

Report of the Special Committee on Larned and Osawatomie State Hospitals to the 2017 Kansas Legislature

CHAIRPERSON: Senator Jim Denning

VICE-CHAIRPERSON: Representative J. R. Claeys

OTHER MEMBERS: Senators Mitch Holmes, Laura Kelly, Caryn Tyson, and Ralph Ostmeyer (substitute); and Representatives Pete DeGraaf, Nancy Lusk, Charles Macheers, and Jack Thimesch

STUDY TOPIC

Study of Various Issues Regarding Larned State Hospital and Osawatomie State Hospital

The Committee's study includes the following:

- Monitor the patient populations and review and study the activities and plans of the treatment programs and correlation to patient outcomes;
- Tour each state psychiatric hospital, considering the evaluating facility issues relating to plan management and safety;
- Review and study the Kansas Department for Aging and Disability Services' (KDADS') policies relating to each state psychiatric hospital;
- Review and study KDADS' responsiveness and efforts in identifying and resolving issues relating to facility, staff, and patients;
- Review and study KDADS' staffing and policies relating to staffing, recruitment, retention, employee morale, and employee relations issues;
- Review and identify patient and employee safety concerns; and
- Review and study any other issues brought to the attention of the Committee concerning state psychiatric hospital oversight.

Special Committee on Larned and Osawatomie State Hospitals

REPORT

Conclusions and Recommendations

The Committee makes the following recommendations:

- Before vendors submit bids for the Kansas Department for Aging and Disability Services' (KDADS') request for proposal (RFP) for operations at Osawatomie State Hospital (OSH), they consult with community mental health providers;
- Full funding of all crisis centers, including Rainbow Services Inc. in Kansas City, COMCARE in Wichita, and Valeo Behavioral Health Center in Topeka;
- KDADS provide an interim plan to utilize 20 additional beds at OSH or through third-party facilities and such plan be included in the 2017 rescission bill;
- The University of Kansas and the state hospitals establish a working relationship that will create partnerships, such as internships, fellowships, and other collaborative ventures;
- Noting staffing shortages at the state hospitals, urge Larned State Hospital and OSH to establish programs, such as internships, fellowships, and similar initiatives, to enhance recruitment measures;
- KDADS develop a comprehensive salary and benefits schedule to enhance recruitment; and
- Noting the destructive nature of bullying in the workplace and condemning it at all employment levels in state hospitals, KDADS investigate incidents of employee bullying and develop policies to curtail such behavior.

Proposed Legislation: None

BACKGROUND

The Legislative Coordinating Council (LCC) in 2016 appointed a Special Committee on Larned State Hospital (LSH) and Osawatomie State Hospital (OSH), composed of nine members. The Committee was tasked by the LCC to study various issues regarding LSH and OSH as follows:

- Monitor the patient populations and review and study the activities and plans of the treatment programs and correlation to patient outcomes;
- Tour each state psychiatric hospital, considering and evaluating facility issues relating to plan management and safety;

- Review and study the policies of the Kansas Department for Aging and Disability Services' (KDADS') policies relating to each state psychiatric hospital;
- Review and study KDADS' responsiveness and efforts in identifying and resolving issues relating to facility, staff, and patients;
- Review and study KDADS' staffing and policies relating to staffing, recruitment, retention, employee morale, and employee relations issues;
- Review and identify patient and employee safety concerns; and
- Review and study any other issues brought to the attention of the Committee concerning state psychiatric hospital oversight.

The Committee was granted four meeting days by the LCC and met on December 19 and 20, 2016, at the Statehouse. The Committee did not tour the state psychiatric hospitals.

COMMITTEE ACTIVITIES

The Committee held all-day meetings on December 19 and 20, 2016, at the Statehouse.

Osawatomie State Hospital

History and virtual tour of OSH. At the December 19 meeting, the Superintendent of OSH provided a history of OSH, stating it is the oldest mental hospital in Kansas, having admitted its first patient on November 5, 1866. The campus currently consists of 2 hospitals with a 146-bed capacity, OSH and Adair Acute Care (Adair) at OSH. The campus is licensed for 206 beds; however, 60 beds are being kept vacant due to the self-imposed moratorium on admissions above 146 patients.

