Committee Reports
to the
2018 Kansas Legislature

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

Kansas Legislative Research Department

January 2018

2017 Legislative Coordinating Council

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

Special Committee on Assessment and Taxation

Special Committee on a Comprehensive Response to the School Finance Decision

Special Committee on Financial Institutions and Insurance

Special Committee on Health

Special Committee on Utilities

Joint Committee on Corrections and Juvenile Justice Oversight

Joint Committee on Information Technology

Joint Committee on Kansas Security

Legislative Budget Committee

Joint Committee on Pensions, Investments and Benefits

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

Joint Committee on State Building Construction

Capitol Preservation Committee

Child Welfare System Task Force

Health Care Stabilization Fund Oversight Committee

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Foreword

In the 2017 Interim, the Legislative Coordinating Council appointed eight special committees to study nine study topics. Legislation recommended by the committees will be available in the Documents Room early in the 2018 Session.

Joint committees created by statute met in the 2017 Interim as provided in the statutes specific to each joint committee. Several of the joint committees have reported on their activities, and those reports are contained in this publication. Legislation recommended by these committees will be available in the Documents Room early in the 2018 Session.

This publication also contains reports of other committees, commissions, and task forces that are not special committees created by the Legislative Coordinating Council or joint committees.

Reports of the following are not contained in this publication and will be published in a supplement:

Special Committee on Commerce
Special Committee on Elections
Special Committee on Natural Resources

Minutes of the meetings of the special committees, joint committees, other committees, commissions, task forces, and panels are on file in the Division of Legislative Administrative Services. A summary of each reporting entity's conclusions and recommendations may be found beginning on page i.

This publication is available in electronic format at http://www.kslegresearch.org/KLRD-web/Publications.html.

Table of Contents

Summary of Conclusions and Recommendations

Special Committee on Assessment and Taxation

The Committee made recommendations related to income tax monitoring, property tax limitation mechanisms, agricultural land use valuation, tax incentives, and sales tax collection on remote transactions, as listed below.

Income tax. The Committee recommended the standing assessment and taxation committees continue to monitor individual income tax receipts throughout the remainder of FY 2018 to fully understand the impact of the changes to law made in this area during the 2017 Session.

Property tax limitation mechanisms. The Committee recommended continued examination of property tax limitation mechanisms used by other states and the effects of the current Kansas tax lid, including the assignment of oversight of the tax lid to a single state agency.

Agricultural land use valuation. The Committee recommended further study of the formula used to determine the use value of agricultural land to more closely align land values with current market realities.

Tax incentives. The Committee recommended a more complete disclosure of state and local tax incentives and the consideration of "best practices" recommendations identified by the Legislative Division of Post Audit to inventory and evaluate tax incentives.

Sales tax collection on remote transactions. The Committee recommended consideration of the Massachusetts' approach for remote sales tax collection and recommended continued participation in various multi-state tax organizations designed to enhance the ability of states to collect sales and use taxes on goods shipped to customers within the state.

Special Committee on a Comprehensive Response to the School Finance Decision

The Committee declined to make recommendations; however, it commends to the Legislature the Committee's minutes and attachments and this report.

Special Committee on Financial Institutions and Insurance

Kansas Uniform Consumer Credit Code. The Committee made no recommendation relative to 2017 HB 2267 or the introduction of any legislation affecting certain consumer loan transactions regulated under the Kansas Uniform Consumer Credit Code (UCCC). The Committee further noted its discussion on its assigned bill, the UCCC and its present structure, and the update and comments submitted by stakeholders on the small dollar lending Final Rule recently published by the Consumer Financial Protection Bureau (CFPB). The Committee notes concerns regarding the uncertainty of the regulatory role of the CFPB and the timing of modifications to the consumer lending provisions of the UCCC, including any state legislative action, during the prescribed 21-month implementation time period for the Final Rule. The Committee encouraged the Office of the State Bank Commissioner to hold regular stakeholder meetings to assist in drafting potential changes to the UCCC.

Minimum motor vehicle liability insurance. The Committee made no recommendation relative to 2017 HB 2104 or the introduction of any legislation that would increase the minimum limits for bodily injury insurance coverage and amend provisions relating to uninsured and underinsured motorist coverage. The Committee further noted its discussion on the bill, information provided on prior legislative consideration of the broader topic of uninsured motorists, and available automobile liability insurance marketplace data and driver data. The Committee encouraged future review of data and analysis, as well as continued stakeholder input.

Special Committee on Health

The Committee noted the importance of keeping the patient first when crafting telemedicine legislation and recommended the introduction of comprehensive telemedicine legislation by the parties, to begin in the House, early in the 2018 Legislative Session. Additionally, the Committee did not recommend the 2017 telemedicine legislation currently residing in the House Committee on Health and Human Services (HB 2206 and HB 2254).

Special Committee on Utilities

The Special Committee on Utilities was not convened during the 2017 Interim.

Joint Committee on Corrections and Juvenile Justice Oversight

The Committee recommended legislative consideration of an appropriation of $1.5 million in each of the next three years for inmate treatment programs; legislation changing how juvenile dispositions are treated with regard to future application of the offender; legislation modifying the SB 123 program; legislation aligning all financial loss crimes with the current threshold of $1,500; delayed approval for construction at the Lansing Correctional Facility; and possible changes to human trafficking laws and to Kansas' Romeo and Juliet laws. The Committee also recommended the Kansas Sentencing Commission reconvene its proportionality committee and make recommendations based on the category and severity of crimes to the 2018 Joint Committee on Corrections and Juvenile Justice Oversight and the 2019 Legislature. Further, the Committee requested legislation to stay limits on overall case lengths for juvenile offenders who abscond from supervision, allow fees to be assessed as part of applications under the Immediate Intervention Program, make a technical change to the charge of the Juvenile Justice Oversight Committee, and allow a juvenile's attorney to waive appearance at the 14-day detention review hearing under KSA 2017 Supp. 38-2343.

Joint Committee on Information Technology

The Committee recommended the Office of Information Technology Services (OITS) present a clear roadmap for the process of mandating actions to improve cybersecurity for state agencies, and OITS should ensure the roadmap treats all agencies fairly. The Committee also requests OITS include in its plans the expectation that, if agencies are given the option to take control of their own cybersecurity efforts, agencies be required to consent to a cybersecurity responsibility statement specifying actions necessary to improve cybersecurity within each agency and identify individuals within each agency responsible for oversight of cybersecurity activities. The Committee would like to elevate the importance of the cybersecurity discussion, the importance of preventative action, and the responsibility of the State to protect data entrusted to the State by its citizens and determine how agencies may implement any changes necessary to improve cybersecurity. The Committee recommended continued investigation into what needs to be accomplished to allow for archiving the livestream of committee hearings held in the Old Supreme Court Room. The Committee believes OITS needs more authority to provide oversight beyond the initial stages of a project and it should be encouraged to develop more tools that will provide better project portfolio management, such as automated reporting tools and software, and work toward better collaboration and integration of systems to avoid duplicative projects. Finally, the Committee suggested a scheduled meeting early in the 2018 Session for consideration of OITS' proposed roadmap for information technology security and make recommendations for legislative action in the 2018 Session, including discussion on 2017 HB 2331 and 2017 SB 204.

Joint Committee on Kansas Security

The Committee recommended the Secretary of State protect the integrity of Kansas voting machines and protect against hacking; the House Committee on Appropriations and the Senate Committee on Ways and Means consider the Kansas Bureau of Investigation enhancement to fund agent positions, particularly investigation positions, recognizing the need for the Legislature to study Kansas' overall law enforcement capacity; the House Committee on Appropriations and the Senate Committee on Ways and Means consider authorizing the Kansas Division of Emergency Management to fill a Planner II National Bio and Agro-defense Facility position for FY 2019; and placing the Kansas Department of Agriculture's Emergency Exercise Plan for biosecurity and the Kansas Agriculture Emergency Response Corps into statute. The Committee requested a bill to add a designated ranking minority member to the Committee.

Legislative Budget Committee

The Committee met four times during the interim. On August 8, 2017, the Committee reviewed the Temporary Assistance for Needy Families Funded Home Visitation Program, re-certification status of the Osawatomie State Hospital (OSH), update on the status of requests for proposal (RFPs) regarding OSH, review for the 2017 pay plan implementation, and an update on correctional facilities. The Committee met on October 5, 2017 for updates on State Fire Marshal Disaster activities, Kansas Department of Transportation bonding, OSH re-certification, KanCare 2.0, Lansing Correctional Facility replacement, the new school finance formula, and selected Kansas Efficiency Study recommendations and agency responses. The Committee met on November 11, 2017, to review the consensus estimates and receive an overview of agency budget requests. The Committee met on December 20, 2017, to review Regents universities efficiency studies, Kansas Public Employees Retirement System Briefing Valuation Report, Office of Information Technology Services update on information technology modernization, a briefing on the Comprehensive Response to School Finance Decision Meeting, the status of the State Employee Health Clinic, and selected agency issue briefings.

Following discussion and review of the topics previously described, the Committee made no recommendations.

Joint Committee on Pensions, Investments and Benefits

The Committee recommended a bill to repeal an obsolete provision that prohibits the Kansas Public Employees Retirement System (KPERS) from investing in Sudan and related reporting requirements to the Committee. The Committee suggested the Legislature consider exempting KPERS from KSA 2017 Supp. 75-3740e and 75-3740f, pertaining to vendors' policies towards Israel, which may increase operational expenses. The Committee recommended the Legislature consider the extent to which State contributions to KPERS on the behalf of school districts should be counted towards education funding.

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

The Committee expressed concerns and adopted recommendations. The Committee recommended KanCare 2.0 proceed as scheduled, the Kansas Department of Health and Environment (KDHE) include comprehensive dental benefits for adults in the KanCare 2.0 request for proposal, and KanCare 2.0 include measures to reduce the waiting lists.

The Committee expressed concerns about the increase in Home and Community Based Services waiting lists.

The Committee further recommended a comprehensive master plan addressing mental health be developed, including corrections; KDHE provide to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services, by February 22, 2018, effective criteria and performance measures for the KanCare Clearinghouse and call center; the Kansas Department for Aging and Disability Services develop policies and practices for surveying long-term care facilities that will give surveyors latitude in interpreting deficiencies, provide adequate salaries and thorough training to enhance the work of surveyors, and monitor inspections and provide reports to the Committee regarding citations and fines; KDHE clarify the language regarding power of attorney (POA) documents to distinguish between POA for health care and POA for finances; and the Child Welfare System Task Force review and clarify Medicaid eligibility for children in foster care and consider streamlining eligibility to make the transition out of foster care more consistent and efficient.

The Committee did not propose legislation.

Joint Committee on State Building Construction

The Committee recommended all the agencies' five-year capital improvement plans except for that of the Department of Corrections. The motion to approve the agency's five-year capital improvement plan made no recommendation on the Lansing construction project for a new correctional facility.

The Committee recommended the Department of Corrections restart the bidding process for the Lansing construction project for a new correctional facility and write the request for proposals to cover design-build proposals.

The Committee also recommended the Department of Corrections bring in stakeholders for the new Lansing Correctional Facility construction project including mental health groups and the Sentencing Commission.

Capitol Preservation Committee

The Committee directed Michael Young, artist, to make updates to the *Brown v. Board of Education* mural. The Committee recommended the Kansas Department of Administration meet with Mr. Young to discuss and implement lighting of the mural; continue to fix fractures in the marble flooring of the Capitol Visitor Center with epoxy and monitor the flooring; and make several updates to signage around the Capitol Complex. The Committee recommended the State Historical Society closely monitor the cracks in the Overmyer murals and proceed with obtaining cost estimates to stabilize and conserve these murals, as necessary. Further, the Committee recommended the Report of the Capitol Preservation Committee to the 2018 Kansas Legislature be forwarded to the Joint Committee on State Building Construction.

The Committee acknowledged support for the following projects: completion of the *Ad Astra* Plaza, without providing any state financing for the completion of the project; expansion of the Law Enforcement Memorial on Capitol grounds; enactment of legislation for the Eisenhower statue on Capitol grounds; and development of a Legislative Coordinating Council policy regarding non-controversial artwork in Capitol committee rooms.

Child Welfare System Task Force

The Task Force made the following preliminary recommendations: a multi-year focus on recruitment and retention of social workers should be implemented, including the Department for Children and Families (DCF) evaluation of the morale and tenure of the work force; long-term incentives, supports, career path (advancement), professional development, ongoing training, supervision, student loan forgiveness, and competitive compensation for social workers who work in the child welfare system should be developed; continuity of services and recordkeeping need improvement so that caseworker turnover does not affect delivery of services; problems that have led to the closure of several Psychiatric Residential Treatment Facilities (PRTFs) for children and youth should be addressed so that more PRTFs can be added; DCF should evaluate and explore options for combining stand-alone computer systems into a consolidated system, to respond to the recent audit performed by the Legislative Division of Post Audit and the federal Program Improvement Plan, and such consideration should include availability of federal matching funds and the system implemented by Indiana; DCF should provide the Legislature with a clear recommendation for computer system improvement and the Legislature should provide the funding required for any necessary feasibility study; prompt adoptions after parental rights have been terminated, though improving, need further attention; issues regarding youth who run from placement should be addressed, including evaluation of what facilities could be used for such youth; there should be consideration of preventative services that could be added or increased; DCF should review the evolution and continuum of placements used over the years; and the effect on the child welfare system of the consolidation of juvenile services within the Kansas Department of Corrections should be considered.

Health Care Stabilization Fund Oversight Committee

The Committee considered two items central to its statutory charge: whether this committee should continue its work and whether a second, independent analysis of the Health Care Stabilization Fund (HCSF) is necessary. This oversight committee continues in its belief that the Committee serves a vital role as a link among the HCSF Board of Governors, the health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability insurance marketplace, which allows for more affordable coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and did not request an independent review.

The Committee made other recommendations and comments relating to the actuarial report provided and the overall health of the HCSF, including declines in many surcharge rates for providers, conclusion of the reimbursement schedule for administrative expenses associated with self-insurance programs established by 2010 SB 414, contemporary issues of concerns to the Board of Governors and health care providers, and inclusion of a statement regarding the significance of the HCSF and the purpose of and use for this fund.

Report of the Special Committee on Assessment and Taxation to the 2018 Kansas Legislature

Chairperson: Representative Steven Johnson

Vice-chairperson: Senator Caryn Tyson

Other Members: Senators Tom Holland and Dan Kerschen; and Representatives Ken Corbet, Tom Sawyer, and Kristey Williams

Study Topic

Review and Monitor State Revenue Sources and Analyze Implementation of the Tax Lid

- The Committee will review major state revenue sources and changes in state tax policy enacted in recent years; monitor implementation of the new individual income tax law by the Department of Revenue; conduct an overview of the State General Fund finances as it relates to FY 2018 and FY 2019; analyze additional issues involving taxation by local units of government, including implementation of the tax lid; and make any recommendations deemed appropriate to the 2018 Legislature.

