

G-1
Foster Care

G-2
Medicaid Waivers

G-3
Recent Changes to
Health Professions'
Scope of Practice

G-4
State Hospitals

David Fye
Principal Fiscal Analyst
785-296-4405
David.Fye@klrd.ks.gov

Health and Social Services

G-4 State Hospitals

The Kansas Department for Aging and Disability Services (KDADS) is responsible for the administration of Larned State Hospital (LSH) and Osawatomie State Hospital (OSH) for Kansans suffering from mental illness, and for the Kansas Neurological Institute (KNI) and Parsons State Hospital and Training Center (PSH&TC) for individuals with intellectual and developmental disabilities. An overview of issues related to the state hospitals, summaries of recent legislation, and an overview of state hospital financing are provided in this article.

Osawatomie State Hospital

OSH, established in 1855, provides services to adults diagnosed with psychiatric disorders, regardless of ability to pay or legal status. OSH is licensed by the Kansas Department of Health and Environment (KDHE) to serve a maximum of 206 patients and currently serves 143 individuals in collaboration with 12 Community Mental Health Centers. These centers refer individuals to OSH through a screening process; however, a moratorium on voluntary admissions and a limit on involuntary admissions was issued in June 2015.

In addition to being licensed by KDHE, OSH receives oversight and certification from the federal Centers for Medicare and Medicaid Services (CMS). CMS issues Medicare and Medicaid Disproportionate Share for Hospital (DSH) programs payments to OSH. In December 2015, CMS decertified OSH and subsequently suspended Medicare and DSH payments.

Decertification. In 2014, OSH began having issues with maintaining census. OSH was over-census for 9 months from March 3 through December 6, 2014. The number of patients at OSH reached an overall 10-year high on August 23, 2014, with a weekly average of 251 patients. (*Note:* OSH began maintaining census at its licensed capacity on December 13, 2014.) The increased census during this 9-month period triggered a CMS survey of OSH. On December 5, 2014, CMS sent a letter citing issues with the physical environment at OSH that had to be remediated to maintain certification. Renovations to complete a Plan of Correction for CMS began in Spring 2015. In May 2015, 60 beds were removed from use to complete the CMS-mandated construction. Approximately \$3.5

million was added for 2016 and \$3.9 million each year after to support individuals and communities impacted by the OSH reduced census during renovation.

On November 3, 2015, CMS conducted another survey at OSH amid concerns the nursing service requirements were not being met. On November 24, 2015, CMS released its survey findings stating, among other things, various nursing security protocols were not being followed. On December 21, 2015, CMS decertified OSH, citing the facility for issues related to patient health and safety. The main impact on funding was through the loss of DSH and Medicare reimbursements for any patients who would have been eligible during their treatment at OSH. (*Note:* For the period that the entire hospital was decertified, OSH was still admitting patients in accordance with the limitations of the moratorium; CMS decertification pertained to billing rather than admissions.)

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

Moratorium. The Secretary for Aging and Disability Services (Secretary) declared a moratorium on OSH admissions on June 21, 2015, to control the patient census. OSH did not close, nor stop admitting new patients; rather, admission of voluntary patients was halted, the census for involuntary patients was capped at 146, and a waiting list was created. KSA 59-2968 authorizes the Secretary to notify the Kansas Supreme Court and each district court with jurisdiction over all or part of the catchment area served by a state psychiatric hospital that the census of a particular treatment program

of that state psychiatric hospital has reached capacity and no more patients may be admitted. Following notification that a state psychiatric hospital program has reached its capacity and no more patients may be admitted, any district court with jurisdiction over all or part of the catchment area served by that state psychiatric hospital, and any participating mental health center that serves all or part of that same catchment area, may request that patients needing that treatment program be placed on a waiting list maintained by that state psychiatric hospital. Patients are admitted in chronological order. In July 2017, OSH increased its patient census to 158 and at the Legislative Budget Committee (LBC) meeting on October 3, 2018, the Secretary indicated OSH had increased its staffing to accommodate 166 patients. The Secretary informed the LBC that while OSH has the capacity to provide treatment to 166 patients, the patient census had been in the range of 130 for the past fiscal year due in part to regional efforts such as crisis unit beds, and OSH was considering lifting the moratorium on voluntary admissions. As of October 2019, the moratorium at OSH remains in place.