The Superintendent provided a virtual tour of the OSH campus, commenting on the age of most of the buildings and focusing on the seven-

building Adair complex where most of the patients are housed.

Decertification. On December 21, 2015, the federal Centers for Medicare and Medicaid Services (CMS) decertified OSH. The Acting Secretary for Aging and Disability Services reviewed the events following decertification of OSH by CMS. He stated, for the previous year, KDADS had been working with staff at OSH toward recertification and OSH is ready to be surveyed by CMS; however, CMS has not set a date to conduct the survey required to recertify OSH. The Acting Secretary did not have a time line for when a date will be set.

Responding to Committee members' questions, the Acting Secretary stated The Joint Commission (a third-party agency that certifies and accredits state hospitals) will accede to CMS for recertification. The initial plan is recertification and then accreditation. The Acting Secretary stated OSH has a maximum capacity of 206 beds, including the 146 currently in use, none of which are currently certified. Adair has 60 beds ready to be recertified; the preparation cost for 30 beds was \$700,000. All 206 beds are needed to meet the adult-continuum-of-care goals.

Time line. The OSH Superintendent discussed the time line of The Joint Commission complaint survey (October 2014) and the State Fire Marshal's findings (October 2014) that led to a comprehensive survey by CMS in January 2015. The CMS survey found OSH to have the following conditions out of compliance: governing body; quality assessment/performance improvement; medical records (active treatment); discharge planning; staffing; and physical environment. The survey findings resulted in the decertification of OSH in December 2015.

Cost. The KDADS Director of Finance and Budget reviewed the costs of the decertification of OSH. The Director of Finance and Budget noted budget enhancements are needed to compensate for loss of funding and provide budget allocations for OSH and LSH. She stated the budget shortfall in FY 2016 for OSH was \$7.2 million and is estimated to be \$20.1 million in FY 2017 and \$14.2 million in FY 2018, assuming recertification of 60 beds by July 1, 2017.

Progress toward recertification. The Chief Executive Officer, Adair, OSH, stated one step in the process of recertification was to divide OSH into two distinct entities, one of which is Adair Acute Care, and to institute a moratorium on admissions at 146 patients. He outlined changes made by OSH in an effort to move toward CMS recertification as follows: reviewed close to 200 policies, revising at least half; revised medical staff bylaws; revised the Risk Management Plan (approved by the Kansas Department of Health and Environment); revised several position descriptions; increased physician coverage (seven days a week); implemented internal monitoring changes (new metrics and satisfaction surveys); increased the staffing schedule on units, resulting in reduced mandates and reduced overtime; reduced nursing staff caseloads; increased safety for patients and staff on units; increased focus on individualized treatment planning; increased focus on patient and staff safety; refined the triage process; increased communication and streamlined workflow; strengthened focus on determining the medical stability of patients prior to admission; revised pharmacy protocols; strengthened the discharge planning process; implemented a new dress code; implemented vigorous training; developed support tools that will monitor distribution of admissions, admission/triage process effectiveness, and staffing variance; and defined OSH's mission and vision.

Audit. A Senior Auditor for the Legislative Division of Post Audit (LPA) reviewed the findings of an audit, released in July 2016, of OSH's loss of funding as a result of CMS decertification. The Senior Auditor stated the decertification was prompted by OSH's failure to comply with federal regulations relating to staff and patient safety. He explained noncompliance resulted in an estimated \$15.0 million loss of funding and additional expenses to address the deficiencies present as of June 2016, an impact that will continue in some degree until the entire facility is recertified. He stated no Medicare or Medicaid funding will be available for OSH until the facility is recertified.

Request for proposal (RFP). The Acting Secretary for Aging and Disability Services indicated KDADS was pursuing recertification of the facility but also looking at other options, including through the release of a RFP.

Enacted 2016 House Sub. for SB 161 included proviso language that, for FY 2016, FY 2017, and FY 2018, prohibits the expenditure of any moneys appropriated for the relevant fiscal years to privatize the operations of LSH or OSH without prior specific authorization in an act of the Legislature or in an appropriation act of the Legislature.