December 2017

Special Committee on Assessment and Taxation

Report

Conclusions and Recommendations

The Committee notes the final impact on receipts, taxpayers, and the economy of the 2017 *individual income tax law changes* cannot be fully ascertained until returns have been filed in the spring. The Committee recommends the standing taxation committees continue to look at *property tax limitation mechanisms* used in other states; oversight, evaluation, and enforcement of the *current tax lid* be assigned to a single state agency; and additional *exemptions to the tax lid* be considered for certain costs borne by cities and counties that are outside of their control. The Committee notes three elections on property tax increases have been conducted, with voters approving two and one failing. The Committee recommends further study of the current *agricultural land use valuation system* to allow changes in valuation to more closely be associated with current market realities. The Committee finds that a more complete *disclosure of state and local tax incentives* would provide additional accountability and transparency and enable more rigorous cost-benefit analyses and consideration of possible “clawback” legislation. On the issue of *collecting tax on sales from remote vendors*, the Committee is encouraged by efforts being undertaken by a number of other states and recommends that Kansas continue to participate in all organizations and discussions designed to enhance the collection of taxes on goods shipped to consumers.

Proposed Legislation: None

Background

Given the number of changes in state tax policy in recent years (including multiple changes in the individual income tax, two increases in the state sales tax rate, and reimposition of a property tax lid on certain local units of government), the Legislative Coordinating Council (LCC) received several requests for interim tax policy studies. As a result, the LCC subsequently approved a broad-based topic generally charging the Committee with reviewing major revenue sources and some of the policy changes made in recent years.

Committee Activities

The Committee met on December 7-8, 2017, and reviewed the charge from the LCC.

Staff outlined the latest Consensus Revenue Estimates made in November and the implications those changes had for projected ending balances in FY 2018 and subsequent years.

Department of Revenue officials presented information on the implementation and timing of certain features associated with the new individual income tax law, including the promulgation of withholding tables that were released over the summer.

Staff distributed information about the history of property tax limitations in other states and on the history of school district property taxes in Kansas.

Another presentation covered the history of the sales tax in Kansas dating back to its enactment in 1937.

Department of Revenue officials provided the latest data on fiscal notes associated with the potential repeal of sales tax exemptions and with extending the tax to a number of currently untaxed services.

Staff explained the new property tax lid that was effective for budgets set by local units of government over Summer 2017. The Committee then held a public hearing on potential changes to the tax lid. Representatives of the Kansas Association of Counties and the League of Kansas Municipalities said enacting 2017 HB 2424 and providing additional exemptions would be helpful for cities and counties if the tax lid were going to be made more workable in the future.

Auditor staff from Legislative Division of Post Audit presented the Committee with two recently completed audits: one involving how other states evaluate and inventory tax incentives and a second covering how Kansas treats agricultural land for property tax purposes.

A representative of the Tax Simple Center told the Committee Kansas would be better served by adopting a more streamlined individual income tax and suggested he would be willing to work with policymakers to draft a proposal.

Staff covered the 1992 *Quill* decision by the U.S. Supreme Court involving the ability of states to attempt to tax sales by remote vendors. A representative of the Department of Revenue presented the latest information on legislative efforts by the states and discussed the status of current litigation that could overturn some of the precedents set in the 1992 case.

At the conclusion of the two-day meeting, the Committee directed staff to prepare the final report outlining its conclusions and recommendations to the 2018 Kansas Legislature.

Conclusions and Recommendations

Individual Income Tax Law Changes

The Committee notes the final fiscal impact of the 2017 individual income tax law changes cannot be fully ascertained until returns are filed and processed in the spring, nor can the impact on taxpayers and subsequent impact on the state's economy. The Committee states the 2018 Legislature should keep this in mind when evaluating another round of major changes to the state and local tax structure. In particular, the Committee wishes to express concern over the relatively high combined state and local sales tax rate (the eighth highest nationally, according to one study) and what that means for competitiveness and the overall health of the state's economy.

The Committee is intrigued by the income tax simplification proposal advanced by the Tax Simple Center and encourages proponents of that idea to continue to work with the Department of Revenue, tax professionals, and the standing committees.

Property Tax Limitation Mechanisms

Relative to ongoing concerns over property tax burdens, the Committee recommends the standing committees review other statutory and constitutional property tax limitation methodologies employed by other states to determine whether any of those mechanisms would be more effective than the current Kansas property tax lid.

Current Tax Lid

The Committee asks the Kansas Association of Counties to provide information about 2017 tax lid election results to the 2018 Legislature. Such information should include the costs of the elections, the amount of additional tax dollars in excess of the lid that were subject to the elections, and what specific projects those additional property taxes were proposed to fund.

The Committee notes exceptions to the property tax lid were approved by voters in two elections and failed in one election in 2017 and recommends such property tax lid election results and information be tracked each year on an ongoing basis and that those results be reported annually to the standing taxation committees alongside local sales tax election results. But the Committee also recognizes that, under current law, no single state agency is charged with oversight, enforcement, or data collection relative to the tax lid and recommends the 2018 Legislature consider assigning these responsibilities to a specific state entity.

Exemptions to the Tax Lid

A number of costs borne by cities and counties under current law are outside the control of governing bodies, and the Committee recommends review of additional exemptions from the provisions of the tax lid, including for additional costs associated with employee benefits and for payments made for leases to public building commissions. Another issue that could be addressed legislatively involves the September 15 requirement for a mail ballot tax lid election that does not appear to be statutorily flexible, and that date falls on a Saturday in 2018. (*Note*: KSA 2016 Supp. 25-433a provides, if September 15 is a Sunday, the election shall be the next business day.) The Committee notes HB 2424 will begin the 2018 Session on General Orders in the House and would be an appropriate vehicle to use in continuing discussion of many of these tax lid issues.

Agricultural Land Use Valuation System

The Committee acknowledges the current averaging system for use valuation of agricultural land for property tax purposes was designed to provide stability and certainty, but that system can produce changes in valuation that do not reflect current market realities. The Committee recommends the 2018 Legislature further examine possibilities for the formula that might more closely synchronize changes in valuation with changes in prices, including considering the number of years being averaged, and using a simple average as opposed to a rolling average approach.

Disclosure of State and Local Tax Incentives

The Committee recommends the standing taxation committees be briefed on the final series of "best practices" recommendations being developed by the Legislative Division of Post Audit as of December 15 in the wake of the audit on how other states inventory and evaluate certain tax credits and exemptions. The Committee is especially interested in a rigorous review process similar to one used in Indiana, as well as certain full disclosure requirements similar to those used in New Mexico. If that review can be supported by legislative action, the Committee recommends that action to the Legislature.

In the name of accountability and transparency, the Committee believes a more complete disclosure of tax incentives is a necessary first step in weighing whether those foregone state and local tax dollars might instead be put to other uses (including potentially other better targeted and more efficient tax incentives). More disclosure also would allow policymakers to consider more rigorous enactment or enforcement of "clawback" provisions that would enable the public sector to recover resources if incentive recipients do not adhere to certain requirements or stipulations.

The Committee finds that all major state and local tax incentive programs should be subject to an annual independent cost-benefit analysis presented to the standing taxation committees.

Finally, the Committee finds the logic of the U.S. Supreme Court compelling in the 1983 decision *Regan v. Taxation With Representation of Washington, 461 US 540*:

> "Both tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income."

This language from the Court equating tax exemptions and government subsidies, in essence, suggests there is no practical difference between an exemption and an appropriation. As such, the Committee stated Kansas needs to do a better job monitoring the utilization of its state tax dollars.

Collecting Tax on Sales from Remote Vendors

On the issue of collection of sales tax from remote vendors, the Committee is encouraged by the efforts being undertaken in recent years by many states, including South Dakota, Colorado, and Massachusetts. The Committee is satisfied with the action taken to date similar to efforts of Colorado and South Dakota, but recommends consideration of the Massachusetts approach and possible necessary legislation. Kansas should continue to participate in all multi-state organizations and discussions designed to enhance the ability of states to collect sales and use taxes on taxable goods shipped to consumers. Should the 1992 U.S Supreme Court precedent from *Quill* not be overturned with a new decision to reflect marketplace realities of the 21st century, the Committee recommends the Kansas Legislature continue to encourage members of the Kansas Congressional delegation to enact authorizing federal legislation referenced in that original decision. Creating a level playing field and providing equity for main street business in Kansas is of increasing concern for the state's economic development. Moreover, collection of tax on currently unreported sales would improve the revenue elasticity of the sales tax and reduce the pressure on other tax sources.

Report of the Special Committee on a Comprehensive Response to the School Finance Decision to the 2018 Kansas Legislature

Chairperson: Representative Blaine Finch

Vice-chairperson: Senator Molly Baumgardner

Other Members: Senators Jim Denning, Anthony Hensley, Carolyn McGinn, and Rick Wilborn; and Representatives Larry Campbell, Steven Johnson, Ed Trimmer, Troy Waymaster, and Valdenia Winn

Study Topic

- Review and analyze the recent *Gannon v. State* decision (402 P.3d 513 (2017));
- Identify the responses available to the Legislature and the consequences of each; and
- Explore options to reduce or eliminate the perpetual cycle of conflict over school finance and end the perennial and recurrent threat of school closures.

January 2018

Special Committee on a Comprehensive Response to the School Finance Decision

Report

Conclusions and Recommendations

Following informative hearings and discussion, the Committee declined to make recommendations; however, it commends to the Legislature the testimony provided to the Committee, the minutes of each meeting, this report, and its appendices.

Proposed Legislation: None

Background

The Kansas Supreme Court issued its fifth opinion in *Gannon v. State* on Monday, October 2, 2017. The *Gannon* litigation concerns whether the Legislature is in compliance with Article 6, Section 6 of the *Kansas Constitution*, which, in relevant part requires the Legislature to "make suitable provision for finance of the educational interests of the state." In *Gannon I*, the Court reiterated its prior holding that Article 6 contains at least two components: equity and adequacy. The Court provided the following test for equity: "School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort." Further, the Court stated adequacy would be achieved when the school finance system is reasonably calculated to have all Kansas public education students meet or exceed the capacities set out in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), including sufficient oral and written communication skills; knowledge of economic, social, and political systems; understanding of governmental processes; self knowledge and knowledge of one's mental and physical wellness; grounding in the arts; training or preparation for advanced training in either academic or vocational fields; and academic or vocational skills that enable favorable competition in academics or the job market.

In *Gannon IV*, the Court held the K-12 public financing system was constitutionally inadequate and gave the Legislature an opportunity to bring the State's education financing system into compliance with Article 6, Section 6 of the *Kansas Constitution* by June 30, 2017. The Legislature subsequently passed 2017 SB 19, creating the Kansas School Equity and Enhancement Act. The Governor signed the bill on June 15, 2017, and it became effective on July 1, 2017.

In *Gannon V*, the Kansas Supreme Court held the State has not met its burden of showing SB 19 meets the constitutional requirements for equity and adequacy. The Court retained jurisdiction of the case and extended to June 30, 2018, the stay of its previous mandate that without a constitutionally valid school finance system, the system would be void and schools could be closed. The Court stated at that time the Court will not "be placed in the position of being complicit actors in the continuing deprivation of a constitutionally adequate and equitable education owed to hundreds of thousands of Kansas school children." Additionally, the Court announced briefs on any legislative remedies are due April 30, 2018, response briefs are due May 10, and oral arguments will be conducted May 22.

At its October 30, 2017, meeting, the Legislative Coordinating Council considered a request submitted by Speaker Ron Ryckman to create an 11-member special committee chaired by a House of Representatives member, with 6 members from the House of Representatives (4 Republicans and 2 Democrats) and 5 members from the Senate (4 Republicans and 1 Democrat). The request emphasized the need to begin work immediately given the scope of the issue to be addressed and the limited time available. To allow the Legislature to begin work quickly and efficiently in January, the request suggested the Committee "act as fact-finders, gather the necessary information, compile the options available to the legislative body, and identify specific matters for the standing committees of both houses." Standing committees include the House and Senate Education Committees, the House K-12 Education Budget Committee, and the Senate Select Committee on Education Finance (if reauthorized).

The LCC authorized the Committee to meet three days with the specific charge to:

- Review and analyze *Gannon V*;
- Identify the responses available to the Legislature and the consequences of each; and
- Explore options to reduce or eliminate the perpetual cycle of conflict over school finance and end the perennial and recurrent threat of school closures.

Committee Activities

The Committee held meetings on December 4, December 18, and December 19, 2017. Information provided at the meetings is summarized below.

December 4

Review of Gannon Litigation and Previous Legislative Responses

The Committee began its work with a presentation from staff of the Office of Revisor of Statutes (Revisor's Office) on the history of school finance litigation in Kansas; the procedural history of *Gannon*, which was filed in 2010; SB 19; and the *Gannon V* opinion. Staff of the Kansas Legislative Research Department (KLRD) followed with additional information on legislative action taken in response to the *Gannon* litigation, as well as information about education consensus calculations for fiscal years (FYs) 2018 and 2019 and a five-year profile of the State General Fund (SGF). A representative of the Kansas State Department of Education (KSDE) also provided data to the Committee concerning changes in enrollment, spending for personnel and at-risk programs, the Local Option Budget (LOB), and capital outlay.

In the afternoon, the Committee received information from staff of the Revisor's Office on the specific equity and adequacy issues identified by the Court in *Gannon V* and from KLRD staff on the potential fiscal impact associated with addressing those issues.

Discussion of Equity Issues

The Court identified four points of inequity in SB 19. First, the Court ruled the expanded use of capital outlay funds for utilities and property and casualty insurance would result in unacceptable levels of wealth-based disparities as a district's ability to take advantage of this provision is tied to its property wealth. The most direct remedy would be to repeal these provisions, which would result in no direct cost to the State.

Second, the Court ruled the reinstatement of the protest petition and election process to reach the maximum LOB authority of 33.0 percent resulted in inequity as it effectively denied access to the maximum LOB authority for many districts while other districts are granted that access. The most direct remedy would be to allow all districts to reach maximum LOB authority without being subject to a protest petition. KSDE estimates allowing districts to reach the maximum LOB authority of 33.0 percent without the protest petition and election process would increase state obligations for Supplemental General State Aid (LOB State Aid) by approximately $10.0 million for FY 2019. Combined, all school districts in the State are approximately $87.0 million below the maximum LOB possible under current law. KSDE officials do not anticipate allowing all districts to reach 33.0 percent without the protest petition and election process would result in all districts below 33.0 percent raising their LOB authority to the maximum authority due to a variety of factors, including local concerns about property tax levels.

Third, the Court ruled the change to using the prior year LOB amount to determine the amount of LOB State Aid a district is entitled to receive results in inequity as a property-poor district that raises its LOB will not receive increased equalization aid for the first year of the increased LOB. The most direct remedy would be to return to using the current year LOB amount to determine LOB State Aid. The November 2017 Consensus Revenue Estimates included savings of $26.4 million in FY 2018 and $8.2 million for FY 2019 due to reduced LOB State Aid payments as the SB 19 appropriation for LOB State Aid was based on current year LOB authority, not the change to prior year LOB authority. Returning to current year LOB would eliminate the FY 2019 savings. Additionally, Committee members discussed the possibility of legislation that would require districts to provide notice to the KSDE by a date certain if they were going to increase their LOB, which would also give the Legislature notice of the need for additional equalization dollars.

Fourth, the Court ruled the 10.0 percent floor for the at-risk weighting violated the equity requirement as only two school districts benefit from this provision, and the State did not demonstrate why the free-meals proxy used for the at-risk weighting was inappropriate for those two districts but appropriate for all other districts. The most direct remedy would be to repeal this provision, which would save the State approximately $2.2 million.

