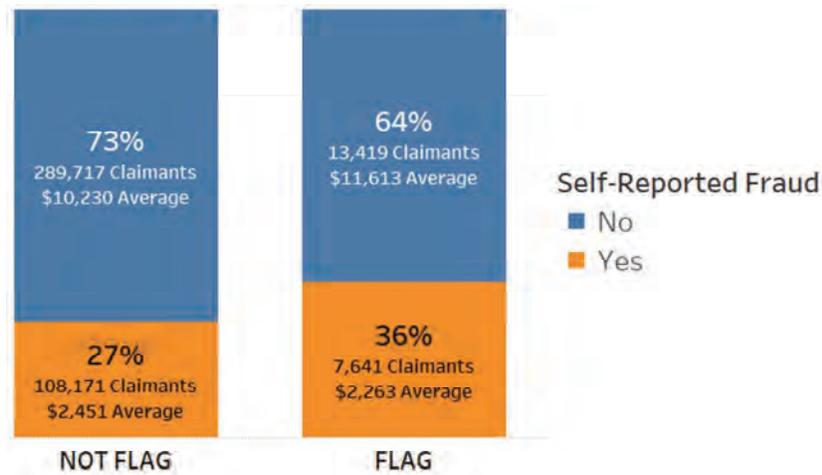
We utilized 53 potential fraud flags in our analyses. We assigned a risk score to each flag, based on how predictive the flag appeared to be. Flags with no predictive capacity were assigned a score of zero, and flags with the highest predictive capacity were assigned a score of 10.

Scoring for Single Value Flags

For flags that were binary, meaning either the claimant was flagged by the test or not, a single score was assigned. To assess a test's predictive value, we compared the percentage of claimants with self-reported fraud who did NOT get flagged relative to the percentage of claimants with self-reported fraud who did get flagged. As an example, the below potential fraud flag identified claimants whose personal address matched the employer address listed on their claim. In figure 2 below, we can see in the left bar that for those claimants not flagged, approximately 27% had self-reported fraud. In the right bar we can see that for those flagged, approximately 36% had self-reported fraud. So, the test appeared to have some predictive value because the percentage of claimants in the subset of claimants flagged (the right bar) was higher than those not flagged (the left bar).

For this test, we assigned a score of two. For reasons explained later in the report, we determined the score using a scale that ranged from 28% of claimants with self-reported fraud for tests with no predictive capacity, since that is our baseline across all claimants, to 66% for tests with the highest predictive capacity, since that is the highest threshold achieved in the egregious section of the report. A score of zero was assigned if the flag resulted in 28% or 10 if the flag resulted in 66%.

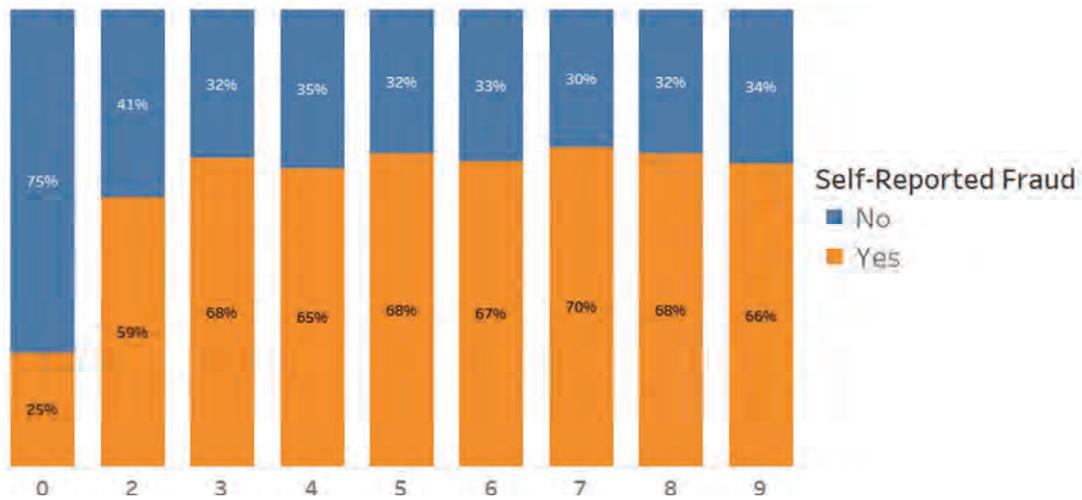
Figure 2



Scoring for Multiple Value Flags

For flags with multiple potential values (three claimants sharing an attribute, four claimants, five claimants etc.), we considered not only whether the claimant was flagged but also the value associated with the flag. As an example, one of the flags we created was to isolate email addresses which differed only by special characters, such as periods (for example, A.c.me@gmail.com, Ac.m.e@gmail.com, and A.c.m.e@gmail.com). If a claimant shared a similar email address with multiple other claimants, we assigned a score based on the number of claimants with that shared similar email address. In Figure 3 below, which represents the results of claimants who share a similar email address, the second bar represents claimants who share a similar email address with one other claimant or, said another way, a shared similar email address between two claimants. Within this subset of claimants, 59% had self-reported fraud, and a score of eight was assigned. For claimants in the rightmost bar, emails shared across nine claimants, 66% had self-reported fraud, and a score of 10 was assigned.

Figure 3



We noted that as the number of similar emails increased, illustrated by moving left to right in Figure 3 above, initially the percentages for self-reported fraud increased dramatically, and then seemed to level off around 66%. This led us to consider the fact that at a certain point, perhaps claimants at or above the threshold where it levels off could be potentially fraudulent. However, we analyzed additional data to support this hypothesis.

Egregious Flag Method

The goal of the egregious flag method was to identify specific potential fraud flags that, individually, appeared to flag claims with a high probability of potential fraud. We had two requirements for a flag to be considered an egregious flag:

- First, it had to intuitively make sense to be egregious. As an example, if three claimants had similar email addresses that differed only by special characters (for example, A.c.me@gmail.com, Ac.m.e@gmail.com and A.c.m.e@gmail.com), it seems likely that those three claimants would be potentially fraudulent.
- Second, the data had to support the decision. The following explains how we used the data available to us to determine whether to consider a potential fraud flag to be egregious.

We identified two subsets of claimants that we believed a reasonable person would agree would have a high probability of being potentially fraudulent, based on three unique combinations of potential fraud flags.

Egregious Claimant Subset #1

The first subset of claimants exhibited all three of the following attributes:

- 1) Claimant shared a bank account with nine or more other claimants
- 2) Claimant shared an email address with nine or more other claimants
- 3) Claimant had a vendor-defined IP address potential fraud score of at least a nine out of 10

This subset consisted of 599 claimants:

- 66% of these claimants had self-reported fraud, and the average claimant payments were \$1,666.
- 34% of these claimants had NOT self-reported fraud, and the average claimant payments were \$2,835.

Egregious Claimant Subset #2

The second subset of claimants exhibited all three of the following attributes:

- 1) Claimant shared a phone number with nine or more other claimants
- 2) Claimant shared an email address (excluding special characters) with nine or more other claimants
- 3) Claimant had a vendor-defined email potential fraud score of at least a nine out of 10

This subset consisted of 730 claimants:

- 70% of these claimants had self-reported fraud, and the average claimant payments were \$1,511.
- 30% of these claimants had NOT self-reported fraud, and the average claimant payments were \$2,449.