Enacted 2016 House Sub. for SB 249 also included proviso language that, for FY 2017 and FY 2018, prohibits the expenditure of any moneys appropriated for the relevant fiscal years to KDADS to enter into any agreement or take action to outsource or privatize the operations or facilities of LSH or OSH without prior specific authorization by an act of the Legislature or an appropriation act of the Legislature. At the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight meeting on November 18, 2016, the Acting Secretary for Aging and Disability Services indicated the agency's interpretation of this provision was that the agency may not privatize either hospital without legislative approval but may pursue a RFP to evaluate options. On November 14, 2016, KDADS issued the RFP titled "Operation of Osawatomie State Hospital (OSH)." The bidding closed at 2 p.m. on December 29, 2016.

Overview of the RFP. Staffing: The contractor must maintain adequate staffing levels to meet the needs of OSH, and it must provide monthly staffing reports to the Secretary for Aging and Disability Services for the first year of the contract, followed with quarterly staffing reports every year thereafter. Penalties may be assessed if a staffing shortage persists longer than 45 days.

Treatment beds: Currently, OSH is licensed for 206 inpatient psychiatric treatment beds. All submitted proposals must include at least 206 inpatient psychiatric beds in the OSH catchment area. The contractor must maintain a minimum of 94 inpatient beds at the current OSH campus, and the remaining inpatient beds may be maintained at the current OSH campus or at another KDADS-approved facility within the OSH catchment area.

Certification: The RFP requires the contractor to bring OSH into accreditation with The Joint

Commission and certification under CMS within 24 months of the effective date of the contract. Additionally, the contractor could be fined if it fails to maintain federal certification and quality or if inspectors find issues that could harm patients.

Incentives and penalties: Incentives are outlined in the RFP for reducing the number of preventable readmissions and the number of patients residing in the hospital long term. Penalties for several types of damaging events are included in the RFP.

Staffing ratios, recruitment, and retention.

A representative from KDADS stated OSH's 2016-2018 strategic goals include filling vacancies, increasing staff satisfaction, and reducing turnover. The representative explained the steps taken to fill vacancies, which included a mental health developmental disability technician and registered nurse wage increase and new job advertising practices. She stated these changes improved hiring rates.

The Acting Secretary presented vacancy and turnover rates for mental health technicians at both OSH and LSH. He noted, in one year, vacancy rates dropped from 40 percent to 10 percent and turnover rates were lowered from 70 percent to 30 percent. He also stated overtime costs were steadily decreasing and the patient to staff ratio had improved from 15:1 to 12.5:1.

Public comment. A representative from the Association of Community Mental Health Centers of Kansas cited the experiences of Indiana and Oregon to express concern regarding the negative effect privatization might have on Kansas' state hospitals. He also expressed concern regarding the deleterious effects that state hospital overcrowding creates for community mental health centers.

A representative from Equi-Venture Farms explained Equi-Venture Farms acts as a facilitator, providing placement options for those discharged from a state hospital.

A representative of the Kansas Mental Health Coalition and co-chair of the Adult Continuum of Care Task Force addressed issues raised in the KDADS' Adult Continuum of Care Committee final report. She stated gaps in the continuum of

care, staffing issues, the staffing moratorium, and the waiting list create serious obstacles in providing the continuum of care the report recommends. The representative recommended the patient moratorium be ended at the OSH facility. She stated the moratorium has created a crisis for law enforcement officials and violates the Adult Continuum of Care Task Force recommendations. She noted only 6 of the 26 community mental health centers have residential housing available. Answering questions, the representative said she was aware of no partnerships between universities and mental health hospitals and an ancillary effect of budget cuts is the loss of grant funding.

A representative of Valeo Behavioral Health Care (Valeo) provided a community mental health care perspective. He outlined a variety of services provided by Valeo, and he noted Valeo offers "upstream" services for those not yet needing state hospitalization. He commented on a pilot program partnering with OSH to accept patients ready to move into a community setting. Responding to questions, the representative stated 60 percent of Valeo funding comes from Medicaid and state grants account for 10 percent Valeo's funding.

A mental health advocate, who also was the superintendent of OSH from 1993 to 1997, stated the goal of mental health treatment is not to avoid institutional care, but to offer a continuum of care, which includes state hospitals. He expressed hope OSH could again become a quality treatment center and a center of excellence for mental health.