The Committee discussed these issues, as well as potential responses, and requested the following information from the KSDE: the number of students in the Blue Valley and DeSoto school districts receiving at-risk services and the number of students in those districts eligible for free meals; the process each district used in pursuing LOB authority of 33.0 percent; and information on the extent to which districts were using capital outlay funds for utility expenses and property and casualty insurance.

Discussion of Adequacy Issues

The Court explicitly declined to provide a specific minimum amount to reach constitutional adequacy, but did refer to three recommendations for the FY 2019 base aid for student excellence (BASE). First, it referred to the three-judge panel recommendation, which included a FY 2019 BASE of $5,055. This is an increase of $927 above the FY 2019 BASE of $4,128 included in current law and would result in an additional cost to the State of $635.9 million for FY 2019. Next, the Court referred to the State Board of Education recommendation, which recommended a FY 2019 BASE of $5,090. This is an increase of $962 above the FY 2019 BASE of $4,128 included in current law and would result in an additional cost to the State of $659.9 million for FY 2019. Finally, the Court referred to the Plaintiff's recommendation, which recommended a FY 2019 BASE of $6,539. This is an increase of $2,411 above the FY 2019 BASE of $4,128 included in current law and would result in an additional cost to the State of $1.65 billion for FY 2019.

The Committee discussed these issues, as well as potential responses, and requested information needed to better understand how to proceed, including information on revenue and budget adjustment scenarios that may be required if additional funding was appropriated for K-12 education.

December 18

Presentation of Follow-up Information

The Committee received information from KLRD staff and KSDE in response to questions asked at the December 4 meeting. Information provided included the legislative history of the LOB cap; the process school districts used in pursuing LOB authority of 33.0 percent; the cost if all districts were required to hold elections to increase their LOB; districts' balances and use of capital outlay funds; summaries of Parents as Teachers, the four-year-old at-risk program, and the at-risk program; data concerning all-day kindergarten; further explanation of the results of a recent survey concerning how school districts would use additional funds; historic data on student performance and numbers of teachers; and headcount data for virtual, out-of-state, and free-lunch eligible students and students receiving at-risk services.

Discussion of Gannon v. State litigation

Arthur S. Chalmers, attorney for the State in the *Gannon v. State* litigation, also appeared before the Committee to answer questions about the case presented to the three-judge panel and the Supreme Court, as well as the Supreme Court's opinion in *Gannon V.* The conferee declined to identify a "safe harbor" for equity or adequacy, but agreed the Court found the Legislature to be in compliance with the equity standard prior to the changes made in SB 19. Further, in response to a question about how the State can demonstrate adequate funding without relying on outputs, such as improved test scores and graduation rates, which will not be immediately available, the conferee referred to *Gannon IV.*

In *Gannon IV*, the Court stated "[t]here is no one specific way for this funding to be achieved"; parted company with the three-judge panel to the extent it would limit the State to a particular system or structure or refuse to consider sources of funding other than those calculated through the Base State Aid Per Pupil; and rejected "any litmus test that relies on specific funding levels to reach constitutional compliance" (*Gannon v. State*, 305 Kan. 850, 916-17 (2017)). Further, the Court stated that while the cost studies are estimates of spending, they represent evaluations that the Court cannot simply disregard, and the State should not ignore them in creating a remedy. (*Id.* at 917.) The Court advised that while considering cures, the Legislature should also be mindful of the connection between equity and adequacy. (*Id.)* Further, the Court emphasized that the adequacy test is one of minimal standards, and "whether the legislature satisfies the test by exceeding the *Rose* standards is up to that deliberative body—and ultimately the people of Kansas who elect its members to office" (305 Kan. at 917-18). the conferee stated the Legislative Division of Post Audit (LPA) cost study looked at the results of math and reading tests that were paired with standards no longer in place, and he questioned whether those outputs were still appropriate to measure adequacy. The conferee indicated that whatever the measure, the Legislature must persuade the Court it is "moving the ball along" toward meeting the minimal standards in *Rose.*

In response to further questioning, the conferee stated his opinion that in "showing its work" to meet the burden for adequacy, the Legislature should demonstrate why, how, and how much performance will improve with the funding provided, and agreed outside expertise may be needed to establish the validity of the methodology relied upon. In showing the validity of phasing in funding, the conferee agreed the Court may be more responsive to this argument if presented with evidence from school boards or other reliable sources that the total amount of funding could not immediately be put to use.

When asked about the timeline for formulating a response, the conferee advised the Committee that given the April 30 briefing deadline, ideally the Legislature will have concluded its work by March 1 to ensure sufficient time for the bill to be enacted and for the Attorney General's Office to compile necessary documents.

Presentation on Revenue and Budget Adjustment Scenarios

KLRD Staff provided information on revenue and budget adjustment scenarios that may be required if additional funding was appropriated for K-12 education. (For a summary of this information, see Appendix I.) Additionally, representatives of selected state agencies appeared before the Committee and spoke to the potential impact of an 18.0 percent across-the-board reduction of SGF appropriations in FY 2019, which, if K-12 education were excluded, would total around $600 million.

The Kansas Department of Corrections (KDOC) indicated an 18.0 percent reduction would be a reduction of $65.6 million. As many of the agency's costs are fixed in relation to the offender population, KDOC stated this reduction would require a reduction in the average daily population (ADP) of offenders through a change in sentencing laws and the early release of offenders. KDOC prepared the following 3 options for consideration: closure of 3 correctional facilities, reducing ADP by 2,503; elimination of all community corrections funding and closure of 2 correctional facilities, reducing ADP by 1,730; or elimination of parole services and community corrections funding and closure of 1 correctional facility, reducing ADP by 1,082.

The Kansas Judicial Branch indicated an 18.0 percent reduction would be a reduction of $18.5 million. Because 94.0 percent of the Judicial Branch budget is dedicated to personnel costs, the reduction would result in approximately 70 working days of court closures across the state, depending on turnover savings and fluctuating docket fee revenues. The Judicial Branch stated layoffs or hiring freezes are not options as it already has approximately 120 vacancies due to previous years' budget cuts and high employee turnover.

The Kansas Department of Health and Environment (KDHE) described how an 18.0 percent reduction of SGF funding would impact the agency; however, the agency indicated a detailed review of all relevant state and federal statutes and regulations would be necessary to determine the extent to which the loss of State match funds could result in the loss of additional federal funds. An 18.0 percent reduction would remove: $645,009 from Administration, which KDHE estimates as 24.5 of 98 funded positions; $3.1 million from the Division of Public Health, which KDHE indicates would eliminate or significantly reduce programs and services; $720,158 from the Division of Environment, which KDHE explains would result in the elimination of testing for parasites, chlamydia, and gonorrhea and reduce resources in the spill response program, asbestos program, and concentrated animal feeding operations; and $112.8 million from the Division of Health Care Finance (DHCF), which would impact Medicaid, the Children's Health Insurance Program, medical assistance for optional services and optional populations, school-based services, and DHCF administrative services.

The Kansas Department for Aging and Disability Services (KDADS) indicated an 18.0 percent reduction would be a reduction of $136.8 million to the agency and would result in a reduction to State-funded programs, including the Senior Care Act, Intellectual/Developmentally Disabled State Aid Services, and mental health grants and services. Further, some programs and services are partially funded by the federal government, with receipt of federal funds contingent on state participation. Consequently, loss of state funds could result in loss of federal funds for Community Developmental Disability Organizations and the Aging and Disability Resource Center, which screens individuals for three of the Medicaid waivers, as well as Meals on Wheels and other nutrition programs for older adults. KDADS indicated this reduction would also impact KanCare/Medicaid programs and services by reducing provider rates and numbers of individuals served both in long-term care and on the seven Medicaid disability waivers; result in accumulation of a waiting list for all Home and Community Based Services waivers; and potentially impact the number of providers willing to care for KanCare participants. Finally, reductions to the agency would require staff reductions that would impact oversight of the agency's behavioral health and longer term care services.

Reductions would also impact KDADS-administered state hospitals and institutions. The budget for Kansas Neurological Institute would be reduced by $1.7 million, including loss of 44.0 FTEs, closure of 3 homes, and impact to 23 residents. The budget for Larned State Hospital would be reduced by $10.4 million, including loss of 111.0 FTEs and 8.0 non-FTEs, closure of 1 unit from the State Security program impacting 20 inmates, closure of 2 units from the psychiatric services program impacting 60 residents, closure of 1 reintegration facility from the Sexual Predator Treatment Program impacting 16 residents, and reduction of contract services currently provided for patient care safety, and treatment. The budget for Osawatomie State Hospital (OSH) would be reduced by $3.3 million, including loss of 30.0 FTEs and elimination of 13-23 beds depending on whether they are eliminated on the licensed (OSH) or certified side (Adair Acute Care). The budget for Parsons State Hospital would be reduced by $2.1 million, including a loss of 64.0 FTEs, closure of 4 cottages, consolidation of remaining residents, and the move or transfer of 75 residents against the will of their parents or guardians to other locations.

The Kansas Department for Children and Families (DCF) indicated an 18.0 percent reduction would remove over $47 million with a larger potential impact to total funding depending on specific programs reduced or eliminated. The agency identified 22 actions that would be required to address this loss of funding, including: closure of 8 DCF service centers; elimination of

Family/Community Services prevention grants in Prevention and Protection Services (PPS), the Economic and Employment Services Food Distribution program, the Head Start Collaboration program, Child Care and Development Fund matching, the Faith-Based Community Initiatives program, the Human Trafficking program, Adult Protective Services grants, the Foster Care Federal Disability Advocacy contract, Foster Care and Family Services grants to 4 tribes, and the Chafee Independent Living program; elimination of SGF in the Family Preservation Program; reinstatement of the 4.0 percent collection fee for Child Support Services; reduction of foster care contracts by 12.0 percent, which could impact services and placement and result in longer stays in foster care; reduction to PPS Family Services prevention assistance not needed to meet federal matching requirements; reduction of funding to other operating expenses, strategic development, vocational rehabilitation and information technology; increase in salary shrinkage; and discontinuation of Adoption Support and Permanent Custodianship programs for future cases.

The Kansas Board of Regents indicated an 18.0 percent reduction would remove over $136 million from the postsecondary system, which would particularly impact Kansans' access to postsecondary education, Kansas' employers' workforce needs, and the system's ability to compete for students against other states, particularly in the regional market.

December 19

The Committee received information from the Revisor's Office staff on the history of Article 6 of the *Kansas Constitution,* which was adopted in 1966. The 1965 Legislature directed the Kansas Legislative Council (today's Legislative Coordinating Council) to study Article 6. As a result, the Council appointed an 11-member Education Advisory Committee. After receiving the Advisory Committee's report, the Council issued its own report recommending a proposed amendment rewriting Article 6. The Council gave primary credit to the Advisory Committee for the development of the proposed revision to Article 6 and stated it "borrowed extensively from the material in the advisory committee's report in preparing the text of this report." The Council recommended the following language for Article 6, Section 6, which has been the focus of the *Gannon* litigation: "The legislature may make provision for finance of educational and scientific activity by (1) transfer of funds . . ., (2) creation of special corporate entities . . ., (3) pooling of public and private funds . . ., and (4) any other method not prohibited by the constitution." According to the Council's report to the Legislature, the recommended language was intended to provide "considerable flexibility in taking whatever appropriate action might be necessary in financing educational programs." The constitutional amendment was introduced with different language, the same language that currently exists; however, the legislative record does not provide an explanation for this change.

The Committee also received information from the Revisor's Office staff on previous Kansas legislation addressing school finance litigation, which were categorized as: barring courts from exercising jurisdiction over claims of Article 6 violations; modifying the rules and practices of civil procedure as they apply to claims of Article 6 violations; prohibiting the expenditure of public moneys to finance the litigation of claims of Article 6 violations; amending the phrase "make suitable provision for finance of the educational interests of the state"; granting the constitutional power of appropriation exclusively to the Legislature; or prohibiting the closure of schools as a remedy for violations of Article 6.

Revisor's Office staff also summarized other states' constitutional provisions governing K-12 school finance.

The Attorney General appeared before the Committee to discuss school finance litigation trends in the United States and the *Gannon* litigation. He reiterated the recommended date of March 1 for the Legislature to have completed its substantive response, which the conferee had provided in his testimony to the Committee. He elaborated that such a deadline was prudent as it takes some time for legislation to be enrolled and signed, and once enacted, the Office of the Attorney General must then collect pieces of the record, develop arguments, and consult with legislative counsel by April 30. As an "extreme" example, the Attorney General indicated that in the last round of briefing, attorneys could not get a copy of an essential legislative document until the day before the brief was due.

On the issue of the Committee's charge to "reduce or eliminate the perpetual cycle of conflict over school finance and end the perennial and recurrent threat of school closures," the Attorney General suggested a broader substantive conversation to address issues such as: who may bring a constitutional challenge to school funding; in what court the challenge should be brought; what duties are included within the term "suitable" (*i.e.*, equity and adequacy exclusively or others); whether equity and adequacy are the appropriate tests; whether there should be constitutional timelines on school finance litigation; the standard of review courts should use in reviewing school funding decisions by the Legislature; remedies the Supreme Court may use if it finds school funding laws are unconstitutional; the consequences for the Legislature if it violates a court order on school funding; how "adequacy" of funding should be determined; and who should be allowed or required to participate in school finance litigation.

Conclusions and Recommendations

Following informative hearings and discussion, the Committee declined to make recommendations; however, it commends to the Legislature the testimony provided to the Committee, the minutes of each meeting, this report, and its appendices. These documents include possible options available. Additionally, Chairperson Finch allowed members to request information to be provided as appendices to this report.

Noting the Committee had not discussed potential cost savings related to merger or consolidation of school districts, Senator Wilborn requested information on that topic be provided (executive summary is Appendix II; full report is available at http://www.ksde.org/Portals/0/School Finance/budget/Legal_Max/sdbs--Final Complete Report.pdf).

Senator McGinn asked for information on expenditures and services provided by other state agencies to K-12 education since 2008 (Appendix III).

Senator Baumgardner asked for LPA's recent performance audit titled "K-12 Education: Evaluating Transportation Services Funding" to be attached to this report (Report Highlights are Appendix IV; full report is available at http://www.kslpa.org/assets/files/reports/r-17-020.pdf).

APPENDIX I

Summary of KLRD Information on Revenue and Budget Adjustment Scenarios

The following table displays cost estimates of various per pupil amounts discussed by the Kansas Supreme Court in its October 2, 2017, decision in the *Gannon* school finance litigation.

	FY 2019 BASE	Current Approved FY 2019 BASE	Difference	Additional Cost to the State
Plaintiff Recommendation	$ 6,539	$ 4,128	$ 2,411	$ 1,653.9 million
KSBE Recommendation	5,090	4,128	962	659.9 million
Three-Judge Panel Recommendation	5,055	4,128	927	635.9 million

The following table displays across the board State General Fund reduction options.

FY 2019 State General Fund Across the Board Reductions			
Amount of Reduced Spending to Be Achieved	Percent of All Spending Excluding K-12 Education	Percent of All Spending Excluding K-12 Education and Debt Service	Percent of All Spending Excluding K-12 Education, Debt Service, and Human Service Caseloads
$200 million	6.0%	6.3%	9.2%
$400 million	12.0%	12.5%	18.3%
$600 million	18.0%	18.8%	27.5%

The table below displays selected revenue generation options.