Larned State Hospital

LSH, located in South Central Kansas, is the largest psychiatric facility in the state and serves the western two-thirds of the state. The hospital serves adults with serious and persistent mental illnesses, most of whom have been deemed a danger to themselves or others. LSH has a Sexual Predator Treatment Program (SPTP) to treat offenders who have completed their prison sentences but have been involuntarily committed because a judge or jury found they were “sexually violent predators,” which means they have a “mental abnormality or personality disorder” that makes it likely they will engage in sexual violence again if not treated. In February 2018, LSH was surveyed by The Joint Commission (TJC), and the Psychiatric Services Program (PSP) was fully accredited and certified for federal reimbursements by both TJC and CMS. The accreditation for the State Security Program (SSP) and the SPTP was discontinued. All programs are licensed for operation by the Kansas Department of Health and Environment.

In FY 2019, the average daily census for the PSP was 67 individuals and the average daily census for the SSP was 119 individuals.

The SPTP, established by statute in 1994, provides for the civil commitment of persons identified by the law as sexually violent predators. KDADS states the program's two missions are to provide for the safety of Kansas citizens by establishing a secure environment in which persons identified as sexually violent predators can reside and to offer treatment with the aim of reducing their risk for re-offending while allowing motivated persons who complete treatment to return to society. The program serves adult male patients from the state who have been adjudicated through Kansas sexually violent predator treatment laws and are committed for treatment under civil statutes. As of September 2019, there were 285 individuals in the SPTP program, including 246 individuals at the LSH main SPTP campus; 20 individuals at the reintegration units at LSH, OSH, and PSH&TC; and 19 individuals on conditional release.

Legislative Post Audits. The Legislative Division of Post Audit (LPA) completed two performance audits on the SPTP. The first, published in September 2013, looked at whether the program was appropriately managed to ensure the safety and well-being of program staff and offenders. The audit found a significant number of direct care staff positions were vacant; program staff worked a significant amount of overtime to provide safety, security, and treatment; and even with significant overtime, the program failed to meet its internal minimum staffing goals.

In April 2015, the second LPA performance audit report, "Larned State Hospital: Reviewing the Operations of the Sexual Predator Treatment Program, Part 2," considered how Kansas' SPTP compared to similar programs in other states and best practices, and what actions could be taken to reduce the number of offenders committed to the SPTP.

That audit found the Kansas program did not adhere to recommended practices for sexual predator programs to emphasize individualized treatment; residents completing the first five phases of the program were not necessarily

equipped with the skills to be successful in finding a job or basic life skills; appropriate records and documentation to effectively manage the program were not maintained; and annual reports had not been filed as required by statute.

Additionally, the audit noted an insufficient local labor force will create staffing problems for the SPTP as it grows. The audit considered six options for reducing the resident population. Copies of the full audit reports and the highlights may be accessed at <http://www.kslpa.org/>.

Following the audits by LPA, LSH made significant structural changes to the SPTP program, including modifications in the types of treatment provided, the manner of providing treatment, and the reintegration and conditional release programs.

Staffing. Staffing shortages have persisted at LSH, resulting in an increase of overtime hours worked by existing staff. KDADS reported the hospital has struggled to recruit staff in a rural area with low unemployment. At the April 18, 2016, Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight (KanCare Oversight Committee) meeting, LSH employees discussed staffing problems at the facility. The testimony outlined how mandatory overtime and limited time between shifts were taking a toll on workers and their families. Those testifying spoke as individuals and not as representatives of KDADS or other state agencies. The Interim Secretary said staffing concerns at LSH were valid, and he had been working to improve employee morale since he took over in December 2015. In April 2017, the Secretary reported to the KanCare Oversight Committee staffing vacancies were decreasing and overtime was diminishing. However, in August 2018, the Secretary reported to the KanCare Oversight Committee that, despite efforts to improve staffing, recruitment and retention continues to be a problem at LSH. In August 2019, the Secretary reported to the KanCare Oversight Committee that LSH is exploring plans to work with counties, courts, and others to complete forensic evaluations and provide other services at locations outside of the hospital in an effort to lower mandated overtime,

reduce wait time for evaluations, and reduce transportation costs. The Secretary reported staffing continues to be a challenge at LSH.

Parsons State Hospital and Training Center

PSH&TC is one of two residential treatment, training, and care facilities operated by the State of Kansas to serve individuals with intellectual and developmental disabilities whose circumstances require specialized residential service provisions. PSH&TC was originally opened in 1903 and primarily treats adult patients, though approximately 20 youth also receive treatment and reside at the facility. In FY 2019, the average daily census for patients in the Habilitation and Treatment Program of the hospital was 161 patients.