For these subsets, which we believe a reasonable person would agree have a high probability of being potentially fraudulent, 66% and 70%, respectively, of claimants had self-reported as fraudulent. This means between 30% and 34% of these claimants had a high probability of being potentially fraudulent but did NOT self-report as fraud.

Egregious Flag

We noted roughly the same percentage of claimants with self-reported fraud across these four subsets of claimants:

- 66% in the egregious claimant subset #1,
- 70% in the egregious claimant subset #2,
- 69% in the subset of claimants where three or more claimants shared an email address, after removal of special characters, and
- 67% in the subset of claimants where three or more claimants shared a bank account.

Based on this analysis, we believed it was reasonable to assume that, if an individual potential fraud flag isolated a subset of claimants where between 66% and 70% of those claimants had self-reported fraud and it intuitively made sense to consider the potential fraud flag as egregious, then there was a high probability that the claimants flagged by that test were potentially fraudulent.

Using this methodology, we identified two potential fraud flags which we considered to be egregious.

- 1) Three or more claimants with the same email address, after removal of special characters (for example, A.c.me@gmail.com, Ac.m.e@gmail.com, and A.c.m.e@gmail.com), which resulted in a subset of paid claimants whereby 69% of those paid claimants had self-reported fraud
- 2) Three or more claimants with the same shared bank account, which resulted in a subset of paid claimants whereby 67% of those paid claimants had self-reported fraud

We further considered whether a specific potential fraud flag was egregious purely based on the nature of the test, and identified one paid claimant with an invalid SSN, and nine paid claimants with a death date prior to their claim dates which we flagged as egregious.

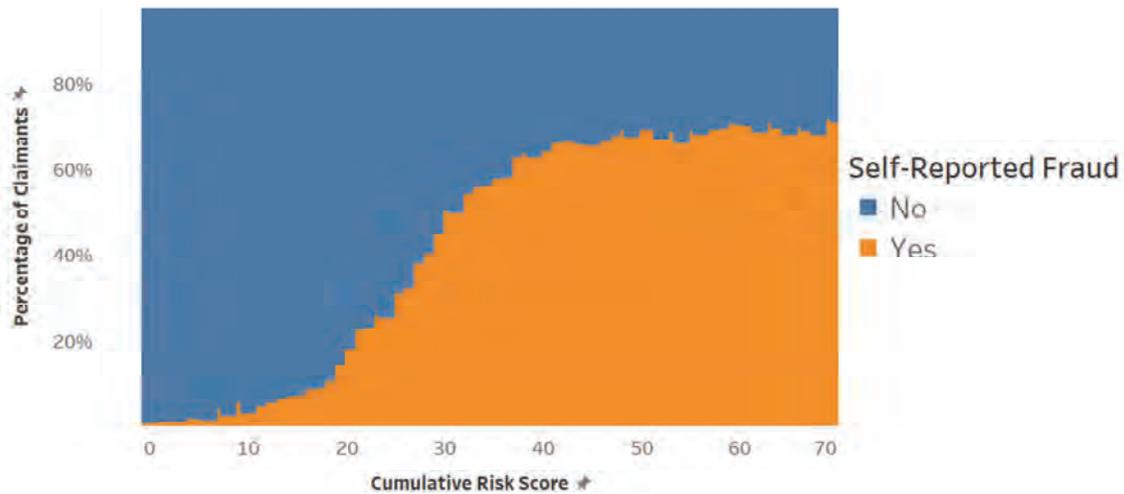
Machine Learning Method

While the egregious flag method was focused on finding a single potential fraud flag that was very predictive of fraud by itself, the machine learning approach was focused on finding unique combinations of potential fraud flags with high predictive value. We trained the model by showing it claimants that had self-reported fraud as well as those that did not have self-reported fraud and asking the model to try to find combinations of flags within the self-reported fraud population that also existed in the population without the self-reported flag.

Cumulative Risk-Score Method

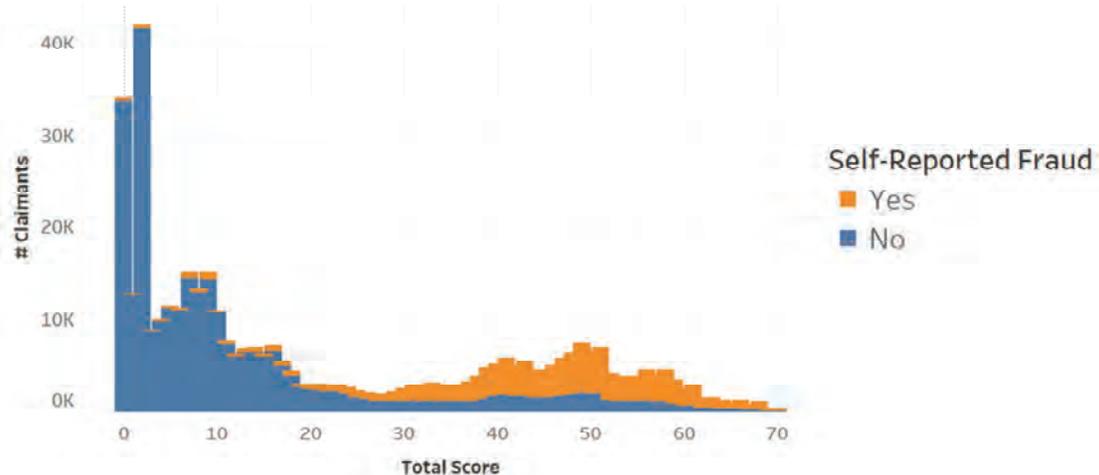
The cumulative risk-score method simply summed up the scores from the potential fraud flags associated with a claimant. Claimants over a certain threshold were determined to be potentially fraudulent. We judgmentally selected a threshold of 40, based on a data-driven approach. First, we noted the average cumulative risk-score for claimants with self-reported fraud was 40. Second, we used data visualization software to help us better understand the distribution of claimants across the various risk score thresholds, focusing once again on the percentage of self-reported fraud claimants relative to the other claimants initially. In Figure 4 below, orange represents claimants with self-reported fraud, and blue represents claimants who did not self-report fraud. On the leftmost side, at a risk score of zero, there is a very small orange bar which indicates approximately 1% of claimants with a risk score of zero had self-reported fraud. On the rightmost side, at a risk score of 70, there is a very large orange bar which indicates approximately 71% of claimants with a risk score of 70 had self-reported fraud. This distribution levels off at a risk-score of approximately 40.

Figure 4



While Figure 4 above shows the percentage breakdown of claimants at each risk score, Figure 5 below shows the breakdown of the number of claimants at each risk score, which provides helpful context.