Sample Fiscal Notes for Selected Tax Law Changes ($ in millions)				
	Sales/Use Tax Increase from 6.5% to 6.6 %, effective July 1, 2018	USD General Fund Levy from 20 to 21 mills, effective tax year 2018	USD General Fund Levy Repeal $20,000 Homestead Exemption	Individual Income Tax Increase of 0.1% in all brackets, effective tax year 2018
FY 2019	46.674	32.540	44.097	85.143
FY 2020	51.885	34.797	45.629	66.686
FY 2021	52.871	36.125	45.787	67.820
FY 2022	53.876	37.405	45.946	68.973
FY 2023	54.889	38.684	46.104	70.145
5-yr total	**260.210**	**179.551**	**227.563**	**358.767**

APPENDIX II

A Comprehensive Study on the Organization of Kansas School Districts

Prepared for
The Kansas State Board of Education

in response to
RFP Number 00241

by

Augenblick & Myers, Inc.

Dr. John Augenblick, John Myers, and Justin Silverstein

January 10, 2001

EXECUTIVE SUMMARY

In October 1999, Augenblick & Myers, Inc. (A&M), a Denver-based consulting firm that works with state policy makers on education finance and governance issues, was selected by the Kansas State Board of Education to conduct a study of school district organization. The study was mandated by the Kansas Legislature in Section 10, 1999 Senate Bill 171.

A&M created an advisory panel for the study, consisting of Dr. Richard King of the University of Northern Colorado, Dr. Chris Pipho, formerly with the Education Commission of the States, Dr. Paul Nachtigal, former director of the Rural Challenge, and Mr. Terry Whitney, formerly with the National Conference of State Legislatures. We then undertook five key tasks.

1. We completed a review of the literature related to school district reorganization.

2. We developed two approaches to selecting “target” districts that might benefit from reorganization.

3. We conducted on-site visits and interviews with representatives of 64 school districts located throughout the state.

4. We developed three alternative ways to reorganize school districts.

5. We identified areas where statutory changes would be needed to implement our recommendations.

School districts are important governmental entities in this country. At the discretion of the states, most of them have been delegated the authority to levy taxes, incur bonded indebtedness, hire key employees, and set curriculum. Kansas, like the other states, determines how many school districts shall exist and where their boundaries shall be. Over time, the number of school districts has decreased dramatically from over 120,000 nationally, to fewer than 15,000, and from over 9,000 in Kansas, to 304. The importance of their boundaries has also diminished somewhat, particularly in states such as Kansas that have modified their school finance procedures so that the wealth of each district is far less critical in determining that district’s total revenue and property tax rates. This is also true in states that have promoted open enrollment (so that pupils can enroll in schools in districts other than the one in which they reside). Kansas currently has 1.00% of the nation’s pupils, 1.62% of the nation’s schools, and 2.10% of the nation’s school districts.

While the states have delegated certain powers to school districts, they maintain both a constitutional responsibility to provide adequate and equitable education services and an interest in assuring that pupils achieve certain education objectives. A state’s economic and democratic future hinges on whether such objectives are met. Because the state pays for a significant portion of educational services, it also has an interest in assuring that the cost of providing these services is reasonable. These days, a state's interest in elementary and secondary education primarily reflects its interest in pupil performance and per pupil spending. Little else justifies changing school district boundaries.

The literature about school district reorganization is rather thin, consisting mostly of economic studies of school and school district optimum size, and the arguments that are made for and against changing the numbers of school districts in a state. While the literature is less than definitive about school and school district size, there has long been the view that schools, particularly high schools, need to be large enough to provide an adequate array of academic services and extra-curricular activities. More recently, there are those who advise that schools be small enough to assure a safe, nurturing environment and that school districts are not so large that they become unmanageable. While technology facilitates the provision of broader opportunities in small, isolated schools, there is little evidence that it can fully substitute for the hands-on presence of well-trained adults. And while evidence exists that some graduates of small high schools go on to become very successful, that evidence tends to focus on very few people, much the same way large schools publicize a small number of pupils who become Merit Scholars.

A&M used two basic approaches to identify "target" school districts that might benefit from reorganization. The first approach focuses on districts with relatively low levels of pupil performance and relatively high levels of per pupil spending. We used a statistical technique, regression analysis, to predict both expected levels of pupil performance (based on combining 1998 composite reading, math, and writing scores for Kansas statewide achievement tests) and expected levels of per pupil spending (for instruction, administration, and plant maintenance and operation). Some people suggested that the use of the tests was inappropriate. Because our purpose was to focus only on some districts, the tests provide the only basis for evaluating the relative performance of school districts, and the information is already being used to hold districts accountable, we feel that it is appropriate to use them as the basis of identifying those school districts where state action might be required. While there are many other kinds of information that individual districts use to evaluate their own performance, none provide comparable information for all districts. We used per pupil spending as the basis for evaluating relative spending levels. Some people suggested that, since the state controls the level of spending of school districts, and no district exceeds the level specified by the state, it is logically impossible to identify high spending districts. Our feeling is that, given the variation in spending that exists, some districts may be spending more than necessary relative to the spending of other districts. The state's formula for distributing state aid may also permit higher spending than is necessary.

Using regression analysis allows us to see how pupil performance and per pupil spending are influenced by the proportion of pupils eligible for free and reduced price lunches and the wealth or enrollment level of a school district. The regression equations accounted for 73 percent of the variation in per pupil performance and 80 percent of the variation in per pupil spending. Given that those levels are high but not perfect, we established confidence intervals around predicted levels of performance and spending to be sure that appropriate districts were identified as being low in performance or high in spending. Based on our analysis, we identified 28 districts that had a combination of low pupil performance and high per pupil spending. They are listed below in three categories.

Districts that have low pupil performance and high per pupil spending based on regression results: Moscow Public Schools (209), West Solomon Valley Public Schools (213), Elkhart (218), Washington Schools (222), Hanston (228), Nes Tre La Go (301), Belle Plaine (357), Chase-Raymond (401), Hillcrest Rural Schools (455), and Udall (463).

Districts with higher than expected per pupil spending and lower than average pupil performance for two years: Fowler (225), Triplains (275), Elk Valley (283), Cedar Vale (285), Herndon (317), Eastern Heights (324), Wathena (406), and Chetopa (505).

Districts with lower than expected pupil performance in 1998, lower than average performance in 1997, and per pupil spending above the predicted level excluding the use of the confidence interval: Turner-Kansas City (202), Bonner Springs (204), Mankato (278), Pleasanton (344), Oxford (358), Caldwell (360), Marysville (364), Madison-Virgil (386), Neodesha (461), and South Haven (509).

The second approach to identify districts that might benefit from reorganization focuses on districts that are either too small or too large, given what researchers and practitioners believe, to offer an appropriate curriculum, extra-curricular opportunities, and a safe, nurturing environment. This approach assumes that a high school should serve between 100 and 900 pupils and that a district should have an enrollment of at least 260 pupils per high school but no more than 2,925 pupils per high school in order to be at those levels. Looking at the total enrollment of school districts and the number of high schools they operate, we found 50 districts that are too small and 24 districts that are too large based on these guidelines. We also identified two districts as being so large that they might need to be reorganized by breaking them into smaller, more manageable districts. These 76 districts have been grouped into four categories and listed below.

Districts that are too small with only one high school: Cheylin (103), White Rock (104), Moscow Public Schools (209), Northern Valley (212), West Solomon Valley Schools (213), Rolla (217), Ashland (220), North Central (221), Fowler (225), Hanston (228), West Smith County (238), Weskan (242), Palco (269), Triplains (275), Jewell (279), West Graham-Morland (280), Elk Valley (283), Cedar Vale (286), Grinnell Public Schools (291), Wheatland (292), Prairie Heights (295), Sylvan Grove (299), Nes Tre La Go (301), Smoky Hill (302), Bazine (304), Brewster (314), Golden Plains (316), Herndon (317), Eastern

Heights (324), Logan (326), Burrton (369), Montezuma (371), Hamilton (390), Paradise (399), Chase-Raymond (401), Mullinville (424), Midway Schools (433), Hillcrest Public Schools (455), Healy Public Schools (468), Dexter (471), Haviland (474), Copeland (476), Pawnee Heights (496), Lewis (502), and Attica (511).

Districts that are too small with more than one high school: Barnes (223), Leroy-Gridley (245), Southern Cloud (334), Rural Vista (481), and Axtell (488).

Districts that are too large relative to the number of high schools they operate: Turner-Kansas City (202), Blue Valley (229), Olathe (233), Emporia (253), Derby (260), Haysville (261), Goddard (265), Maize (266), Salina (305), Hutchinson Public Schools (308), Seaman (345), Newton (373), Manhattan (383), Great Bend (428), Auburn Washburn (437), Dodge City (443), Leavenworth (453), Garden City (457), Geary County Schools (475), Liberal (480), Hays (489), Lawrence (497), and Kansas City (500).

Districts that are too large: Wichita (259) and Shawnee Mission Public Schools (512).

Some of the most important activities we undertook in this study were the on-site visits to a large number of school districts where we interviewed many district representatives. We did this not only because it was required by contract, but also to better understand the dynamics within the districts we identified as targets and in their neighboring districts, which might also be involved in reorganization. We used several criteria to select districts for on-site visits or interviews. First, every one of the 28 districts we identified using the first approach described above was placed on the list. Second, we selected some neighboring districts of those 28 target districts. Third, we obtained additional information about 90 school districts, including the age of their buildings and enrollment projections, and selected some districts based on those factors. Finally, we selected some districts based on being too large, using the second approach to identify target districts described above. In all, we had contact with 64 districts.

We learned a number of things from our on-site visits and interviews: (1) there is substantial resistance to consolidation because of historical, cultural and financial reasons; (2) there is support for state reorganization in extreme cases, where there are declining enrollments and high spending; (3) district officials justified and defended low student performance and high spending; and (4) technology, distance learning, building projects and innovative superintendents were considered essential for surviving consolidation.

Once the on-site visits and interviews were completed, we began to develop reorganization scenarios, ultimately creating three alternative approaches: (1) an approach based on pupil performance and per pupil spending; (2) an approach based on enrollment levels relative to number of high schools; and (3) an approach that took into consideration both of the first two approaches and resolved differences between them based on a variety of practical considerations, including distance between schools, school capacity (which we obtained through a survey carried out by the Department of Education), and the information we obtained through the on-site visits and interviews.

Tables in the report show the characteristics of target school districts and their neighboring districts, as well as the mergers of districts associated with the three alternative approaches to reorganization. The figures below summarize the results of each approach for the entire state.

(1) For the approach based on pupil performance and per pupil spending, we identified 28 target districts. We examined all neighbors of those districts for possible reorganization with target districts based on their pupil performance, their per pupil spending, and their distance from the target districts. We were unable to reorganize eight of the target districts using those criteria. We found 20 neighboring districts that could be merged with the 20 remaining target districts to create 20 new districts. The result is 284 districts statewide.

(2) For the approach based on school district size, we identified 76 target districts. We examined all neighbor districts for the 74 districts that we felt had high schools that were either too small or too large based on enrollment relative to number of high schools, excess capacity of schools, and distance between schools. We were able to reconfigure 45 of the 50 districts with high schools that are too small by merging them with 29 neighbor districts and creating 34 new districts. We were able to reconfigure six of the 24 districts with high schools that are too large by merging them with seven neighbor districts and creating five new districts. In total, 51 target districts are merged with 36 neighbor districts to create 39 new districts and a total of 256 districts in the state. Some other approach would need to be taken to address the issue in 20 of the 26 districts with large high schools and in the two large districts.

(3) For the combined approach, we were able to reconfigure 56 target districts with 36 neighboring districts to create 43 new districts and a total of 255 districts statewide. As with the second approach, we were unable to resolve concerns in 21 districts by reorganization, which would require other approaches to be taken.

In order to facilitate reorganizing school districts in Kansas, a number of changes need to be made to the state's statutes. A&M recommends that the legislature delegate to the State Board of Education the power to change school district boundaries more easily than is currently allowed. The State Board should consider boundary changes by using three processes to assess alternative: (1) Emergency dissolution, (2) Required boundary change planning, and (3) Review of boundary options. The emergency dissolution is required for those districts that are less than 80 students in 2000, or less than 100 students in 2001 and have declining enrollment. Those districts are required to have a public hearing and report the results to the State Board. The State Board shall take action to accept the district report or implement one of their own. The required boundary change planning is for all of the other districts identified as part of the 28 original targets on Map 1 in this report. Districts would have three years to work on improvements or recommendations, then if they are still targets would follow the emergency dissolution process. The review of boundary options would be for all of the other districts identified as targets in this report. They would follow the same process as the required boundary change planning districts without the final requirement of dissolution.

APPENDIX III

Wrap Around Services
By Program for FY 2008 - FY 2017
Includes Services Provided to Children of School Age (Grades K-12)

			FY08		FY09		FY10	
Agency	Program	Program Description	AF	SGF	AF	SGF	AF	SGF
Department for Children and Families	Communities in Schools	Grant to provides case management services to at-risk students focusing on improving academics, behavior, attendance and graduation rates.	-	-	-	-	-	-
Department for Children and Families	Jobs for America's Graduates	Assists students at risk of failing in school, provides an avenue for achieving academically, and assists students in ultimately earning credentials that make it possible to exit school and enter post-secondary education and/or the workforce.	-	-	-	-	-	-
Department for Children and Families	Kansas Reading Roadmap (Hysell-Wagner, Kidzlit, et al)	Works with low income schools in rural and urban communities to increase reading proficiency among at-risk children.	-	-	-	-	-	-
Department for Children and Families	Project Impact	Grant that targets at-risk youth ages 14-17 who live in high-risk counties. Recruitment and retention programs develop students' interests in various fields of study.	-	-	-	-	-	-
Department for Children and Families	Epic Skillz	Grant to build employment skills for college and career readiness, targeting middle schools in Hutchinson.	-	-	-	-	-	-
Department for Children and Families	Smartmoves/KS Alliance of Boys and Girls Clubs	Provides comprehensive abstinence-based teen pregnancy prevention and education program to at-risk youth in seven cities and three tribal nations.	-	-	-	-	-	-
Department for Children and Families	Urban Scholastic Center	Serves urban/inner-city children and youth to offer a wide array of services to benefit students grade K-12, including literacy, after school and evening educational programs.	-	-	-	-	-	-
Department of Education	Autism Diagnosis	Train and provide Autism Diagnostic Teams to offer early childhood screenings and/or assist schools and families in developing individual treatment plans and streamlined service delivery.	-	-	-	-	798,000	-
Kansas Department for Aging and Disability Services	Serious Emotional Disturbance (SED) waiver*	Medicaid Home and Community Based Services waiver providing services to children who experience serious emotional disturbance and who are at risk of inpatient psychiatric treatment.	1,954,654		2,503,743		2,486,613	
Kansas Department of Health and Environment - Public Health	DentaQuest - Dental	DentaQuest Foundation grant to provide school-based dental services.	-	-	-	-	-	-
Kansas Department of Health and Environment - Public Health	Medicaid Matching	Medicaid funds to provide school-based dental services.	-	-	-	-	-	-
Kansas Department of Health and Environment - Public Health	School Screening Program	Delta Dental Foundation grant providing dental screenings for children. Beginning in FY 2015 this program provides dental screening supplies to volunteer screeners.	34,000	-	34,000	-	34,000	-
Kansas Department of Health and Environment - Public Health	School Screenings	Federal Health Resources and Services Administration (HRSA) grant providing school-based dental sealants.	80,000	-	80,000	-	80,000	-
Kansas Department of Health and Environment - Public Health	CDC Grant - Dental (School Sealants)	Funding through the federal Centers for Disease and Prevention (CDC) to provide sealants to children.	-	-	-	-	-	-
Kansas Department of Health and Environment - Public Health	Healthy Kansas Schools Grant Program	CDC grant to support school wellness coalitions and coordinators to implement and promote school wellness policies and practices in nutrition and physical activity. Also provides professional development and assistance to school nurses on the daily management of students with chronic diseases.	-	-	-	-	-	-
Kansas Department of Health and Environment - Public Health	Committee for Children's Second Step Program	CDC grant for implementation of social-emotional curriculum for selected schools.	10,000	-	10,000	-	10,000	-

(Table spans two pages and concludes on pages 2-18 and 2-19.)