Written-only testimony was provided by the Kansas Hospital Association (KHA). KHA's written-only testimony stated that last year KHA formed a Behavioral Health Task Force consisting of behavioral health providers in the state as well as representatives from the Association of Community Mental Health Centers, law enforcement, KVC Health Systems, Prairie View Inc., the Kansas Mental Health Coalition, and the Governor's Behavioral Health Service Planning Council. The following comments were provided by the KHA Task Force members after they toured the renovated Adair Unit at OSH on November 9, 2016:

- Task Force members were very surprised to see the cramped common area, voiced

concerns about seeing curtains in patient rooms which could be used by patients to harm themselves or other patients, and thought it was unsafe to have an unpadding brick wall in a seclusion room; and

- The Task Force members were told that since OSH is seeking CMS recertification for just the Adair Unit, this area has been classified as a separate hospital from the rest of the campus. In essence, patients are not permitted to use any of the recreational and activity services provided in other buildings, such as the indoor swimming pool, or walk to activities in other buildings. In fact, patients on the Adair Unit are not permitted to go outside. The group felt strongly that keeping 50 involuntary patients housed closely together indoors, around the clock, was unsafe and did not foster a therapeutic environment. There is no avenue for patients to benefit from exercise other than walking the short hallways on Adair. In fact, a OSH staff member mentioned that at least one patient assault takes place daily. An outdoor patio is being built for the Adair Unit and, when weather permits, will provide another area for patients to use.

Larned State Hospital

History and virtual tour of LSH. At the December 20 meeting, the Superintendent of LSH related his experience with mental hospitals. He noted LSH is unique in that, besides the juvenile facility operated by the Kansas Department of Corrections, there are three separate hospital programs with three distinct sets of staff on the grounds: the Psychiatric Services Program (PSP), the State Security Program (SSP), and the Sexual Predator Treatment Program (SPTP). He gave a brief history of the facilities, which began as a state hospital and farming operation in 1914.

The Superintendent gave a virtual tour of the grounds, explaining the services offered for each of the programs. He stated the PSP patients generally are civilly committed adults with mental illness and receive services for crisis stabilization, treatment, and rehabilitation. The SSP patients generally are criminally committed persons, and

the hospital provides a secure setting for forensic evaluations and psychiatric inpatient treatment. The SPTP's mission is two-fold: to provide for the public safety to prevent further victimization of others by sexual offenders assigned to the program and to work with those residents willing to engage in the work of personal change through quality treatment programming, with the ultimate aim of reducing the individual's risk for re-offense to a level that would allow the return of the individual to society as a contributing, productive citizen.

Answering questions, the Superintendent stated the SPTP census is 261 individuals, including patients in the 4 reintegration facilities. One reintegration facility is located at OSH, two facilities are on the grounds of Parsons State Hospital, and the fourth facility is located at LSH. When asked about affiliations between the state hospital and Kansas universities with applicable degree programs, the Superintendent noted LSH is pursuing a partnership with the University of Kansas. He noted University of Kansas School of Medicine doctors had provided telepsychiatric services for LSH patients for several weeks.

Summary of recent LPA audits of LSH. A Performance Audit Manager, LPA, reviewed a two-part comprehensive audit of the SPTP at LSH. Noting the patients were involuntary but civil, rather than criminal, commitments, she reported the first audit (2013) found the facility had inadequate control over access doors and keys and inadequate oversight over prohibited items, and staff felt unprepared to deal with resident altercations. Further, direct-care vacancies resulted in significant overtime. The program often failed to meet its internal minimum staffing goals, even with significant overtime. The audit report indicated the SPTP resident population has grown steadily, adding an average of about 18 residents per year from 2002 to 2012. Further, the audit predicted, based on the average growth rate, the program would reach its current physical capacity during 2018. As a result of few residents being released, resident population growth was anticipated to exceed LSH's physical capacity. She stated the follow-up audit documented all recommendations had been met or were being met.

Regarding the second part of the audit (2015), the audit found, unlike other states with similar programs, Kansas did not emphasize

individualized treatment programs. Although the SPTP met most statutory requirements, those related to education and rehabilitation may not have been adequately addressed. Residents who were ready for the reintegration program lacked necessary skills for finding a job or simple life skills, such as knowing how to cook. Further, the SPTP, which as of December 2014 housed 243 residents, would soon reach maximum capacity and program costs were estimated to more than double by 2025.