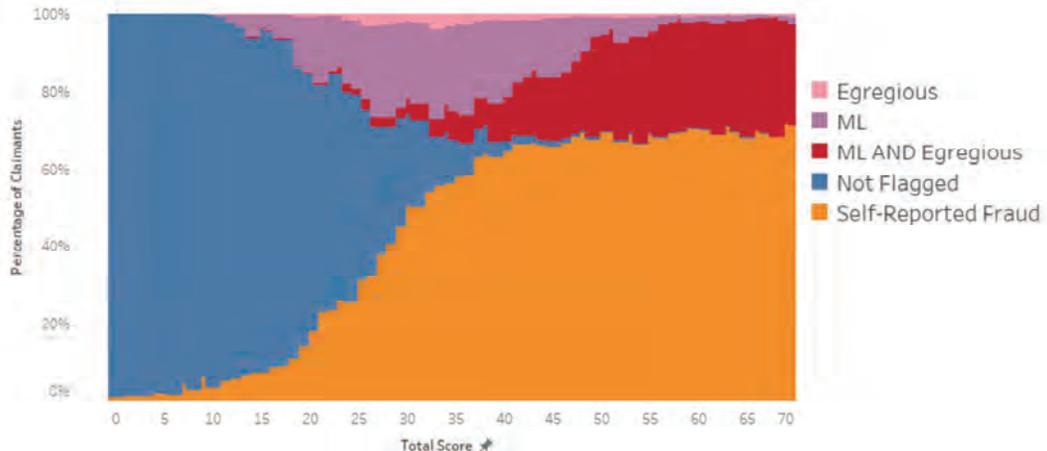
Figure 5



Combination of All Methods

Starting with the self-reported fraud claimants as our baseline in Figure 4 above, we then layered in the claimants flagged by our egregious flag and machine learning methods. These independent methods produced very similar results in the higher cumulative risk score levels, as shown in red below, and while there was overlap between these two methods in the lower cumulative risk scores, there were also some claimants flagged by one method and not the other, which is expected since one identifies a single flag which is consistent with potential fraud, and the other identifies combinations of flags consistent with potential fraud.

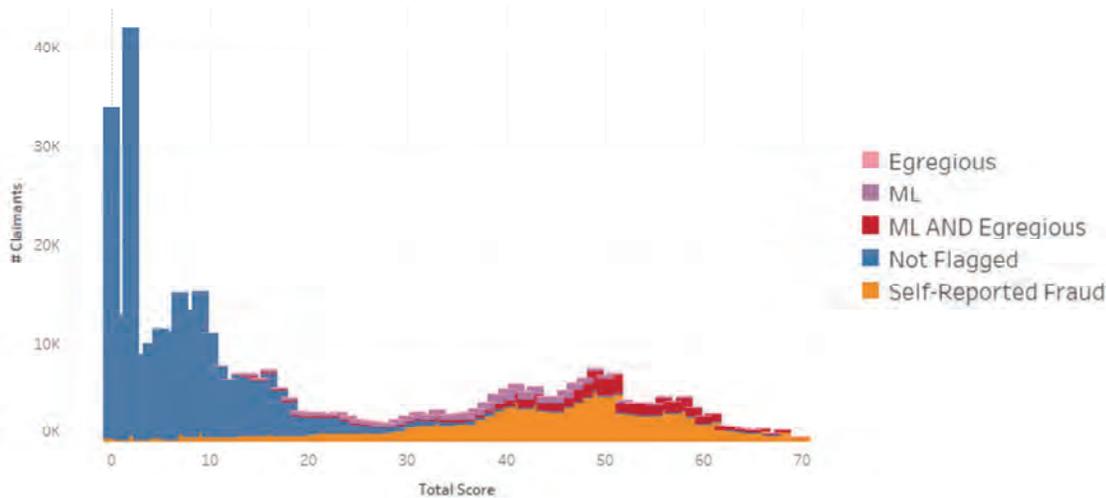
Figure 6



The secondary feature of Figure 6 above is that it further supports our earlier conclusion that a cumulative risk score of 40 is appropriate as a cutoff for our cumulative risk score method, as there are very few claimants not already flagged as potentially fraudulent at a score of 40 or above, as shown by the blue area in the graphic above.

While Figure 6 above shows the percentage breakdown of claimants at each risk score, Figure 7 below shows the breakdown of the number of claimants at each risk score, which provides helpful context.

Figure 7



Taking these approaches together, including the self-reported fraud flag, we have estimated the total payments to potentially fraudulent claimants to be between \$486 million and \$511 million. The low end of the range includes claimants with self-reported fraud and/or claimants identified by our machine learning method. The high end of the range includes these same claimants plus claimants flagged by the egregious flag method and/or the cumulative risk-scoring method and is the figure we will use throughout the remainder of this report. We noted the average cumulative risk score for potentially fraudulent claimants not self-reported as fraud was 39, which is consistent with the average risk score for claimants with self-reported fraud of 40. The average of total payments to potentially fraudulent claimants who had not self-reported fraud was \$4,057, which is slightly higher than the average of claimants with self-reported fraud of \$2,439. This aligns with expectations, as we understand that KDOL was stopping payments to self-reported fraud claimants as well as claimants that had other patterns consistent with fraud, so we would expect the average of payments to claimants who did not have a self-reported fraud to be higher, resulting in an overall higher average.

Of the \$511 million potentially fraudulent payments, approximately \$310 million related to state programs, and \$201 million related to federal programs.

Of the \$511 million potentially fraudulent payments, approximately \$436 million was paid before the implementation of the multifactor authentication requirement implemented by KDOL, and approximately \$75 million was paid after.

Of the claimants identified as potentially fraudulent, approximately 98.5% filed their claim(s) via the internet, and approximately 1.5% filed their claim(s) by phone. Of the claimants not identified as potentially fraudulent, approximately 81.7% filed their claim(s) via the internet, and approximately 18.3% filed their claim(s) by phone.

Of the \$511 million potentially fraudulent payments, approximately 87.4% were paid by direct deposit, and approximately 12.6% were paid by prepaid debit card. Of the payments not identified as potentially fraudulent, 75.3% were paid by direct deposit, and approximately 24.7% were paid by prepaid debit card.

Legitimate Claims Following Potentially Fraudulent Claims

Our analysis utilized individual claim level detail for purposes of flagging potentially fraudulent claims, but, ultimately, a claimant was determined to be potentially fraudulent or not. KDOL raised concerns that this would tend to overstate the potential fraud because there were instances where legitimate claimants filed for unemployment only to discover that a fraudulent claim had previously been filed utilizing their personal information. Therefore, our analysis would categorize all payments to this claimant as potentially fraudulent when only a portion should be categorized as potentially fraudulent. While it is not possible to determine an exact dollar amount that follows this pattern since we do not have the self-reported date for all potentially fraudulent claims and we cannot say definitively that all new claims paid after a self-report were legitimate, we have developed an approach to provide some insight into the magnitude of this situation.

For self-reported fraud, we have the date of the reported fraudulent claim. If a claimant with self-reported fraud subsequently filed a claim and you assume that claim was legitimate, then any subsequent payments would presumably be legitimate as well. The total of such payments was approximately \$25 million.

We previously calculated payments to claimants who had self-reported fraud to be \$282 million, which represents 55% of the total payments to potentially fraudulent claimants of \$511 million. If we assume the same proportion of payments for legitimate claims in the population of self-reported fraud claimants to the total population of potentially fraudulent claimants, we can estimate that \$45 million (\$25 million/55%) of the total \$511 million could have potentially been for legitimate claims following fraudulent claims. If these payments were legitimate, that would reduce our estimated potential fraudulent claim range to between \$441 and \$466 million.