FY11		FY12		FY13		FY14		FY15		FY16		FY17	
AF	SGF	AF	SGF	AF	SGF	AF	SGF	AF	SGF	AF	SGF	AF	SGF
-	-	-	-		-		-	1,671,424	-	1,789,625	-	1,500,000	-
-	-	-	-	5,419,755	-	102	-	4,100,000	-	3,750,000	-	3,800,000	-
-	-	-	-	-	-	5,201,613	-	10,318,497	-	9,424,343	-	10,259,081	-
-	-	-	-	-	-	-	-	187,299	-	108,085	-	424,905	-
-	-	-	-	-	-	-	-	228,670	-	41,063	-	186,528	-
-	-	162,927	-	122,194	-	122,195	-	199,987	-	219,434	-	219,435	-
-	-	-	-	-	-	-	-	-	-	46,849	-	116,617	-
1,023,464	-	751,643	-	683,661	-	215,000	-	215,000	-	215,000	-	215,000	-
2,807,294		2,794,198		3,015,736		2,267,479		2,329,782		2,316,873		2,281,044	
-	-	-	-	-	-	-	-	30,000	-	30,000	-	50,000	-
-	-	-	-	-	-	-	-	30,000		30,000		50,000	
34,000	-	34,000	-	34,000	-	34,000	-	34,000	-	70,000	-	-	-
80,000	-	150,000	-	80,000	-	-	-	-	-	-	-	-	-
-	-	-	-	60,000	-	60,000	-	60,000	-	60,000	-	60,000	-
-	-	-	-	-	-	120,000	-	120,000	-	120,000	-	120,000	-
16,000	-	16,000	-	16,000	-	22,000	-	22,000	-	22,000	-	32,000	-

Wrap Around Services
By Program for FY 2008 - FY 2017
Includes Services Provided to Children of School Age (Grades K-12) *(Continued)*

Agency	Program	Program Description	FY08		FY09		FY10	
			AF	SGF	AF	SGF	AF	SGF
Kansas Department of Health and Environment - Public Health	Committee for Children's Second Step Program	CDC funding for literature units to support social-emotional curriculum for selected schools.	25,000	-	25,000	-	25,000	-
Kansas Department of Health and Environment - Public Health	Committee for Children's Second Step Program	Social-emotional curriculum materials and evaluations for selected schools.	35,000	-	35,000	-	35,000	-
Kansas Health Policy Authority	School Based Services	These totals include all school based services. Prior to FY 2012 these services were not reported by type of service in the Medical Assistance Report.	14,605,084	5,731,712	27,050,175	9,239,563	25,877,964	7,970,030
Kansas Department of Health and Environment - Health Care Finance	School Based Services	Targeted Case Management	-	-	-	-	-	-
Kansas Department of Health and Environment - Health Care Finance	School Based Services	Rehabilitation	-	-	-	-	-	-
Kansas Department of Health and Environment -	School Based Services	Physical Therapy	-	-	-	-	-	-
Kansas Department of Health and Environment - Health Care Finance	School Based Services	Occupational Therapy	-	-	-	-	-	-
Kansas Department of Health and Environment - Health Care Finance	School Based Services	Speech/Language Services	-	-	-	-	-	-
Kansas Department of Health and Environment - Health Care Finance	School Based Services	Audiology Services	-	-	-	-	-	-
Kansas Department of Health and Environment - Health Care Finance	School Based Services	Mental Health Services	-	-	-	-	-	-
Kansas Department of Health and Environment - Health Care Finance	School Based Services	Other Practitioner Services	-	-	-	-	-	-
Kansas Department of Health and Environment - Health Care Finance	School Based Services	Other Services (cost settlements for local education agencies)	-	-	-	-	-	-

Notes for Department for Children and Families:
Expenditures for program s such as Early Head Start and Early Steps to School Success are not included as these are for children under age 5.
Transfers to KSDE for Parents as Teachers and Kansas Preschool Programs are not included as these are for children under the age of 5.
Prevention programs such as Family Preservation, Healthy Families, etc. are not included.
Child care subsidy payments are not included regardless of the age of the child.

Notes for Department of Education:
Autism Diagnosis program also provides services to younger children; expenditures include entire program.

Notes for Kansas Department for Aging and Disability Services:
Serious Emotional Disturbance (SED) HCBS waiver expenditures are for each federal fiscal year (FFY). SGF share noted to correspond to FMAP percentage, but not provided by agency.

Notes for Kansas Department of Health and Environment - Public Health:
The total number of schools receiving CDC grants for the Committee for Children's Second Step Program are as follows: five schools FY 2008 - FY 2010, eight schools FY 2011 - FY 2013, eleven schools FY 2014 - FY 2016, and sixteen schools FY 2017 - FY 2019.
The agency notes that totals provided are approximate and may not be the exact amounts funded.
School based services also provides services to younger children; expenditures include entire program.

Notes for Kansas Health Policy Authority and Kansas Department of Health and Environment - Health Care Finance:
SGF amount listed includes all state funds (SGF and fee funds).

FY11		FY12		FY13		FY14		FY15		FY16		FY17	
AF	SGF	AF	SGF	AF	SGF	AF	SGF	AF	SGF	AF	SGF	AF	SGF
40,000	-	40,000	-	40,000	-	55,000	-	55,000	-	55,000	-	80,000	-
56,000	-	56,000	-	56,000	-	77,000	-	77,000	-	77,000	-	112,000	-
19,531,897	6,371,810	-	-	-	-	-	-	-	-	-	-	-	-
-	-	412,107	10,157	351,874	8,728	389,746	9,805	481,362	755	426,313	46	477,052	1,196
-	-	3,686,439	1,588,487	3,470,471	1,508,268	3,778,828	1,642,189	4,043,646	1,752,656	3,850,865	1,683,370	3,802,454	1,673,080
-	-	124,005	53,434	126,684	55,049	129,638	56,332	143,947	62,372	124,804	54,794	125,755	55,332
-	-	91,990	39,638	87,912	38,177	95,685	41,555	122,961	53,275	105,778	46,390	93,705	41,230
-	-	12,589,946	5,425,008	12,689,763	5,515,912	14,321,483	6,224,592	15,194,771	6,587,485	14,129,843	6,214,022	14,923,579	6,566,375
-	-	55,453	23,895	47,617	20,676	75,423	32,767	83,751	36,272	77,308	33,888	82,919	36,484
-	-	950,144	407,598	891,864	384,812	1,163,083	498,562	1,214,773	515,900	1,156,933	485,997	999,111	439,609
-	-	2,021,434	871,036	2,322,866	1,009,482	2,050,158	891,075	1,853,468	803,228	1,858,510	804,709	1,663,948	732,137
-	-	609,538	7,805	15,083,906	4,923	15,383,034	6,678	16,009,291	10,594	15,593,007	217,825	17,086,198	501,147

APPENDIX IV

Legislative Post Audit Performance Audit Report Highlights

K-12 Education: Evaluating Transportation Services Funding

December 2017 • R-17-020

QUESTION 1: *Has Transportation Funding Been Allocated to School Districts in Accordance with the Statutory Formula in Recent Years?*

Background Information

State law only requires districts to transport students who must travel at least 2.5 miles and do not live in the same town as their school. On the other hand, the state provides transportation funding for all in-districts students who live at least 2.5 miles from their school.

State transportation funding is based on a statutory formula which allocates funding based on districts' estimated, not actual, transportation costs. The state will provide an estimated \$98 million in transportation funding to school districts in the 2017-18 school year through this formula.

- KSDE has correctly executed the numerous calculations in the transportation funding formula for the past five years. These include allocating expenditures between groups of students by distance, plotting per-student expenditures on a chart, determining a curve of best fit, and calculating the transportation FTE for each district. (p.11)

- However, KSDE has continued to implement a funding minimum to the formula which is not authorized in statute. (p.11)

  - *A minimum funding amount was removed from statute in 1973 but KSDE has continued to implement it for the most densely populated districts.*
  - *Over the past five years, KSDE's minimum funding level has provided a total of \$45 million more in transportation funding than allowed by law.*
  - *State law does not include a minimum funding level for transportation, and it does not give KSDE the authority to create one.*
  - *KSDE officials told us they continued adding a minimum funding level because some legislators had requested it in previous years.*
  - *Although there is no provision for a minimum funding level in state law, our findings in Question 2 of this audit suggest a minimum might be appropriate.*

- KSDE's methods for counting students do not always align with statute, but the effect on funding is likely minimal. (p.14)

  - *State law requires students for whom "transportation was made available" be counted for funding purposes, even if the student did not actually ride the bus.*
  - *The way KSDE counts students for funding purpose is not consistent with that statutory definition.*

    - *KSDE counts all students who live at least 2.5 miles from school for funding purposes, but does not make sure transportations services were made available to these students.*
    - *For students who live less than 2.5 miles from school, KSDE mostly counts students who were actually transported rather than only counting students for whom transportation was made available.*
    - *KSDE reduces the count of students who only ride the bus one way.*

  - *However, the difference between the statutory definition and KSDE's method for counting students likely has a minimal effect on funding.*

QUESTION 2: *How Does the Funding School Districts Receive for Funded Transportation Services Compare to Their Actual Costs?*

- The state provides transportation funding to districts based on costs estimated through a formula rather than the districts' actual costs.

- We selected a sample of 16 districts across the state and compared their costs for providing required transportation to the amount of funding they received. (p. 17)

- Overall, our sample districts received less funding than it cost them to transport students, but the results vary by district. (p.17)

  - *We estimated the districts in our sample spent about $20 million to provide "funded" transportation services, and received about $16 million in state transportation funding.*
  - *The difference between state transportation funding and the estimated cost of funded services varied significantly across our 16 districts.*
  - *Two large districts in our sample account for most of the difference between funding and costs.*
  - *The mixed results for our sample are not surprising, given that the transportation formula funds districts based on estimated costs rather than actual costs.*

- The funding formula uses student density to estimate transportation costs, but a variety of other factors can also influence costs. (p.20)

  - *The funding formula uses student density to help predict a district's costs because density is strongly related to transportation costs.*
  - *However, the geography of a district and where students live can lead to significant cost differences between districts of similar student densities.*
  - *District policies related to which students the district will transport or how students are assigned to school can also influence costs.*
  - *Last, factors related to bus driver pay and the fuel efficiency of a district's bus fleet can also influence a district's per-student transportation costs.*

- Based on our sample, the current funding formula appears to understate the comparative cost of transporting students who live at least 2.5 miles from school. (p.22)

  - *Under the current funding formula, students who live at least 2.5 miles from school are weighted 2.8 times more heavily than other students when allocating costs.*
  - *For nearly all the districts in our sample, we estimated the comparative cost ratio to transport funded students was significantly greater than the 2.8 ratio currently in statute.*
  - *That is because the vast majority of their total transportation costs were related to transporting students who live at least 2.5 miles from school.*
  - *We estimated a comparative cost ratio of 5.0 might better reflect how districts' costs are allocated between students who live at least 2.5 miles from school and other students.*
  - *We estimate that increasing the comparative cost ratio to 5.0 would increase statewide transportation funding by about $4 million over 2016-17 transportation funding.*

QUESTION 3: *What Types of Transportation Requirements and Funding Mechanisms Do Other Similar States Use to Provide and Fund K-12 Transportation?*

- A 2006 Washington audit identified four primary mechanisms for state funding of transportation services. (p.27)

  - *Predictive or efficiency driven formula funding provides funding at a predicted cost level that assumes similar costs for similar districts. Kansas uses this type of formula.*
  - *Block-grant funding provides funding as part of a per-student grant given to school districts.*
  - *Approved-cost funding provides reimbursement for specific costs incurred by transportation programs.*
  - *Per-unit-allocation funding provides a fixed amount for funding based on a specified unit such as miles driven or students transported.*

- Kansas and the five states we reviewed varied as to which students must be transported. (p.28)

  - *Five of the six states we evaluated, including Kansas, require school districts to provide transportation services, but varied in terms of which students must be transported, ranging from all students to no students*
  - *All six states allow districts to use similar methods to provide transportation services. These include having an in-house bus fleet, contracting for busing, or paying for mileage in lieu of busing.*

- Only three states, including Kansas, provide dedicated transportation funding. (p.29)

  - *Kansas, Missouri, and Oklahoma provide dedicated transportation funding, though Kansas provides funding for a narrower group of students that the other states do.*
  - *Three of the states we reviewed did not provide any specific funding for transportation, although two did consider transportation within their general state aid.*

SUMMARY OF RECOMMENDATIONS

We recommended the Kansas Department of Education remove the minimum funding level from its transportation funding allocation beginning with the 2018-19 school year. We also recommended the department develop a process to ensure their counts are consistent with statutory requirements (p.32).

We recommended the Legislature consider reviewing whether a minimum funding level is appropriate for large, densely populated districts. We also recommended the Legislature consider reviewing the comparative cost ratio to determine if a ratio that better reflects districts' actual costs is more appropriate. (p.32).

AGENCY RESPONSE

The department generally concurred with the audit's findings and recommendations. (p.33)

Although we did not request a formal response from the 16 districts we reviewed part of this audit, three districts provided us with informal feedback. All three districts (Wichita, Shawnee Mission, and Dodge City) expressed concerns regarding our recommendations that KSDE discontinue the funding minimum and that KSDE make other changes to align how the department counts students with statute. The districts noted that changes to how the department allocates funding or how it counts students would likely lead to funding reductions that could be detrimental to students. (p. 33)

HOW DO I REQUEST AN AUDIT?

By law, individual legislators, legislative committees, or the Governor may request an audit, but any audit work conducted by the division must be directed by the Legislative Post Audit Committee. Any legislator who would like to request an audit should contact the division directly at (785) 296-3792.

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Report of the Special Committee on Financial Institutions and Insurance to the 2018 Kansas Legislature

CHAIRPERSON: Senator Jeff Longbine

VICE-CHAIRPERSON: Representative Jim Kelly

OTHER MEMBERS: Senators Rick Billinger and Lynn Rogers; and Representatives Cindy Neighbor, Randy Powell, and Jene Vickrey

STUDY TOPIC

Review of 2017 Legislation Affecting Certain Consumer Loans and the Uniform Consumer Credit Code (UCCC) [HB 2267] and 2017 Legislation Modifying Automobile Liability Insurance Policy Requirements [HB 2104]

The Committee is directed to:

- Study the impact of 2017 HB 2267. This review would include a study of current finance charges, rates, and terms under the UCCC; the impact of the proposed legislation and potential modifications related to the Consumer Financial Protection Bureau's anticipated Final Rule on small dollar lending on financial institutions, loan companies, and Kansas consumers; and the current regulatory environment in Kansas; and
- Review the potential impact associated with amendments to the Insurance Code governing automobile liability insurance policies contained in 2017 HB 2104. Such study should include a review of insurance policy pricing and the marketplace, cost estimates and other available data relating to impact on premiums and policyholders, and pertinent driver data.