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

Kansas Neurological Institute

KNI, established in 1959, provides both a treatment center and residence for adults with intellectual and developmental disabilities who require a high level of ongoing support. Many residents require intensive physical and medical supports, and about one-third are unable to eat by mouth and receive their nutrition through feeding tubes. In FY 2019, the average daily census in the Program and Supported Living Program of the hospital was 140 patients.

| Overtime All Funds Expenditures for the Kansas State Hospitals FY 2018 and FY 2019 | | |
|---|------------|------------|
| | FY 2018 | FY 2019 |
| KNI | \$ 328,028 | \$ 440,245 |
| LSH | 4,585,740 | 4,474,756 |
| OSH | 1,068,535 | 1,485,996 |
| PSH&TC | 525,377 | 566,960 |

State Hospital Commission

In June 2019, the State Hospital Commission was created within KDADS to provide leadership, guidance, direction, oversight, and training and support to the four state hospitals.

Recent Legislative Action

Several bills were considered during the 2017, 2018, and 2019 Legislative Sessions.

2017 Policy

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

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

2017 Fiscal

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

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

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

2018 Policy

The 2018 Session passed House Sub. for SB 109 reauthorizing the Mental Health Task Force to meet in Fall 2018 to study the Kansas mental health delivery system and develop a strategic plan addressing the recommendations of the January 8, 2018, Mental Health Task Force report, including ascertaining the location and total number of psychiatric beds needed to most effectively deliver mental health services in Kansas.

2018 Fiscal

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

2019 Policy

In 2019, the Legislature passed House Sub. for SB 25, which included language requiring

OSH to create a comprehensive plan to end the moratorium at the hospital and to report this plan by January 2020 to the House Social Services Budget Committee, the House Health and Human Services Committee, and the Senate Public Health and Welfare Committee.

2019 Fiscal

The 2019 Legislature added funding to replace a shortfall in federal revenue at the state hospitals, including \$951,224 for PSH&TC and \$853,494 for the KNI in FY 2019. The Legislature added funding due to adjustments in the federal Disproportionate Share Hospital allotments, including \$617,164 for LSH in both FY 2019 and FY 2020; \$4.0 million for OSH in FY 2019; and \$1.1 million for OSH for FY 2020. The Legislature added funding to decrease agency salary shrinkage at the hospitals, including \$951,224 for PSH&TC for FY 2020, \$853,494 for KNI for FY 2020, \$253,867 for LSH in both FY 2019 and FY 2020, and \$1.4 million for OSH in both FY 2019 and FY 2020. Also, the Legislature added funding at LSH for an Uninterrupted Power Supply System for the Isaac Ray Building (\$54,405) and a Personal Protective Device System within the Psychiatric Services Program (\$567,850). The Legislature added \$186,931 for salary adjustments at LSH to reduce turnover and the number of vacant positions and required the agency to provide a report to the Legislative Budget Committee prior to the beginning of the 2020 Legislative session on the impact of the funding on agency staffing vacancies and turnover.

State Hospital Financing

The state hospitals are primarily funded through three basic sources. The first is the State General Fund, which consists primarily of money collected through various statewide taxes. The second is each hospital's fee fund, which includes collections from Medicare, private payments, Social Security, and insurance. The third source is federal Title XIX funding, also known as Medicaid. The federal Title XIX funding is transferred to the KDADS central pool and is redistributed among the four state hospitals.

State developmental disabilities hospitals (KNI and PSH&TC) are Medicaid certified as intermediate care facilities for persons with developmental disabilities, and nearly all of the people living in the facilities are covered by Medicaid. The state developmental disabilities hospitals submit annual cost reports that establish per diem rates they charge to Medicaid for each day a person covered by Medicaid lives in the facility.

The state mental health hospitals (LSH and OSH) establish per diem rates in much the same way as the state developmental disabilities hospitals, but are classified as institutions for

mental disease. Due to federal rules, most state mental health hospital patients are not eligible for standard Medicaid match, but these hospitals are eligible for Medicaid payments through the DSH program. This program assists all acute care hospitals that serve a disproportionately high number of indigent persons. Kansas is currently pursuing a waiver to the federal rule prohibiting a Medicaid match for institutions for mental disease. In addition, Congress is currently considering changes to federal laws that may allow funding for short periods in cases where a mental impairment is combined with a opioid use disorder.

For more information, please contact:

David Fye, Principal Fiscal Analyst
David.Fye@klrd.ks.gov

Iraida Orr, Principal Research Analyst
Iraida.Orr@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181