Evaluating the Effectiveness of KDOL Fraud Flags

As described in the Overview of Data section of this report, we received a file which identified 350,137 claimants as having been flagged as potentially fraudulent by KDOL. When we isolate to claimants flagged by both FORVIS and KDOL, there is an overlap of \$382 million of payments.

In addition to flagging \$382 million of claims which were also flagged in our analysis, the KDOL flag identified an additional \$345 million of payments as potentially fraudulent. The average cumulative risk score for this subset of claimants was 19, which is considerably below the average of 40 we noted for claimants with self-reported fraud. The average total payments to claimants in this subset was \$12,084, which is well above the average of claimants with self-reported fraud of \$2,439. Taking these two pieces of information together, it appears many of these claimants were likely legitimate and should not have been flagged.

Therefore, it appears that while the KDOL was effective at flagging potentially fraudulent claimants, it flagged a number of likely legitimate claimants as well.

Evaluating the Impact of Waiving the One-Week Waiting Period

We understand that prior to March 30, 2020, a one-week waiting period was required to give KDOL more time to adjudicate and investigate potential issues with a claim. However, during most of the scope period, this requirement was waived. To assess the potential impact of this decision, we isolated claimants that met certain criteria consistent with a claimant that might not have been paid had this waiting period been in effect. Specifically, we assumed that if a claimant met all of the following criteria, then it is possible that KDOL might have identified the claimant as potentially fraudulent and stopped issuing payments during the one-week waiting period.

- 1) Claimant had received only a single payment.
- 2) The benefit period begin date on the claim was six days prior to the first claim week date associated with the single payment, indicating waiver of the one-week waiting period (rather than 13 days which was normal before the waiver).
- 3) The single payment occurred within seven days of the claim week date. This seemed like a reasonable assumption since most payments happened within seven days, and this is the same number of days as the waiting period. For payments that were delayed longer than seven days, presumably payment would have been stopped regardless of whether the one-week waiting period was in effect.
- 4) KDOL had flagged the claimant as potentially fraudulent, suggesting that the reason there was only a single payment to the claimant was that KDOL may have stopped payment as opposed to the claimant having stopped filing additional claims.
- 5) We had identified the claimant as potentially fraudulent in this report.

A total of approximately \$15 million was paid to claimants meeting all of these criteria, and as such, might have been avoided but for the waiver of the one-week waiting period.

Employer Analytics

We examined the claim counts by employer in 2015 through 2019 compared with January 2020 through March 2022. First, we identified employers with no claim activity noted prior to 2020 but at least one claim between January 2020 and March 2022. Of the 1,536,416 claims we were able to match between the individual claim level data and the summary level employer data, 712,324, or 46%, matched this pattern. The average score for these claimants was 25, which is the same as the overall population average of 25 and well below the self-reported fraud average of 40. Next, we identified employers with at least twice as many claims during January 2020 through March 2022 as compared with 2015 through 2019. There were 711,463 claims, or 46%, associated with these employers. We searched for correlations between the percentage change between these two periods and risk scores but did not note any strong correlations. The average score for these claimants was 22. We also noted that analyzing specific employer claims prior and during the pandemic was difficult as not all types of employers were impacted the same during the pandemic.

Improper Payments

We obtained detail of overpayments by claimant from KDOL. We have summarized this detail in Figure 8 below, by category of overpayment. The totals below were labeled as “Total Due” in the spreadsheet provided to us. The left column provides totals which include claimants which we have identified in this report as potentially fraudulent. The right column provides totals which exclude those claimants.

Figure 8

OVERPAYMENT REASON	Total Including Flagged Claimants	Total Excluding Flagged Claimants
Attributing earnings to wrong week	\$ 6,966.64	\$ 5,828.00
Bank pay award	\$ 87,344.84	\$ 87,344.84
Clerical or CSR/Adjudicator error	\$ 1,023,133.64	\$ 934,724.14
Concurrent filing against two states	\$ 296,901.47	\$ 287,805.46
EDP program error	\$ 947.20	\$ 947.20
Error in computing weekly or maximum amount	\$ 375.00	\$ 375.00
Failure to act on disqualifying information	\$ 224,689.52	\$ 202,051.52
Illegal alien	\$ 910,134.79	\$ 797,837.07
Inadequate search for work	\$ 555,855.29	\$ 539,987.29
Incorrect reason for separation	\$ 23,355,720.03	\$ 19,200,337.31
Incorrect reporting of base period wages	\$ 1,150,196.74	\$ 963,642.12
Incorrect reporting of weeks of work	\$ 8,934.68	\$ 7,630.68
Keypunch error	\$ 60,887.00	\$ 60,821.00
Not elsewhere classified-attributable to agency	\$ 5,186,734.12	\$ 4,654,946.00
Not elsewhere classified-attributable to the claim	\$ 5,457,605.71	\$ 3,639,391.18
Not elsewhere classified-attributable to the emplo	\$ 75,872.12	\$ 74,122.12
Payment after failure to report	\$ 8,258,258.38	\$ 6,911,550.66
Reasonable assurance	\$ 305,514.64	\$ 254,826.64
Refused to accept suitable work	\$ 1,340,886.91	\$ 1,246,157.40
Reporting of business owner wages	\$ 1,440.00	\$ 1,440.00
Reversal (JAVA)	\$ 2,049,892.86	\$ 1,943,105.86
Reversal (other than JAVA)	\$ 9,797,735.94	\$ 9,038,723.84
Unable or unavailable for work	\$ 7,166,966.64	\$ 5,943,150.75
Underreporting of wages	\$ 318,837.56	\$ 304,976.39
Unreported Worker's Compensation	\$ 101,329.30	\$ 100,353.30
Unreported irregular separation	\$ 2,413,010.42	\$ 2,005,585.58
Unreported pension	\$ 462,936.52	\$ 412,129.84
Unreported vacation/holiday pay/severance	\$ 2,837,994.54	\$ 2,437,573.72
Unreported wages	\$ 3,630,478.66	\$ 3,216,741.96
Multiple Reasons	\$ 638,804.38	\$ 618,059.14
	\$ 77,726,385.54	\$ 65,892,166.01

Passwords and Security Phrases

We asked for passwords and security phrases associated with claimants to use in our analysis but were told by KDOL that they are no longer retained by KDOL at the advice of a security audit they had undergone.

Comparison between 2020 and 2021

Total payments in 2020 and 2021 were \$2,507,087,871 and \$839,771,851, respectively. These totals are broken down by program in Figure 9 below.

Figure 9

Program	2020	2021
UI REGULAR	\$ 979,770,296	\$ 319,533,891
EB	\$ 11,898,953	\$ 1,658,337
MEUC	\$ -	\$ 85,380
PUA	\$ 177,615,809	\$ 36,730,814
FPUC	\$ 1,226,085,098	\$ 318,339,932
PEUC	\$ 110,859,636	\$ 161,838,230
TRA	\$ 858,079	\$ 1,585,267
	\$ 2,507,087,871	\$ 839,771,851

The number of claims in 2020 and 2021 were 1,030,801 and 472,442 respectively. There were 669,759 claimants with one or more claims in 2020 but none in 2021. There were 335,976 claimants with one or more claims in 2021 but none in 2020. There were 65,738 claimants with claims in both 2020 and 2021.