The 2015 audit offered 6 options for reducing the SPTP census, such as placing low-risk residents in a community setting, removing medically infirm residents to a separate secure nursing facility, and increasing the reintegration allocation from 16 to 32. The audit recommended better alignment of the program with current research-based recommended practices and that the program identify the need for additional resources and develop a strategy for obtaining those resources. The implementation and review of various processes to address management of the program was also recommended. Additionally, the development of a strategic plan to address program growth and limited labor force issues was recommended.

SPTP update; response to LPA reports; update on litigation; update on new program. The Chief Forensic Psychologist, LSH, provided an update regarding the SPTP. He reported the treatment program has been revised with a three-tiered individualized treatment program that provides special accommodations for those with intellectual or other disabilities. He noted staff training includes enhanced assessments and testing.

The Chief Forensic Psychologist explained each of the tiers in the three-tiered individualized treatment program. Tier One provides residents with the skills to live an offense-free life through therapy and supplemental groups focused on the resident's individual risk and needs. Tier Two begins the process of moving from a highly structured inpatient treatment program toward an essentially independent lifestyle through a graduated series of individualized and escorted community outings where residents demonstrate the ability to make appropriate decisions within the community. Tier Three (community

reintegration) provides continued treatment and community integration by establishing employment, a viable means of transportation, financial stability, and an approved support network. Successful Tier Three residents are recommended to the court for transitional release, and those who complete an approved conditional release plan may be recommended to the court for conditional release into the community. Conditional release requires the individuals discharged from the SPTP live in the community under court supervision for a minimum of five years.

The Senior Litigation Counsel, KDADS, responded to the LPA recommendations for the SPTP. Actions by KDADS to address the LPA recommendations include providing individualized resident treatment plans that are reviewed and updated every 90 days, conducting the annual mental exams using impartial clinical staff, implementing specific curriculum for any individual with an intellectual or developmental disability, providing residents with the skills needed for successful reintegration during Tier Two classes and supervised outings, implementing a roster system to track data related to treatment services and tier progression and participation, and forming a committee that has met periodically to evaluate the recommendations of the LPA report and the SPTP Task Force report related to population growth and program location.

The Senior Litigation Counsel explained the SPTP is statutorily prescribed, and the program accepts only high-risk residents and focuses exclusively on treatment, with the goal of reintegration into the community. She noted the 80 percent program participation rate, adding that 90 percent of residents have enrolled in classes or groups for the next quarter. She stated KDADS continues to evaluate LPA's six options to reduce the census. Answering questions, the Senior Litigation Counsel replied low- and medium-risk individuals are not eligible for the SPTP, and only high-risk individuals are in the program. She stated eight individuals have completed the program, three of whom have finished the program in the previous three months. Typically, it takes a resident three to five years to complete the program.

When asked, given the new changes to the SPTP, how long it should take a patient to be able to complete the program, the Chief Forensic Psychologist stated a range of four to six years, but noted the range could be shorter or longer depending on unique factors for a particular patient.

Review of programs at LSH: PSP and SSP.

The Clinical Director, LSH, reviewed the services provided by the PSP and the SSP. He said the PSP daily census averages 75 to 82, with a readmission rate of 10 percent. (The national average is 15 to 20 percent.) He explained the Active Treatment/Activity Therapy approach focuses on improving behavioral and emotional skills. Regarding the SSP, he reported the daily census averages around 90, which is approaching capacity. The Clinical Director outlined staff and treatment needs and announced new recruitment and training initiatives, such as working toward becoming a residency training site for post-graduate students. Responding to questions, he replied the new treatment approach is evidence-based and follows best practices.

Current status of LSH. The Superintendent related the process for improving staff morale. He stated town hall meetings, small groups, and individual contacts identified a negative working environment and staff feelings of hopelessness and being ignored. By developing a series of reports every two weeks over a period of several months, the following initiatives were developed to address staff concerns:

- Volunteers from the other hospitals were recruited;
- Salaries were improved;
- The practice of mandating overtime and pulling staff from other units was discontinued;
- A float pool was created;
- Staffing agencies provided 258 new employees;
- A career path was instituted to license mental health technicians;
- Supervisors took steps to create a more positive environment; and
- Statewide notices of vacancies and referrals produced 565 new employees.

