

# 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

<b>I/DD INSTITUTIONAL SETTINGS AND WAIVER SERVICES*</b>	
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

<b>FE / PD / BI INSTITUTIONAL SETTINGS AND WAIVER SERVICES*</b>	
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.