There were 222,375 claimants who received at least one payment in 2020 but none in 2021. There were 120,754 claimants who received at least one payment in both 2020 and 2021. There were 70,514 claimants who received at least one payment in 2021 but none in 2020.

KDOL Progress on implementation of program integrity elements

FORVIS was asked to assess KDOL's progress on implementing the program integrity elements and guidance issued by the United States Department of Labor and the National Association of State Workforce Agencies. The following integrity elements and guidance are included along with a brief assessment of KDOL's progress in these areas. Our assessment of these areas is based on discussions with KDOL personnel.

A. Social security administration cross-matching for the purpose of validating social security numbers supplied by a claimant.

KDOL performed procedures related to validating social security numbers (SSN) both prior to and during the pandemic. During the height of the pandemic, KDOL staff continued to perform procedures around SSN verification, testing that ordinarily would have been done during the one-week waiting period. We understand from our discussions with KDOL, that the ability to keep up with all fraud testing elements was challenging due to the unprecedented volume of claim filings.

KDOL is currently in the process of implementing Pondera Solutions (Pondera), a fraud detection software that utilizes advanced data analytics to identify potential fraud. Pondera will utilize data, including SSN data to better automate the Department's fraud detection capabilities going forward.

B. Checking of new hire records against the national directorate of new hires to verify eligibility.

We understand from our discussions with KDOL that this procedure has been in place throughout the pandemic. Similar to SSN cross-matching procedures, KDOL's ability to sustain its fraud detection capabilities during the height of the pandemic was impacted by the significant growth in claim filings.

C. Verification of immigration status or citizenship and confirmation of benefit applicant information through the systematic alien verification for entitlement program.

We understand from our discussions with KDOL, claimants are required to acknowledge their immigration status on their unemployment insurance claim application. Depending on the claimants' responses in their application KDOL follows up. KDOL also relies on the fact that employers are required to check immigration status. KDOL does not currently utilize any external data to verify immigration status.

D. Comparison of applicant information to local, state, and federal prison databases through incarceration cross-matches.

Prior to and since the beginning of the pandemic, KDOL has been utilizing data from the Kansas Department of Corrections to identify potentially fraudulent claims. One limitation on the data was that KDOL had been provided with prison release information but had not been incorporating that information into its process or saving that data beyond a three-week retention period. This could have led to falsely flagging an individual if they had been released from prison and became eligible for unemployment insurance. We made KDOL aware of this limitation, and we have been told they have begun retaining prison release information on a go forward basis. KDOL has not had access to federal prison records, but we understand that with the implementation of Pondera, KDOL will now have access to federal prison databases to supplement its searches within the state of Kansas.

E. Detection of duplicate claims by applicants filed in other states or other unemployment insurance programs through utilization of the interstate connection network, interstate benefits cross-match, the state identification inquiry state claims and overpayment file and the interstate benefits 8606 application for overpayment recoveries for Kansas claims filed from a state other than Kansas.

- We understand from our discussions with KDOL that currently and historically, KDOL has not been able to develop an automated process for identifying possible claimants filing inappropriately in multiple states. KDOL utilizes ICON and Integrity Data Hub (IDH) to search for possible problematic claims. ICON utilizes data from the State Wage Record

Exchange System to identify claimants with wages paid in other states. When a claimant files on-line there is no automated check against filings in other states. This is a system limitation KDOL will rectify during modernization. The claimant application does require claimants to note if they have filed in other states. A yes response to that question results in additional research; however, the approach to flagging claimants that have filed in multiple states is manual.

F. Identification of internet protocol addresses linked to multiple claims or to claims filed outside of the United States.

KDOL has not fully developed its approach to incorporating IP address testing into its fraud analytics program. KDOL currently has procedures to block payment on claims with foreign IP addresses.

G. Use of data mining and data analytics to detect and prevent fraud when a claim is filed, and on an ongoing basis throughout the lifecycle of a claim, by using current and future functionalities to include suspicious actor repository, suspicious email domains, foreign internet protocol addresses, multi-state cross-match, identity verification, fraud alert systems and other assets provided by the unemployment insurance integrity center.

As discussed above, KDOL is in the process of implementing Pondera which will allow KDOL to improve its ability to perform proactive data mining and data analytics to assist with detecting and preventing the payment of fraudulent claims. Pondera will streamline KDOL's process to monitor claims and utilize third party data sources to enhance its ability to identify fraudulent claims.

Assessment of the KDOL Phone System

We obtained policies and procedures for phone contacts, read the Legislative Post Audit reports, and inquired of management on processes in place during the Period. There were significant delays in phone response times due to the substantial volumes of calls placed to KDOL because of the new legislation and benefits. KDOL onboarded personnel from other departments and agencies to assist with responding to the significant increase in the volume of calls during the early days of the pandemic. According to our inquiry, the hold times could be well over an hour during the peak call periods. Due to the wait times experienced to contact a customer service person, it is highly unlikely that fraudulent callers would wait on-hold and answer the CSR questions and successfully file a fraudulent claim. We ascertained that KDOL made enhancements subsequently to increase the number of verification questions to increase the reliability of a valid claim. Our data analysis above indicates that, although there were a significant number of claims initiated by phone, the potentially fraudulent claims were more likely to have been filed online. As noted above, 98.5% of the potentially fraudulent claims identified were filed via the internet, and approximately 1.5% were filed by phone.

Leadership and Personnel Changes at KDOL

KDOL has experienced significant leadership changes throughout the Period. KDOL provided the following timeline with respect to the leadership positions at the Department.

Secretary of Labor

- Secretary of Labor Delia Garcia's last official day in office was Friday, June 19, 2020.
- Ryan Wright, Deputy Chief of Staff, Governor's Office was interim Secretary of Labor from June 22, 2020, through December 21, 2020.
- Brett Flaschbarth, then Deputy Secretary of KDOL, was named Interim Secretary of Labor from December 22, 2020 through January 27, 2021. Mr. Flaschbarth resigned his position as Deputy Secretary effective June 19, 2021.
- Amber K. Shultz was appointed Secretary of Labor beginning January 27, 2021 and remains Secretary to the present day.

Deputy Secretary of Labor

- Peter Brady was Deputy Secretary of Labor from August 2, 2020 through August 12, 2022. Prior to his role as Deputy Secretary, Peter was Director of Industrial Safety and Health.
- Keith M. Tatum was hired as Deputy Secretary of Labor beginning May 2, 2022 and remains in that role.

Chief of Staff

- Sandy Johnson was hired as Chief of Staff beginning April 18, 2021.

Chief Information Officer

- John Cahill, Chief Information Officer departed KDOL May 3, 2020.
- Bill Periman, Chief Information Officer was in this role from July 1, 2020 to November 13, 2020.
- Kelly Johnson was Interim Chief Information Officer from December 31, 2020 through February 20, 2021, and Chief Information Officer from February 21, 2021 through June 25, 2022.
- Doug Eamigh has been interim Chief Information Office from June 26, 2022 to the present.