The Superintendent also announced that a contract with the University of Kansas will create a partnership to provide a residency-type training facility.

Community, staff, and other operational meetings. The Acting Secretary commented on human resources (HR) issues, noting HR staff had a turnover rate of 100 percent. Citing a recent centralization of HR resources by the Department of Administration in Topeka rather than at LSH, the Acting Secretary noted the agency was experiencing some complications and complaints by staff. He emphasized the importance of keeping lines of communication open among staff, leadership, and the community. The Acting Secretary noted quarterly meetings by the Citizens Advisory Committee, and he referenced training to match law enforcement with mental health information and resources.

Future of LSH; juvenile corrections facility; no privatization. The Acting Secretary, commenting on the future of LSH, expressed gratitude for the dedicated staff at LSH. He stated leadership training was being instituted and a partnership with Wichita State University will enhance leadership training. With the imminent closing of the juvenile correctional facility, the SPTP might be able to utilize the vacant building. Responding to a question, he replied working toward recertification and accreditation will continue regardless of the outcome of the recently issued RFP by KDADS.

Public comment. The Executive Director for the Kansas Organization of State Employees (KOSE) expressed appreciation for the recent initiatives to improve working conditions for employees. Then, she identified continuing concerns: excessive overtime, increases in health insurance premiums, unpredictable days off, and timely release of vacancy reports.

The Executive Director noted employees have not felt the increase in their take-home pay, such as in 2016 when the Legislature appropriated funds for a pay increase, because the full increase plus some has been absorbed by increases in state employee health insurance premiums. She stated the State Employee Health Plan financial report reflects the plan's intention to increase the employees' share of plan costs over the next ten years, resulting in annual *de facto* pay cuts. The Executive Director noted this is not a favorable environment for employee recruitment and retention.

Although progress had been made from August 2016 through October 2016 in the staff vacancy rates, the Executive Director noted there are still significant vacancy rates for direct care positions, as reflected in the overtime experience of both state hospitals. She noted KOSE is cautiously optimistic about staffing and overtime trend reductions at LSH. Her testimony mentioned KDADS does not provide KOSE with weekly vacancy rate reports on a regular basis and does not provide turnover rates by position for either state hospital. The Executive Director noted the overall turnover rates for both OSH and LSH are over 30 percent.

A LSH employee and KOSE representative offered praise to the Acting Secretary and superintendents for reducing overtime. He then identified concerns needing to be addressed: workplace bullying (usually by a supervisor); ineffective promotion practices; and punitive, rather than instructive, disciplinary practices. Responding to a question, the Acting Secretary replied a bullying policy can be developed.

Another LSH employee and KOSE representative expressed appreciation for the improvements evident at LSH. She expressed the following concerns: a long vacancy list of positions, unqualified HR employees, an incomplete investigation before disciplining an employee, and disciplining an employee for calling in sick. She expressed special concern regarding supervisors bullying employees and

hiring and advancement decisions based on favoritism.

CONCLUSIONS AND RECOMMENDATIONS

The Committee adopted the following recommendations:

- Before vendors submit bids for the KDADS' RFP for operations at OSH, they consult with community mental health providers;
- Full funding of all crisis centers, including Rainbow Services Inc. in Kansas City, COMCARE in Wichita, and Valeo Behavioral Health Center in Topeka;
- KDADS provide an interim plan to utilize 20 additional beds at OSH or through third-party facilities and such plan be included in the 2017 rescission bill;
- The University of Kansas and the state hospitals establish a working relationship that will create partnerships, such as internships, fellowships, and other collaborative ventures;
- Noting staffing shortages at the state hospitals, urge LSH and OSH to establish programs, such as internships, fellowships, and similar initiatives to enhance recruitment measures;
- KDADS develop a comprehensive salary and benefits schedule to enhance recruitment; and
- Noting the destructive nature of bullying in the workplace and condemning it at all employment levels in state hospitals, KDADS investigate incidents of employee bullying and develop policies to curtail such behavior.