December 2017

Special Committee on Financial Institutions and Insurance

Kansas Uniform Consumer Credit Code

Conclusions and Recommendations

The Committee makes no recommendation relative to 2017 HB 2267 or the introduction of any legislation affecting certain consumer loan transactions regulated under the Kansas Uniform Consumer Credit Code (UCCC).

The Committee notes its discussion on 2017 HB 2267, the UCCC and its present structure, and the update and comments submitted by stakeholders on the small dollar lending Final Rule published by the Consumer Financial Protection Bureau (CFPB) in October 2017.

- **CFPB Final Rule–implementation timeline and uncertainty.** The Committee notes concerns expressed by some conferees regarding the uncertainty of the regulatory role of the CFPB and the timing of modifications to the consumer lending provisions of the UCCC, including any state legislative action, during the prescribed 21-month implementation time period of the Final Rule. The Committee also recognizes state regulators have not had sufficient time to evaluate the Final Rule and will have the 21-month implementation period to do so.

- **Regulatory review and stakeholder involvement.** The Office of the State Bank Commissioner (OSBC) is encouraged to hold regular stakeholder meetings to assist in drafting changes to the UCCC, in light of the CFPB Final Rule and the 21-month implementation period. The Committee requests regular updates during the 2018 Session, to include review of any proposed modifications to the UCCC and implementation concerns for the OSBC, lenders, and consumers.

  - The Committee's discussion topics also included consumer lending trends and practices, including the length of loans and whether the Final Rule would be applicable to Kansas short-term consumer loan transactions. The Committee also requests further consideration of other trends or practices, such as rolling (or consecutive) loans.

Proposed Legislation: None

Background

The charge to the Special Committee on Financial Institutions and Insurance (Committee) was to review and make recommendations on two topics assigned by the Legislative Coordinating Council (LCC): legislation affecting certain consumer loan transactions and the Kansas Uniform Consumer Credit Code (UCCC) (2017 HB 2267) and legislation modifying automobile liability insurance policy requirements (2017 HB 2104). The LCC authorized the Committee to meet for one day.

The Committee was directed to study the impact of 2017 HB 2267, including a review of current finance charges, rates, and terms under the

UCCC; the impact of the proposed legislation and potential modifications related to the CFPB's anticipated Final Rule on small dollar lending on financial institutions, loan companies, and Kansas consumers; and the current regulatory environment in Kansas. (*Note:* The Final Rule was released on October 5, 2017.)

HB 2267 was introduced by the House Committee on Financial Institutions and Pensions. On February 15, 2017, the House Committee approved a study request to be submitted to the LCC. On February 22, 2017, the bill was re-referred to the House Committee on Federal and State Affairs. The study request was jointly signed by Representative Kelly (Chairperson, House Committee on Financial Institutions and Pensions) and Representative Barker (Chairperson, House Committee on Federal and State Affairs). A companion version to the bill, SB 234, was introduced by the Senate Committee on Federal and State Affairs on March 20, 2017, and referred to the Senate Committee on March 21, 2017.

Committee Activities

The Committee met on October 11, 2017, and considered both assigned topics. As part of its review of the UCCC topic, the Committee received an overview of the assigned bill; a review of available resources on the broader topic of consumer lending and prior legislative consideration of the topic; a presentation from the Deputy Commissioner, Consumer and Mortgage Lending Division (Code Administrator), Office of the State Bank Commissioner (OSBC), on small dollar lending regulation, current lending trends, and a preliminary review of the new Final Rule; and formal testimony from proponents, a neutral party, and opponents on HB 2267.

Overview of the topic; small dollar lending regulation in Kansas and the CFPB Final Rule. Committee staff provided an overview of resources made available on the Committee's page on the Kansas Legislative Research Department (KLRD) website, including surveys on unbanked and underbanked consumers and a paper published by the Federal Reserve Bank of Kansas City regarding payday lending practices; KLRD *Briefing Book* articles on payday lending and the UCCC; a KLRD memorandum on state and federal payday lending regulation; a legislative update provided by the OSBC in January 2017 and prior Committee minutes from an informational hearing on payday lending and short-term installment loans; a prior interim legislative report on the UCCC; and a link to the CFPB's Final Rule and the topic of small dollar lending on the CFPB website.

Information provided by Committee staff indicated 38 states have specific statutes permitting payday lending. In Kansas, two statutes in the UCCC govern payday lending (KSA 16a-2-404 and KSA 16a-2-405). A payday loan is a consumer loan transaction that has a loan amount equal to or less than $500, a payment term between 7 and 30 days, a finance charge no greater than 15 percent of the loan, and the lender anticipates a single repayment. The statute also states a lender and related interest cannot have more than two loans outstanding to the same borrower at a time and no more than three loans to any one borrower within a 30-day calendar period. A separate statute contains provisions related to military borrowers.

The Code Administrator presented an overview of the role and responsibilities of the Consumer and Mortgage Lending Division (CML) of the OSBC. One of CML's primary responsibilities is to examine licensed entities for compliance with state and federal law. The Code Administrator summarized small dollar lending licensees in Kansas: payday only companies (49); payday only branches (136); payday and title companies (10); payday and title branches (74); title company only (7); and title only branches (42). The company and branch data review finds 66 companies, 252 branches, and 318 locations in Kansas. Title loans are offered pursuant to KSA 16a-2-401 (open-end credit statute in the UCCC) and allow a consumer to borrow money up to an amount pre-approved by the lender. The consumer is permitted either to pay the balance in full or pay in installments.

Also among the information presented by the Code Administrator was a review of trends in small dollar lending. The Code Administrator noted some lenders are moving away from the traditional payday loan model and into an installment loan product, which is also permitted under the UCCC (a presentation slide illustrated this decline from an estimated $415 million in payday loans in CY 2012 to $325 million in CY 2016); a growing challenge for both state and federal regulators is unlicensed lenders that operate primarily, or only, online; and online unlicensed lenders often operate outside state or federal jurisdiction. It was further noted the CFPB rule will impact the type of small dollar lending products that lenders offer in the future.

Final Rule on payday, vehicle title, and certain high-cost installment loans update. The Code Administrator reviewed the timeline from the CFPB's proposal of the rule in June 2016 to announcement of the Final Rule on October 5, 2017. The implementation period established for the Final Rule will be 21 months following its publication in the *Federal Register*. (*Note:* The Final Rule was published in the *Federal Register* on November 17, 2017.) The Final Rule:

- Covers short-term loans (duration of less than 45 days) that are open-end or closed-end;
- Covers longer-term loans (duration of more than 45 days) that are open-end or closed-end and have a balloon payment feature;
- Exempts certain types of loans from the Final Rule, including loans for autos and consumer goods, real estate loans, credit cards, student loans, pawn loans, overdraft services, and overdraft lines of credit; and
- Exempts lenders making 2,500 or fewer loans per year and deriving 10 percent or less in revenue from the loans.

Lenders will be required to assess a borrower's ability to repay and limits are placed on the number of loans a consumer may take within a specific time frame and for short-term loans; there is a mandatory cooling-off period after three loans.

Committee discussion addressed the OSBC's concern with the growing number of unlicensed and unregulated lenders on the Internet and regulatory enforcement actions permitted by law. These entities, the Code Administrator noted, make helping a consumer who has done business with an unlicensed, unregulated Internet lender very challenging because many of these businesses do not respond or cooperate in answering and settling complaints.

Overview of HB 2267. Committee staff provided the Committee with a summary of HB 2267. The bill would amend three statutes within the UCCC relating to consumer loans, as outlined below (statute, bill section).

KSA 16a-2-401 (Section 1). The bill would establish a lender's finance charge at a rate of 36 percent per annum, inclusive of all fees, interest, and charges contained in the loan contract, including costs of ancillary products, subject to the current limitations on prepaid finance charges within this statute for any consumer loan with open-end credit (under current law, a lender is permitted to charge a finance charge at any rate agreed to by the parties.)

KSA 16-2-404 (Section 2). The bill would make several modifications to consumer loan transactions, more commonly known as payday loans:

- Loan restrictions: The lender would be restricted to one outstanding loan to a borrower and any loan would be limited to a maximum of $500. The minimum term of the loan would be the number of months equal to the sum of the loan principal and all applicable charges, divided by the maximum allowable monthly payment;
- Loan rates and charges: The lender would be required to accept prepayment from a borrower prior to the loan due date and could not charge any fee or penalty for prepayment. The maximum rate of any loan could not be more than 36 percent per annum. The total required monthly payment could not exceed the greater of 5 percent of the borrower's verified gross monthly income or 6 percent of the borrower's verified net monthly income (income would be verified pursuant to rules and regulations promulgated by the Code Administrator). Other fee provisions would include:

- The total loan charges could not exceed 50 percent of the loan principal;
- The maximum monthly fee or charge would be 5.0 percent of the original loan principal or $20, whichever is less; and
- The maximum return check charge or late charge would be the lesser of 5.0 percent of the loan principal or $20, plus any amount passed from another financial institution; and

- Lender and agency reporting: The lender would be required to disclose terms to the borrower and provide certain notices. Additionally, lenders would be required to provide annually certain information to the Code Administrator. The Code Administrator would be required to publish, at least annually, an aggregate report of this information to the public.

KSA 16a-2-405 (Section 3). In relation to military borrowers, the bill would prohibit a lender from charging annual maintenance fees to military borrowers or to their dependents.

Fiscal impact. According to the fiscal note prepared by the Division of the Budget, the OSBC indicates the bill's enactment would increase expenditures by $106,250 in FY 2018 and for FY 2019. The OSBC also estimates enactment would decrease revenues by $260,000 in FY 2018 and for FY 2019. The OSBC would require 1.0 additional full-time equivalent employee (FTE) in its Examination Division with a salary of $45,000, $18,650 for benefits, $1,000 for office equipment and space, and $8,400 for travel to comply with the bill. The OSBC also estimates a need for 0.5 additional FTE in its Licensing Division with a salary of $22,500, $9,700 for benefits, and $1,000 for office equipment and space to comply with provisions of the bill. The estimated increase in expenditures relating to the bill would be ongoing. The OSBC also estimates revenues relating to payday loan transactions to decrease by approximately 70.0 percent; this estimate is based on the effect of similar legislation and caps enacted in other states. For the fiscal note, the OSBC did not include specific states used to create the estimate; however, the agency did indicate revenues are based on volume and any decrease or increase in revenues would be dependent on how many loans are issued. Any fiscal effect associated with 2017 HB 2267 is not reflected in *The FY 2018 Governor's Budget Report*.

Comments on HB 2267—proponents and neutral parties. The Committee received proponent testimony from representatives of Catholic Charities of Northeast Kansas, Catholic Charities of Northern Kansas, and The Pew Charitable Trusts. Written proponent testimony was submitted by a representative of the Kansas Catholic Conference.

Proponent testimony. Proponents highlighted research detailing the excessive fees and financial impact of payday lending on Kansans. A conferee provided the following example: with a typical annual percentage rate (APR) of 391 percent for a payday loan in Kansas today, a borrower of a $300 loan would have that debt for an average period of five months and would repay a total of $750. This proponent also highlighted Colorado's experience and changes in 2010 law that better align the interests of borrowers and lenders and would be compatible with federal rules. HB 2267 was described as an improvement upon the Colorado model, as it would make providing loans easier for Kansas lenders. Among the bill features addressed in proponent testimony were affordable monthly payments, reasonable fees, and enough time to repay loans. Proponents also commented on the development of the Kansas Loan Pool Project (KLPP), which has helped more than 100 families refinance more than $150,000 in payday loans since KLPP's inception. One proponent spoke to her own experience with payday lending and her inability to repay the loans, as well as KLPP clients' experiences with payday lending practices. Proponents urged the Committee to take appropriate legislative action to alleviate the financial burden of individuals utilizing short-term, high-interest loans.

Neutral testimony. The Committee received neutral testimony from the Code Administrator, OSBC. The conferee related that the bill, as drafted, presents potential challenges and ambiguities that would affect OSBC's ability to appropriately regulate certain financial products authorized under the UCCC. She noted several provisions in the bill add complexity to the UCCC.

She also stated it is unclear how HB 2267 would interact with the Final Rule and noted the length of the Final Rule's implementation period. Further, the conferee acknowledged, the UCCC needs to be updated because many consumer credit products exist today that were not contemplated in 1973 when the UCCC was first enacted.

Comments on HB 2267—opponents. The Committee received testimony from representatives of Advance America, Anderson Financial Services d.b.a. LoanMax, and the Kansas Community Financial Services Association. Written opponent testimony was submitted by a branch manager for Advance America. Opponents addressed the bill's impact on the short-term lending industry in Kansas, suggesting it would not improve the industry but, rather, would completely eliminate the industry, reduce financial choice, and force consumers to turn to costlier, less regulated forms of short-term credit. A conferee noted payday loan transaction rates in Kansas are among the lowest in the country and are as low or lower than those of surrounding states, and Kansas has some of the strongest pro-consumer protections in statute, including military best practices lending requirements, forms available in Spanish, 24-hour right of rescission, no loan rollovers, no criminal prosecution for bad checks, and a limit of two outstanding loans per customer. A representative for a title loan company testified title loan products provide a reliable, fully regulated source of short-term cash and further stated, in the company's experience, the average loan is less than $560 and the average term of the loan is only three months. Customers may pay in full at any time. A conferee noted the full ramifications of the Final Rule were unknown at the time of the meeting, but will be discovered over the 21-month implementation period, which would make statutory changes in 2018 or closer to the actual implementation date more prudent. Opponents requested the Legislature not proceed with HB 2267 or related legislation at this time.

Conclusions and Recommendations

The Committee makes no recommendation relative to 2017 HB 2267 or introduction of any legislation affecting certain consumer loan transactions regulated under the UCCC.

The Committee notes its discussion on 2017 HB 2267, the UCCC and its present structure, and the update and comments submitted by stakeholders on the small dollar lending Final Rule recently published by the CFPB.

- **CFPB Final Rule–implementation timeline and uncertainty.** The Committee notes concerns expressed by some conferees regarding the uncertainty of the regulatory role of the CFPB and the timing of modifications to the consumer lending provisions of the UCCC, including any state legislative action, during the prescribed 21-month implementation time period for the Final Rule. The Committee also recognizes state regulators have not had sufficient time to evaluate the Final Rule and will have the 21-month implementation period to do so.

- **Regulatory review and stakeholder involvement.** The OSBC is encouraged to hold regular stakeholder meetings to assist in drafting changes to the UCCC, in light of the CFPB Final Rule and the 21-month implementation period. The Committee requests regular updates during the 2018 Legislative Session, to include review of any proposed modifications to the UCCC and implementation concerns for the OSBC, lenders, and consumers.

    - The Committee's discussion also included consumer lending trends and practices, including the length of loans and whether the Final Rule would be applicable to Kansas short-term consumer loan transactions. The Committee also requests further consideration of other trends or practices, such as rolling (or consecutive) loans.

Special Committee on Financial Institutions and Insurance

Minimum Motor Vehicle Liability Insurance

Conclusions and Recommendations

The Committee makes no recommendation relative to 2017 HB 2104 or the introduction of any legislation that would increase the minimum limits of liability for bodily injury and amend provisions relating to uninsured and underinsured motorist coverage to prohibit setoff.