Recommendations

Automated Potential Fraud Flagging Process

KDOL utilized a mixture of automated and manual procedures to identify potentially fraudulent claims during the scope period. We recommend KDOL implement automated processes to identify potentially fraudulent claims. We understand that KDOL is currently in the process of implementing Pondera, a fraud detection software that utilizes advanced data analytics to identify potential fraud.

Track Specific Reasons for Potential Fraud Flag

KDOL used a generic flag for claims suspected to be potentially fraudulent during the scope period. This limited our ability to analyze the effectiveness of their potential fraud flagging process and did not allow us to analyze the specific types of fraud flags that could have been used. We recommend identifying the specific reasons why claims were flagged as potentially fraudulent. This will allow KDOL to assess the effectiveness of individual potential fraud flag and identify patterns and possible trends, including potential emerging fraud schemes.

Analyze Effectiveness of Specific Potential Fraud Flags

In addition to tracking the specific reasons for potential fraud, we recommend KDOL periodically analyze these specific potential fraud flags to assess their effectiveness, at some meaningful interval, but not less frequently than annually. This assessment should consider the predictive capability of the specific potential fraud flags relative to claims determined to be fraudulent. KDOL should also develop new fraud flags periodically to address emerging fraud schemes.

Continue Use of Kansas Unemployment Insurance Fraud Reporting Tool

We recommend continuing the use of the online Kansas unemployment insurance fraud reporting tool at <https://reportfraud.ks.gov/>. Even the best analytics cannot identify all potentially fraudulent claims and augmenting those procedures with the ability to self-report fraud is helpful to not only identify potential fraudulent claims, but also have data which can be used to evaluate the effectiveness of existing analytical procedures and identify potential new analytical procedures.

Create a Process to Identify New Analytical Procedures

In an ever-changing world where fraudsters are constantly inventing new ways to circumvent controls, being vigilant and identifying new analytical procedures to identify new schemes is advised. We recommend studying the self-reported fraud claims and other claims which were not flagged by analytics to gain an understanding of the nature of the claim to determine whether a new analytic should be developed to catch similar potentially fraudulent claims. In addition, we recommend holding recurring meetings with other state unemployment agencies to share fraud prevention techniques.

Retain and Utilize Kansas Department of Corrections Prison Release Date

KDOL did not retain the prison release date for state incarceration records during the scope period to determine whether a claimant had simply been incarcerated at some point prior to the claim filed date, or whether the claimant was incarcerated as of the date of the claim filed date. We recommended, and have been told, that KDOL has since began retaining the prison release date.

Documentation of Procedures

Once new procedures have been implemented, we recommend these procedures be documented which will help to keep KDOL team members synchronized, improve consistency during periods of turnover, enhance training and allow third parties, such as auditors, to have greater clarity and understanding of the procedures KDOL has implemented. This documentation should be updated periodically, and information about which procedures were implemented on which dates, modified on which dates, and discontinued on which dates should be retained.

Training

Leveraging the documented procedures described above, training of new employees should be conducted to ensure consistency of application of procedures. Training should be periodic and should incorporate lessons learned from the pandemic and updated to incorporate emerging fraud schemes.

Attachment A – Scope of Work From the Request for Proposals

Scope of Work – Base Bid

FORVIS shall understand the effects on the Kansas Department of Labor and the unemployment insurance system of fraudulent claims and improper payments during the period of March 15, 2020 through March 31, 2022, and the response by the Kansas Department of Labor to such fraudulent claims and improper payments during that period.

The scope of services shall include:

- 1) An assessment of systems with access to the payment and processing of claims, forensic endpoint images related to the claims and the external perimeter housing the claims systems, as well as an assessment of the Kansas Department of Labor's response to claims. (Due May 1, 2022)
- 2) The amounts and nature of improper payments and fraudulent claims, fraud processes and methods and the possibility of recovery of any improper payments. The term "improper payment" means any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements and includes any payment to an ineligible recipient. Distinguish improper payment from fraudulent claims. Compile, assess and evaluate a statistically significant, projectable, and time-line controlled sample of State Unemployment Insurance Trust Fund funded programs of fraudulent claims and improper payments. Statistically significant and projectable sampling shall be made for each quarter of calendar years 2020 and 2021, and the first quarter of calendar year 2022. (Due September 1, 2022)
 - a. Address whether such improper payments were made pursuant to pandemic-related federal unemployment compensation programs or the state's traditional unemployment compensation program.
 - b. Address whether such claims were made prior to or after the implementation of multi-factor authentication methods by the Kansas Department of Labor.
 - c. Assessment of the frequency of claimant profile password changes, PIN resets and whether common PINs are allowed (1111, 1234, etc.).
 - d. Assessment of the claimant payment method used for such claims and payments.
 - e. Assessment of the amount of such payments that may have been avoided if the unemployment waiting week had not been waived as of March 31, 2020.
 - f. Assessment of the factors used by the Kansas Department of Labor to flag a claim for fraud and the effectiveness and accuracy of each such factor.
- 3) An assessment that provides likelihood of a data breach within the Kansas Department of Labor, being a contributing factor to any fraudulent payments, improper network architecture allowing a potential breach to have occurred and a timeline of relevant events. Examine additional possible avenues for which fraudulent activities could have occurred within the Unemployment Insurance Program to include, but not limited to, the human factor related to fraud and data breaches. This assessment should include a review of whether the Kansas Department of Labor had controls to ensure staff were properly background checked and trained in IT security to ensure the security of sensitive unemployment insurance information and whether those controls followed during the COVID-19 pandemic. (Due September 1, 2022)
- 4) Information on the progress regarding the secretary's implementation of all program integrity elements and guidance issued by the United States Department of Labor and the National Association of State Workforce Agencies (due September 1, 2022). Those elements include:
 - a. Social security administration cross-matching for the purpose of validating social security numbers supplied by a claimant.

- b. Checking of new hire records against the national directorate of new hires to verify eligibility.
- c. Verification of immigration status or citizenship and confirmation of benefit applicant information through the systematic alien verification for entitlement program.
- d. Comparison of applicant information to local, state, and federal prison databases through incarceration cross-matches.
- e. Detection of duplicate claims by applicants filed in other states or other unemployment insurance programs through utilization of the interstate connection network, interstate benefits cross-match, the state identification inquiry state claims and overpayment file and the interstate benefits 8606 application for overpayment recoveries for Kansas claims filed from a state other than Kansas.
- f. Identification of internet protocol addresses linked to multiple claims or to claims filed outside of the United States.
- g. Use of data mining and data analytics to detect and prevent fraud when a claim is filed, and on an ongoing basis throughout the lifecycle of a claim, by using current and future functionalities to include suspicious actor repository, suspicious email domains, foreign internet protocol addresses, multi-state cross-match, identity verification, fraud alert systems, and other assets provided by the unemployment insurance integrity center.

Scope of Work – Additional Items

- 1) Assessment of the phone system used by the Kansas Department of Labor to respond to claimant and assist claimants in filing claims.
- 2) Assessment of the number of unique individual claimants receiving benefits by unemployment compensation program in 2020 and 2021 and the total number of claims, and amount of benefits, paid to each individual.
- 3) Assessment of the employer claim counts and charges for the five years preceding 2020 and claims in 2020 and 2021, with an examination of employers showing large increases in 2020 and 2021 to determine how many fraudulent claims were not flagged for fraud. Assess fictitious employer scheme fraud claims for the five years preceding 2020 and including 2020 and 2021. Fictitious employer schemes may include, but not limited to, creation of fictitious companies, use of post office box addresses, no actual employees, business operations or normal business expenses.
- 4) Make recommendations for future Unemployment Insurance Systems and Practices.
- 5) Assess and note timeframes of leadership and personnel changes at the Kansas Department of Labor. Assess administration changes, and whether policies, security, protocols, and guidelines changed. Assess crucial milestones and the impact they had on fraudulent and improper payment claims. Assessment and notation of timeframes and crucial milestones shall be for the period between March 15, 2020, and March 31, 2022.

FORVIS

130 E. Randolph Street, Suite 1900 / Chicago, IL 60601

P 312.288.4653 / F 312.288.4672

forvis.com

Sean Tarwater, Chairperson
Unemployment Compensation Modernization and Improvement Council
300 S.W. 10th Ave., Ste. 551
Topeka, KS 66612

Dear Mr. Tarwater:

Thank you for the opportunity to provide investigation services for the Unemployment Modernization and Improvement Council (the Council) in connection with the effects on the Kansas Department of Labor (KDOL) and the unemployment insurance system of fraudulent claims and improper payments during the period of March 15, 2020 through March 31, 2022. For our analysis, we relied upon information provided to us in the form of electronic unemployment insurance claims files, documents, as well as conversations and interviews with relevant parties. This first supplement to our report, which was dated September 1, 2022, is based on work completed to date. We anticipate issuing another supplement to our report in early 2023 which will contemplate claims from April 1, 2022 through December 31, 2022.

Our services were provided in accordance with the Statement on Standards for Forensics Services promulgated by the American Institute of Certified Public Accountants and, accordingly, do not constitute a rendering by **FORVIS, LLP** (FORVIS) or its partners or staff of any legal advice, nor do they include the compilation, review, or audit of financial statements. Because our services were limited in nature and scope, they cannot be relied upon to discover all documents and other information or provide all analyses that may be of importance in this matter. We were asked to analyze certain designated files, data, and information and, based on the scope of work, we identified matters discussed in this report, including an estimate of potential fraudulent payments based on data analytics procedures. This is a factual report of our findings, and we do not make a determination on if specific claims are fraudulent or comment on legal culpability.

This first supplement to our report, which was dated September 1, 2022, is the property of FORVIS and has been prepared solely for use by the Council and should not be used by any other party or for any other purpose, without our written permission in each specific instance.

The validity of this report is predicated on the extent to which full, honest, and complete disclosure was made by all parties. We reserve the right to supplement this report if additional information becomes available.

FORVIS, LLP

FORVIS, LLP



Robert R. Sprague, CPA

**First Supplement to Fraud Investigation Services Report for Unemployment Compensation Modernization
and Improvement Council on Behalf of the Kansas Legislature ("Council")**

September 1, 2022

**Calculation of Total Net Estimate of Potentially Fraudulent Claims Including LWAP, plus Improper Payments and
Clarification of Total Payments Amount**

	Low	High
Initial Estimate of Potentially Fraudulent Claimants (Excludes LWAP)	\$ 486,000,000	\$ 511,000,000
Reduction for Legitimate Claims Following Potentially Fraudulent Claims	\$ (45,000,000)	\$ (45,000,000)
Net Estimate of Potentially Fraudulent Claims	\$ 441,000,000	\$ 466,000,000
PLUS: Estimate of Potentially Fraudulent LWAP Claims	\$ 10,000,000	\$ 11,000,000
PLUS: Improper Payments	\$ 66,000,000	\$ 66,000,000
LESS: Estimate of Potentially Fraudulent Claims before March 15, 2020	\$ (2,000,000)	\$ (2,000,000)
Total Net Estimate of Potentially Fraudulent Claims Including LWAP, plus Improper Payments	\$ 515,000,000	\$ 541,000,000

Total Payments per the Report	\$ 3,554,882,327
Less: LWAP Payments	\$ (130,565,088)
Total Payments Net of LWAP Payments	\$ 3,424,317,239
Less: Payments on or after 1/1/2020 pertaining to Claims Filed before 1/1/2020	\$ (22,099,743)
Total Payments pertaining to Claims Filed on or after 1/1/2020 (Excluding LWAP Payments)	\$ 3,402,217,496

First Supplement to Fraud Investigation Services Report for Unemployment Compensation Modernization
and Improvement Council on Behalf of the Kansas Legislature ("Council")
September 1, 2022

Breakdown of Federal vs State Programs and Before or After MultiFactor Authentication

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Initial Estimate of Potentially Fraudulent Claimants	\$ 486,000,000	\$ 511,000,000	\$ 10,000,000	\$ 11,000,000
Reduction for Legitimate Claims Following Potentially Fraudulent Claims	\$ (45,000,000)	\$ (45,000,000)	\$ -	\$ -
Net Estimate of Potentially Fraudulent Claims	\$ 441,000,000	\$ 466,000,000	\$ 10,000,000	\$ 11,000,000

Federal vs State Programs

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Initial Estimate				
Federal Programs	\$ 180,000,000	\$ 201,000,000	\$ 10,000,000	\$ 11,000,000
State Programs	\$ 306,000,000	\$ 310,000,000	\$ -	\$ -
Initial Estimate	\$ 486,000,000	\$ 511,000,000	\$ 10,000,000	\$ 11,000,000

Reduction for Legitimate Claims Following Potentially Fraudulent Claims
NOTE: Low and High are the same because these are all based on self-reported fraud (this analysis required a self-reported fraud date) which is included in both low and high

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Federal Programs	\$ (27,000,000)	\$ (27,000,000)	\$ -	\$ -
State Programs	\$ (18,000,000)	\$ (18,000,000)	\$ -	\$ -
Reduction for Legitimate Claims Following Potentially Fraudulent Claims	\$ (45,000,000)	\$ (45,000,000)	\$ -	\$ -

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Net Estimate				
Federal Programs	\$ 153,000,000	\$ 174,000,000	\$ 10,000,000	\$ 11,000,000
State Programs	\$ 288,000,000	\$ 292,000,000	\$ -	\$ -
Net Estimate	\$ 441,000,000	\$ 466,000,000	\$ 10,000,000	\$ 11,000,000

Before or After MultiFactor Authentication

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Initial Estimate				
Before MFA	\$ 412,000,000	\$ 436,000,000	\$ 9,000,000	\$ 10,000,000
After MFA	\$ 74,000,000	\$ 75,000,000	\$ 1,000,000	\$ 1,000,000
Initial Estimate	\$ 486,000,000	\$ 511,000,000	\$ 10,000,000	\$ 11,000,000

Reduction for Legitimate Claims Following Potentially Fraudulent Claims
NOTE: Low and High are the same because these are all based on self-reported fraud (this analysis required a self-reported fraud date) which is included in both low and high

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Before MFA	\$ (3,000,000)	\$ (3,000,000)	\$ -	\$ -
After MFA	\$ (42,000,000)	\$ (42,000,000)	\$ -	\$ -
Reduction for Legitimate Claims Following Potentially Fraudulent Claims	\$ (45,000,000)	\$ (45,000,000)	\$ -	\$ -

	Low (Excludes LWAP)	High (Excludes LWAP)	LWAP Only - Low	LWAP Only - High
Net Estimate				
Before MFA	\$ 409,000,000	\$ 433,000,000	\$ 10,000,000	\$ 11,000,000
After MFA	\$ 32,000,000	\$ 33,000,000	\$ -	\$ -
Net Estimate	\$ 441,000,000	\$ 466,000,000	\$ 10,000,000	\$ 11,000,000

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November 28, 2022

Legislative Coordinating Council
Kansas State Capitol
300 W 10th Ave.
Topeka, KS 66612

Dear Members of the LCC:

Pursuant to New Section 6(d) of chapter 92 of the 2021 Session Laws of Kansas, I am writing to certify the dollar amount of improper payments estimated by the audit performed on the Department of Labor, as required by New Section 1(g)(1) of Chapter 92 of the 2021 Session Laws of Kansas.