The Committee notes its discussion on 2017 HB 2104, the information provided on prior legislative consideration of the broader topic of uninsured motorists, and available automobile insurance marketplace data and driver data. The Committee also notes the bill continues to reside in the House Committee on Insurance, and the Committee encourages the review of data and analysis from its discussion that is detailed below.

- **Stakeholder input.** The Committee discussed convening the various groups to determine whether a more comprehensive proposal, not just adjustments to the two bodily injury limits, could be created. The Committee notes past discussions and the difficulty these complex issues present in bringing all parties to the table and reaching compromise.

- **Data requested.** The Committee expressed interest in seeing more up-to-date and complete numbers from stakeholders to help inform decision-making on this topic. Requested data and analysis from stakeholders would include:

  - ***Insurance setoff provisions.*** During discussion on recommendations regarding HB 2104, additional information about available policy data and cost estimates for Oklahoma and Colorado (states with experience with setoff provisions) was requested. The Committee would like to see statistics from states that allow setoffs and comparisons with statistics from states that do not allow setoffs;

  - ***Health care cost estimates, fiscal impact on government payors.*** The Committee also expressed interest in bringing health care providers, including hospitals and doctors, into the conversation to discuss what is being written off in terms of uncompensated care, and include what the transfer or "shifted" costs are, especially in the instances of Medicare and Medicaid, and the effect on taxpayers; and

  - ***Kansas insurance premiums, costs to all policyholders.*** The Committee requests data on what the automobile liability insurance premiums would be and what the setoff would be separately, then combined, and the effects on all rate payers (*i.e.*, Kansas motorists required to maintain financial responsibility).

Proposed Legislation: None.

Background

The charge to the Special Committee on Financial Institutions and Insurance (Committee) was to review and make recommendations on two topics assigned by the Legislative Coordinating Council (LCC): legislation affecting certain consumer loan transactions and the Kansas Uniform Consumer Credit Code (2017 HB 2267) and legislation modifying automobile liability insurance policy requirements (2017 HB 2104). The Committee was authorized to meet for one day.

The Committee was directed to review the potential impact associated with amendments to the Insurance Code governing automobile liability insurance policies and consider in its review these factors: insurance policy pricing and the marketplace, including the pricing of auto insurance policies, how policies are sold to Kansas motorists, and how pricing of policies could affect persons who have difficulty affording compulsory coverage; estimates and other available data relating to this topic, including the average premium changes associated with changes to the bodily injury liability minimum limits for policyholders; and data on individuals with suspended driver's licenses and other pertinent driver data.

HB 2104 was introduced by the House Committee on Insurance at the request of Representative Hodge. The House Committee held hearings on the bill in February 2017 and heard from proponents, who included private citizens, attorneys representing injured persons, and insurance agents, and from opponents, who included representatives of insurance companies and an automobile leasing company. On March 16, 2017, the House Committee approved a study request to be submitted to the LCC.

Committee Activities

The Committee met on October 11, 2017, and considered both assigned topics. As part of its review of the automobile liability insurance topic, the Committee received an overview of the assigned bill; a review of available resources on the broader topic of uninsured and underinsured motorists and prior legislative consideration of the topic; comment from the Commissioner of Insurance; a staff review of published data and driver data submitted by the Kansas Department of Revenue; and formal testimony from proponents and opponents on HB 2104.

Topic Overview

History of Kansas law and legislation; recent report. Committee staff reviewed the report of the 2015 Special Committee on Insurance, which also included a study of automobile liability insurance policy requirements. Report information provided included enacted law and legislation considered relating to the assigned topic. Minimum motor vehicle liability insurance policy limits were first enacted in 1957 with coverage minimum limits in any one accident of $5,000 for bodily injury to or death of one person and $10,000 for bodily injury to or death of two or more persons, and $1,000 for harm to or destruction of the property of others. Coverage limits, when referenced, often are listed to reflect the limits in sequential order and separated by a slash mark; the 1957 limits would be indicated as "$5,000/$10,000/$1,000." In 1973, enacted Sub. for HB 1129 included an increase in the limits to $15,000/$30,000/$5,000. In 1974, enacted SB 918 codified the requirements, which were not changed, at KSA 40-3107. In 1981, the enactment of SB 371 amended those limits upward to $25,000/$50,000/$10,000, the statutory limits that continue in effect to date. HB 2231, also introduced in 1981, proposed the same limits as 1981 SB 371. In 1984, technical changes were made to KSA 40-3107; the changes did not affect the policy coverage limits.

No further legislation related to increasing minimum policy coverage limits was introduced until the 1989 Legislative Session, when HB 2482 would have increased the minimum coverage limits to $50,000/$100,000/$20,000. A hearing on the bill took place on March 15, 1989, before the House Committee on Insurance, but no further action was taken. Minimum policy coverage limit legislation was introduced in 1995, with SB 369 proposing an increase in the limits to $50,000/$100,000/$20,000. The following year, HB 2844 was introduced, seeking the same minimum policy coverage limits sought in 1995. In 1998, SB 634 was introduced by the Senate Committee on Judiciary to address minimum policy coverage limits. The bill proposed limits of $100,000/$200,000/$40,000. The bill was referred to the Senate Committee on Financial Institutions and Insurance, but no hearing was held. The bill died in Committee. In 2012, HB 2679 was introduced by the House Committee on Insurance. The bill would have increased the minimum policy coverage limits to $50,000/$100,000/$25,000. The bill was referred to the House Committee on Insurance, but no hearing was held on the bill. The bill died in Committee at the end of the 2012 Legislative Session.

Most recently, 2015 HB 2067 was introduced, a hearing was held in the House Committee on Insurance, and an interim study was requested on the bill. The bill would have raised the limits to $50,000/$75,000/$35,000. The Special Committee on Insurance was tasked with, among other things, reviewing the need to increase minimum motor vehicle liability insurance policy limits. Committee staff reviewed the report's findings, noting the Special Committee recommended one bill for introduction. Its bill, 2016 HB 2446, addressed one of the three limits—property damage—increasing this limit from $10,000 to $25,000. HB 2446 was passed and enacted during the 2016 Legislative Session and, in addition to the increase in the property damage limit, the bill specified that beginning with the 2026 Legislative Interim and at least every ten years thereafter, subject to authorization by the LCC, a legislative interim study committee is required to study whether the minimum motor vehicle liability insurance limits for bodily injury or death of one or more persons and for harm to or destruction of property of others should be adjusted.

Statutory setoff in Kansas; states' approaches. Committee staff reviewed provisions in KSA 40-284(b), which requires Kansas motorists to have both uninsured motorist (UM) and underinsured motorist (UIM) coverage. Because Kansas motorists are required to have a minimum automobile liability insurance of $25,000 for bodily injury to or death of one person in any one accident, the analyst explained, the motorist is also required to have $25,000 in UM/UIM coverage. UIM coverage is insurance the policyholder has with his or her own insurer. However, this does not mean, in the event of an accident, a policyholder will access $25,000 from the negligent motorist and $25,000 from the motorist's own UIM coverage for a total of $50,000 in coverage. In order to access any benefits under UIM coverage, the injured motorist must have bodily injury damages that exceed the negligent motorist's liability coverage and the negligent motorist's available liability coverage must be less than the injured motorist's available UIM coverage. When both motorists have minimum coverage liability policies, no UIM coverage is available to the injured motorist. The insurer may reduce the policyholder's UIM coverage by the limits of the negligent motorist's insurance coverage, known as a "setoff" or "credit." HB 2104 would eliminate this "setoff," so a motorist could access his or her automobile liability limits and UIM coverage.

According to the Insurance Information Institute (III), approximately 20 jurisdictions require UM coverage and only a handful of states require motorists to purchase UIM coverage. Comparative information was presented outlining law, relevant case law, and other guidance for select states that allow setoff (Alabama, Alaska, California, Delaware, Indiana, and Missouri) and select states that prohibit setoff (Arkansas, Colorado, and Oklahoma).

Personal automobile liability insurance marketplace. Committee staff reviewed published comparative data and provided three charts:

- *Top 10 Most Expensive and Least Expensive States for Auto Insurance, 2014.* Kansas ranks just outside the ten least expensive states, with an overall rank of 39th. The most expensive state, New Jersey, had an average insurance buyer expenditure of $1,263.67 and the least expensive state, Idaho, had an average expenditure of $571.94. Kansas' average expenditure was $688.82. Average expenditure is equal to the total written premium divided by liability car years. A car year is equal to 365 days of insured coverage for a single vehicle. [Chart source: National Association of Insurance Commissioners (NAIC), 2017, data published by the III.]

- *Average Expenditures for Auto Insurance by State, 2010-2014.* This chart is an expanded version of the above-described chart and details annual expenditures by three policy components of automobile insurance—liability, collision, and comprehensive coverages—and average expenditure by year. For example, the average expenditure for Kansas of $688.82 is made up of liability ($354.24), collision ($257.88), and comprehensive ($237.67).

  - The analyst also detailed Kansas average expenditures by year and the national average: 2013—$660.28 (Kansas)/$866.31 (national); 2012—$632.07/$838.49; 2011—$625.92/$795.00; and 2010—$625.17/$789.29. [Chart source: NAIC, 2017 (exported data).]
  - The analyst reported archived data indicates Kansas was ranked 6th least expensive, with an average expenditure of $568 in 2007.

- *Private Passenger Cars Insured—Shared and Voluntary Markets, 2014.* Kansas reported 2,286,148 in its voluntary market (able to be insured in the commercial marketplace) and 1,709 in the shared market for a total of 2,287,857. This equates to 0.075 percent of insureds in the shared market. Assigned risk plans and other similar plans are qualified as shared (or residual) market. [Chart source: AIPSO; information exported from III website.]

Division of Vehicles' data. Committee staff reviewed written testimony submitted by a representative of the Kansas Department of Revenue. The Division of Vehicles (Division) summarized action taken by the Division to suspend driver's licenses (all three tables detailed below) and vehicle registrations (table 3 only). Testimony indicated the data provided could include an individual driver multiple times due to different occurrences. At a higher level, the Division reported, it has 3,237,146 records of violations, failure to meet agreed-to responsibilities, and actions taken as a result and 212,335 of them are suspensions. Testimony indicated some suspensions are associated with out-of-state drivers and are not specific to insurance-related issues. Calendar year data for 2011-2016 are reported below:

- *Traffic convictions for no proof of insurance (KSA 2016 Supp. 40-3104 or city code equivalent)*: 2011—12,185; 2012—12,650; 2013—11,411; 2014—11,902; 2015—11,177; and 2016—11,116.

- *Suspensions due to missed SR 22 filings (administrative action, suspension of license based on report of insurance lapse)*: 2011—23,624; 2012—21,273; 2013—19,596; 2014—18,644; 2015—17,845; and 2016—17,056.

- *Suspensions due to accident with no insurance (administrative action, suspension of license and registration because driver/owner/vehicle was involved in accident and did not have required insurance)*: 2011—4,129; 2012—3,816; 2013—3,240; 2014—2,995; 2015—2,817; and 2016—3,542.

Comment provided by the Commissioner of Insurance. The Commissioner of Insurance (Commissioner) provided the Committee with a resource guide on shopping for automobile insurance policies. (This guide outlines state laws, required and optional coverage, policy components, and other factors to consider when purchasing a policy.) He urged the Committee to use the Kansas Insurance Department (KID) anytime for input, collaboration, and research regarding any insurance topic. He noted KID is very concerned about changes that will increase automobile liability insurance costs and increase the uninsured motorist rate. The Commissioner referenced one of three indicators in the data KLRD provided (liability insurance premiums) and commented on Kansas' number being much lower than the national average given the current limits.

HB 2104

Overview and fiscal information. Committee staff provided the Committee with a summary of HB 2104. The bill would amend two statutes relating to motor vehicle liability insurance. The bill would amend the law governing UM and UIM coverage (KSA 40-284) to require any automobile liability insurance policy renewed, delivered, or issued for delivery on and after January 1, 2018, contain a provision with coverage limits equal to the limits of liability coverage for bodily injury or death in such policy sold to the named insured for payment of damages from the uninsured owner or operator of a motor vehicle. The bill would provide that any UM coverage must include an UIM provision with coverage limits equal to the limits of liability provided by such UM coverage. The bill also would specify the amount of available UIM coverage shall not be reduced because of any payment by or on behalf of the owner or operator of the other motor vehicle or any third party.

The bill also would amend the Kansas Automobile Injury Reparations Act (KAIRA) (KSA 2016 Supp. 40-3107) to increase the minimum limit on insurance for bodily injury or death of one person from $25,000 to $50,000, and the limit for bodily injury or death of two or more persons from $50,000 to $100,000, on and after January 1, 2018.

Fiscal impact. According to the fiscal note prepared by the Division of the Budget, KID indicates enactment of HB 2104 would likely result in Kansas consumers paying higher premiums for motorist insurance coverage. However, KID states that any premium increase would be negligible. In addition, the bill could increase insurance premium taxes collected from insurance companies as a result of higher premiums, reduce insurance premium taxes collected from insurance companies as a result of some consumers choosing not to pay higher premiums and becoming uninsured, or result in a combination of the previous two scenarios. KID indicates it cannot estimate the fiscal effect on insurance premium taxes as a result of enactment of the bill. Any fiscal effect associated with 2017 HB 2104 is not reflected in *The FY 2018 Governor's Budget Report*.

Comments on HB 2104—proponents. The following association representatives and individuals appeared before the Committee and provided testimony in support of the bill: representatives of the Kansas DUI Impact Center and the Kansas Trial Lawyers Association, one insurance agent, three plaintiff's attorneys, and two private citizens. One attorney's presentation included testimony from five private citizens. Additional written proponent testimony was submitted by two private citizens.

Proponents generally described the minimum limits for automobile liability coverage as outdated and spoke to concerns about the inadequate protection afforded to consumers by this coverage. Proponents pointed to economic changes in the past 35 years and commented on the cost shift from some motorists onto other motorists, to health insurers and hospitals, to employers, and to government payors. Proponent testimony also addressed injured motorists and the inability for an injured person with minimum limits of coverage to access UIM coverage. An attorney noted when both drivers have $25,000/$50,000 policies, the UIM provision pays $0. There may not be enough to pay all the damage, but due to setoff, an individual cannot get the $25,000 amount from his or her own policy, even though they are underinsured for their own loss and paid a premium for this coverage. He concluded, by increasing limits or eliminating setoff, Kansas can provide adequate financial security, so bad drivers can pay for the injuries they cause. Private citizens and their representatives shared similar concerns about the inability to cover medical bills, missed work, and anticipated future medical expenses. Without legislative remedy, proponents concluded, KAIRA is failing its purpose because Kansans are often left with uncompensated expenses after a collision, even when they are not at fault and have purchased the required auto liability insurance.

No neutral testimony was submitted.

Comments on HB 2104—opponents. The Committee received testimony from representatives of the American Insurance Association; Enterprise Leasing Company of Kansas, LLC; the Kansas Automobile Insurance Plan; the Property Casualty Insurers Association of America; and the State Farm Insurance Companies. Written opponent testimony was submitted by representatives of Allstate Insurance, American Family Insurance, the Kansas Association of Property and Casualty Insurance Companies, and The General Insurance.