After reviewing the audit provided to me by the Unemployment Compensation Modernization and Improvement Council (UCMIC), as well as the first supplement to the audit also provided to me by the UCMIC, I hereby certify a total amount of \$357.9 million identified as improper payments. This total amount is a combination of the \$292.0 million in net fraud estimates as identified in the first supplement to the audit, as well as \$65.9 million in non-fraud overpayments contained in the original audit dated 09/01/2022. It is important to note that the \$65.9 million in non-fraud overpayments were not all paid from the state's unemployment trust fund, so the impact to the state's trust fund would likely be below \$65.9 million.

Attached to this certification you will find a copy of the audit that was provided to me by the UCMIC, the first supplement to the audit, and the report from the UCMIC addressed to the Division of the Budget. Please feel free to contact me should you have any questions or require further information.

Sincerely,



Adam Proffitt
Director of the Budget

cc: J.G. Scott, Director of the Kansas Legislative Research Department

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Report of the Legislative Budget Committee to the Legislative Coordinating Council

CHAIRPERSON: Senator Rick Billinger

VICE-CHAIRPERSON: Representative Troy Waymaster

OTHER MEMBERS: Senators J.R. Claeys and Tom Hawk; Representatives Will Carpenter, Kyle Hoffman, and Kathy Wolfe-Moore

CHARGE

The Committee is charged with reviewing reports and certifications of the dollar amount of improper payments from the unemployment insurance system and recommending to the Legislative Coordinating Council an amount to transfer from the Legislature Employment Security Fund to the Employment Security Fund of the Department of Labor.

December 2022

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Report to the Legislative Coordinating Council

Recommendations:

While the Committee has received the audit on improper payments that have occurred with the Unemployment Trust Fund, it is the determination of the Committee that of the second tranche of \$250.0 million allocated through 2021 Senate Sub. for Sub. for HB 2196, a transfer of \$107.9 million is necessary to further replenish unemployment insurance funds impacted by the public health emergency and to meet the intended purposes of the American Rescue Plan Act (ARPA) – Coronavirus State and Local Fiscal Recovery Fund (SLFRF) as established in the U.S. Treasury. As stated in U.S. Department of the Treasury’s Final Rule dated January 27, 2022:

In the final rule, Treasury is maintaining the inclusion of this eligible use category. Because unemployment insurance trust funds directly fund benefits to unemployed workers, maintaining the solvency of the trust fund is critical to the continued provision of assistance to unemployed workers. Further, funds deposited into the trust fund must be used as assistance to unemployed workers, an eligible use of SLFRF funds. Finally, while, in the absence of the SLFRF, trust fund deposits would likely be funded through increases on employer payroll taxes, the eligibility of uses of SLFRF funds does not depend on how obligations would otherwise be satisfied if the SLFRF were not available for this use.

This funding is critical for the ongoing recovery from the public health pandemic, support of those who are or will become unemployed, and mitigating any additional tax burdens on Kansas employers as they recover from the economic downturn associated with the COVID-19 pandemic.

Proposed Legislation: None.

BACKGROUND

Section 1 of 2021 Senate Sub. for Sub. for HB 2196 (HB 2196) requires the Unemployment Compensation Modernization and Improvement Council (Council) to select an independent firm to conduct an audit examining the effects on the Department of Labor and the unemployment insurance system of fraudulent claims and improper payments from March 15, 2020, to March 31, 2022. (KSA 2022 Supp. 44-771)

Section 6 of HB 2196 (KSA 2022 Supp. 75-5745) requires the Council to report the dollar amount of improper payments determined by the audit provided for in Section 1 to the Division of the Budget. The statute also authorizes the Legislative Coordinating Council to authorize transfer of funds from the Legislature Employment

Security Fund to the Employment Security Fund of the Department of Labor, upon recommendation from the Legislative Budget Committee (Committee). The amount transferred may not exceed the certified improper payment amount.

HB 2196 Section 6 further provides for a transfer of funds from the Legislature Employment Security Fund to the Employment Security Fund of the Department of Labor on the basis of the amount of improper payments made from April 1, 2022, through December 31, 2022, as determined by the Secretary of Labor.

Unemployment Compensation Modernization and Improvement Council

The Council selected FORVIS to conduct the audit and received a report from FORVIS at a meeting held on September 7, 2022 (Attachment A). The Council requested certain additional information from FORVIS necessary to determine the dollar amount of improper payments and received this information at a meeting held on September 19, 2022 (Attachment B).

The Council concluded the audit of the Department of Labor had determined the amount of improper payments from the Employment Security Fund from March 15, 2020, to March 31, 2022, to be \$358.0 million.

The Council also noted \$250.0 million of federal coronavirus relief aid had been transferred to the Employment Security Fund and recommended an additional \$108.0 million of federal coronavirus relief aid be transferred to the fund.

The Council further recommended an additional \$20.0 million of federal coronavirus relief aid be retained for a future transfer to the Employment Security Fund to account for improper payments occurring from April 1, 2022, to December 31, 2022. The exact amount of this transfer would be certified by the Secretary of Labor at a later date.

The Council reported its conclusions to the Division of the Budget on September 19, 2022.

Division of the Budget

The Director of the Budget certified \$357.9 million identified as improper payments by the audit and reported that amount to the Legislative

Coordinating Council on November 28, 2022 (Attachment C).

That amount includes \$292.0 million in net improper payment estimates (Attachment B) and \$65.9 million in non-fraud overpayments (Attachment A). The Director of the Budget noted the \$65.9 million in non-fraud overpayments were not all paid from the Employee Security Fund and that the impact on the State's trust fund would likely be less than that amount.

COMMITTEE ACTIVITIES

As part of its meeting on December 19, 2022, the Committee received an update on the certified improper payment amount from the Director of Legislative Research (Director). The Director provided an overview of HB 2196 and the amount certified by the Director of the Budget. The Director noted that, of the \$357.9 million total, \$250.0 million of federal coronavirus relief aid had already been transferred to the Department of Labor Employment Security Fund, leaving an amount up to \$107.9 million for the Committee to take action on.

Responding to questions from the Committee, the Director indicated the Department of Labor Employment Security Fund had a balance between \$1.0 billion and \$1.1 billion as of the date of that meeting.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommended the transfer of \$107.9 million from the Legislature Employment Security Fund to the Employment Security Fund of the Department of Labor.