Opponents indicated Kansas' financial responsibility laws and the established limits require the Legislature to balance fair limits while recognizing minimum limits that become too high will create affordability problems and cause more uninsured motorists to be on the road. A representative for the state's residual market (the shared market) indicated the majority of the plan's policyholders would face increases, projected at up to 34 percent, for liability coverage that includes the proposed minimums. An opponent pointed to the average cost of auto injury claims in Kansas and indicated raising the minimum bodily injury limits is not needed. An opponent countered the stated concern that policyholders are not getting what they paid for (when purchasing required UIM coverage) as false and misleading. The company representative commented if UIM coverage is required by statute, it should be on a modified difference-in-limits basis, rather than a strict difference-in-limits to ensure that when other injured parties are involved and the liability insurance limits from the wrongdoer have been reduced to an amount that is less than the insured's UIM limits, the insured would still be able to recover an amount up to the UIM limits. Opponents urged the Legislature to be cautious when adjusting the minimum limits and to be aware of the unintended consequences of such action.

Conclusions and Recommendations

The Committee makes no recommendation relative to HB 2104 or the introduction of any legislation that would increase the minimum limits for bodily injury and amend provisions relating to UM and UIM coverage to prohibit setoff.

The Committee notes its discussion on 2017 HB 2104, the information provided on prior legislative consideration of the broader topic of uninsured motorists, and available automobile insurance marketplace data and driver data. The Committee also notes the bill continues to reside in the House Committee on Insurance, and the Committee encourages the review of data and analysis from its discussion that is detailed below.

- **Stakeholder input.** The Committee discussed convening the various groups to determine whether a more comprehensive proposal, not just adjustments to the two bodily injury limits, could be created. The Committee notes past discussions and the difficulty the issues present in reaching compromise.

- **Data requested.** The Committee expressed interest in seeing more up-to-date and complete numbers from stakeholders to help inform decision-making on this topic. Requested data and analysis from stakeholders would include:

  - ***Insurance setoff provisions.*** During discussion on recommendations regarding HB 2104, additional information about available policy data and cost estimates for Oklahoma and Colorado (states with experience with setoff provisions) was requested. The Committee would like to see statistics from states that allow setoffs and comparisons with statistics from states that do not allow setoffs;

  - ***Health care cost estimates and fiscal impact on government payors.*** The Committee expressed interest in bringing health care providers, including hospitals and doctors, into the conversation to discuss what is being written off in terms of uncompensated care, and to include the transfer or "shifted" costs, especially in the instances of Medicare and Medicaid, and the effect on taxpayers; and

  - ***Kansas insurance premiums, costs to all policyholders.*** The Committee requests data on what the automobile liability insurance premiums would be and what the setoff would be separately, then combined, and the effects on all rate payers (*i.e.*, Kansas motorists required to maintain financial responsibility).

Report of the Special Committee on Health to the 2018 Kansas Legislature

Chairperson: Representative Daniel Hawkins

Vice-chairperson: Senator Vicki Schmidt

Other Members: Senators Barbara Bollier and Laura Kelly; Representatives Susan Concannon, Jim Kelly, and Monica Murnan

Study Topic

Study Telehealth and Telemedicine and Consider 2017 Legislation

The Committee is directed to:

- Study the subjects of telehealth and telemedicine in order to increase and improve health care access for all Kansans;
- Review and consider 2017 HB 2206, which addresses coverage of telemedicine in health insurance policies and contracts; and
- Review and consider 2017 HB 2254, which addresses the practice and delivery of telehealth services by certain providers.

December 2017

Special Committee on Health

Report

Conclusions and Recommendations

The Committee notes the importance of keeping the patient first when crafting telemedicine legislation.

The Committee does not recommend the 2017 telemedicine legislation currently residing in the House Committee on Health and Human Services (HB 2206 and HB 2254).

The Committee recommends the introduction of comprehensive telemedicine legislation by the parties, to begin in the House, early in the 2018 Legislative Session.

Proposed Legislation: None

Background

The Legislative Coordinating Council (LCC) in 2017 appointed a Special Committee on Health (Committee), comprised of seven members. The LCC tasked the Committee with the following:

- Study the subjects of telehealth and telemedicine in order to increase and improve health care access for all Kansans;
- Review and consider 2017 HB 2206, which addresses coverage of telemedicine in health insurance policies and contracts; and
- Review and consider 2017 HB 2254, which addresses the practice and delivery of telehealth services by certain providers.

The Committee was granted two meeting days by the LCC and met on October 19 and 20, 2017, at the Statehouse.

Committee Activities

The Committee held all-day meetings on October 19 and 20, 2017, at the Statehouse. During these meetings, the Committee viewed demonstrations of telemedicine technologies; heard testimony from individuals, organizations, and providers; and participated in a roundtable discussion with select stakeholders.

Demonstrations of Telemedicine Technologies

On October 19, 2017, representatives of Teladoc, FreeState Healthcare (FreeState), and HCA Healthcare, Inc. (HCA), provided individual demonstrations of telemedicine technologies. The three entities noted technology is not the issue for providing care through telemedicine. However, FreeState and HCA representatives expressed the primary roadblock for providing telemedicine services is reimbursement for those services.

Teladoc. Representatives of Teladoc provided the Committee with information and demonstrated Teladoc's technology for delivering telemedicine services. The representatives noted Teladoc had approximately 75 percent of the total telemedicine business nationally in 2016; Teladoc covers 187,000 Kansans and saved the State approximately $4.6 million in 2016; the company specializes in simple non-emergent care, such as sinusitis, upper respiratory infections, influenza, poison ivy, and urinary tract infections; approximately 70 percent of Teladoc physicians who are Kansas board-certified live in Kansas; Teladoc is not direct-to-consumer and is available only as a benefit through an employer, health plan, union, or hospital system; pill shopping is not plausible because Teladoc physicians do not and cannot prescribe controlled drugs or lifestyle drugs through the Teladoc system; and Teladoc has a limited Medicaid footprint in Kansas.

FreeState. Representatives of FreeState provided the Committee with information and demonstrated FreeState's technology for delivering telemedicine services. The representatives stated FreeState is a Kansas-based company and has utilized telemedicine for three years; telemedicine is cost-effective and provides access to care to people who would not otherwise receive health care, such as those living in rural areas; and it would cost approximately $800,000 total to put the FreeState telemedicine technology in every critical access hospital in Kansas. A representative expressed frustration with reimbursement for provided services. He noted Medicare and the State's Medicaid program, KanCare, do pay for these telemedicine services, but FreeState struggles to be reimbursed by private insurers.

HCA. Representatives of HCA provided the Committee with information on HCA's telemedicine services and demonstrated its technology platform, described as a robot. The representatives noted reimbursement is the major roadblock for providing care through telemedicine; discussed the positive impact of HCA's telestroke program; described the licensing and credentialing requirements for physicians participating as a telemedicine provider; and noted each telemedicine model, such as how the room is set up is based on the health system or organization.

Study of Telemedicine – Presentations from Individuals, Providers, and Organizations

Over the course of the two-day meeting, the Committee heard from a variety of interested parties concerning the delivery of telemedicine in Kansas. Common topics are described in detail below.

Medicaid reimbursement for school-based services. Representatives of the Kansas Speech-Language-Hearing Association and Kansas Association of Special Education Administrators School Based Tele-Therapy State Task Force, Kansas Association of Special Education Administrators, and PresenceLearning articulated the need for fiscal parity for Medicaid reimbursement of school-based services. The representatives noted 26 states and the District of Columbia have included schools as Medicaid reimbursable locations for telemedicine services. Additionally, there is a shortage of speech therapists in schools, and permitting Medicaid reimbursement for telemedicine services could alleviate those shortages.

Reimbursement by private payors. Representatives from the Kansas Hospital Association (KHA) and FreeState noted there is variance of reimbursement for telemedicine services by commercial insurance carriers.

Necessity of consistent, clear telemedicine definitions. Several representatives noted the importance of comprehensive telemedicine policy so regulatory boards and law enforcement can protect Kansans from bad actors. A representative of the Governor's Behavioral Health Services Planning Council shared her experience with setting up a telemedicine practice without clear legal guidance on telemedicine practices in Kansas and noted mental health professionals and agencies need legislatively defined telemedicine terms and parameters to develop telemedicine structures and business plans.

Maintaining an active license and insurance requirements for telemedicine providers. A representative of the Health Care Stabilization Fund Board of Governors (HCSF) noted telemedicine providers should be required to maintain an active Kansas license and comply with the Health Care Provider Insurance Availability Act.

Telemedicine provides health care to rural areas. A representative of the Kansas Association for the Medically Underserved (KAMU) noted telemedicine creates new access to specialty and other providers within the medical home and community and is an important solution to the health care provider shortage in rural Kansas. A physician with the Community Health Center of Southeast Kansas expressed the importance of telemedicine in rural areas. A representative of the Kansas Physical Therapy Association noted physical therapy has been successful in providing telemedicine services to veterans through the Veterans' Administration and is utilized in rural areas. Additionally, a representative of Heartland Community Health Center noted telemedicine helps leverage psychiatry resources in Kansas.

Additional benefits of telemedicine. A representative of Via Christi Health noted telemedicine allows struggling rural hospitals to have the benefit of keeping patients local, which captures ancillary services, improves the rural recruitment process, and allows for comprehensive care at a lower cost. A representative of the Kansas Health Care Association and Kansas Center for Assisted Living noted telemedicine decreases the rate of re-hospitalizations for the assisted living and nursing home population. A representative of Wilson Medical Center shared that telemedicine has allowed her to take a weekend off now and then.

Coverage parity. The parties agreed that comprehensive legislation should include coverage parity. Coverage parity prevents the denial of claims for covered services because telemedicine was used in lieu of an in-person encounter. The representatives noted there are 34 states and the District of Columbia with telemedicine coverage parity laws. Representatives noted parity provides for consumer protection and creates a level of assurance to the health care provider.

Payment parity. Although most parties agree that telemedicine is a useful tool, there was disagreement on how to pay for these services. Blue Cross and Blue Shield of Kansas (BCBSKS) and Aetna remarked that insurers typically provide telemedicine benefits on their own, and the State should not mandate coverage of these services. The Aetna representative noted Aetna's opposition to payment parity mandates, and mentioned there are no mandates requiring every doctor or hospital to be paid the same. The Aetna representative also stated payment parity stifles innovation and cost savings, and decreases the willingness of employers and insurers to fully implement telemedicine services. The representative of Blue Cross and Blue Shield of Kansas City (Blue KC) noted payment parity is a slippery slope and payment parity could have the unintended consequence of passing costs on to consumers.

October 19 testimony. Representatives of the following organizations testified before the Committee on October 19, 2017: American Telemedicine Association (ATA); BCBSKS; Children's Mercy Hospital; Community Health Center of Southeast Kansas; Health Care Stabilization Fund; Heartland Community Health Center; KAMU; Kansas Health Care Association/ Kansas Center for Assisted Living; Kansas Heart and Stroke Collaborative; Kansas Medical Society (KMS); Kansas Speech-Language-Hearing Association and Kansas Association of Special Education Administrators School Based Tele-Therapy State Task Force; Kansas Association of Special Education Administrators; Kansas State Board of Healing Arts; PresenceLearning; Teladoc; and Zipnosis.

October 19 written-only testimony. Representatives of the following organizations provided written-only testimony on October 19, 2017: AARP Kansas; Hospice Services and Palliative Care of Northwest Kansas, Inc.; Kansas Academy of Family Physicians; Kansas Academy of Nutrition and Dietetics; Kansas Association of Osteopathic Medicine; Kansas Oral Health Connections; Kansas Public Health Association, Inc.; Kansas Speech-Language-Hearing Association; and Kansas State Board of Pharmacy.

October 20 testimony. Representatives of the following organizations testified before the Committee on October 20, 2017: Aetna; Blue KC; Cardinal Health; Eagle Telemedicine; Ellsworth County Medical Center; Governor's Behavioral Health Services Planning Council; Kansas Association of Masters in Psychology; KHA; Kansas Physical Therapy Association; Kansas State Alliance of YMCAs; Southeast Kansas Mental Health Center; Sunflower Telemedicine; Susan B. Allen Memorial Hospital; University of Kansas Medical Center for Telemedicine and Telehealth (KUCTT); Via Christi Health; Wilson

Medical Center; and Wright Psychological Services.

October 20 written-only testimony. Representatives of the following organizations provided written-only testimony on October 20, 2017: Heartland Telehealth Resource Center; Hospital District #6, Harper County; Kearny County Hospital; and Newton Medical Center.

Roundtable Discussion

The Committee was joined by the following participants in a roundtable discussion on telemedicine: Chad Austin, Senior Vice President Government Relations, KHA; Larrie Ann Brown, Legislative Counsel, Teladoc; Rachelle Colombo, Director of Government Affairs, KMS; Denise Cyzman, Executive Director, KAMU; Coni Fries, Vice President of Government Relations, Blue KC; Mike Michael, Director, State Employee Health Plan; Sunee Mickle, Director of Government Relations, BCBSKS; Dr. Eve-Lynn Nelson, Director, KUCTT; Mike Randol, Director of Health Care Finance, Kansas Department of Health and Environment (KDHE); Clark Shultz, Assistant Commissioner, Kansas Insurance Department; Latoya Thomas, Director of the State Policy Resource Center, ATA; Claudia Tucker, Vice President of Government Affairs, Teladoc; Charles Wheelen, Executive Director, HCSF; Andrew Wiens, Policy Director, Office of Kansas Lieutenant Governor; Keith Wisdom, Kansas-Nebraska Market President, Aetna; Dr. Shawna Wright, Governor's Behavioral Health Services Planning Council, Rural and Frontier Subcommittee; and Dr. Elisha Yaghmai, FreeState.

Topics Discussed and Issues Identified

Topic #1 – Definitions of Telemedicine and Telehealth:

- The stakeholders discussed the importance of a broad, flexible definition for telemedicine. The ATA representative noted ATA uses both telemedicine and telehealth interchangeably, and is defined as "health care services provided from one location to another location through the use of telecommunications." The ATA representative noted ATA leaves the definition broad and does not include the provider, patient, technology, sites of care, or location of the provider in the definition. A Teladoc representative stated a broad definition is important because technology and innovation is faster than the legislative process. The Aetna representative stated a broad definition, flexible with regulations, would make the most sense for legislation.

- A discussion was spurred involving the necessity of interactive two-way audio or visual technologies. The BCBSKS representative stated it is the position of BCBSKS that telemedicine services should be delivered through the Health Insurance Portability and Accountability Act compliant two-way audio or visual technologies, while a Teladoc representative noted this framework would disenfranchise 500,000 Kansans. The ATA representative concluded that requiring an interactive component would be a step backward, and explained the use of asynchronous "store-and-forward" capabilities.

Topic #2 – Legislation:

- The Chairperson noted there are currently two bills residing in the House Committee on Health and Human Services (HB 2206 and HB 2254). He stated he would prefer for a single bill to be drafted, and regulations would likely have to be adopted by related agencies. He then asked the roundtable participants their views on the 2017 telemedicine legislation.

- The KMS representative asked that any new legislation prohibit an insurer from excluding an otherwise covered health care service from coverage solely because the service is provided through telemedicine or telehealth rather than in-person contact to ensure broader access to telemedicine.

- The KMS representative also discussed 2017 HB 2254 specifically and requested portions relevant to a physician's scope of practice and ensuring the standard of care is the same and informed consent be included in legislation.

- The KMS representative further stated KMS would prefer the reimbursement provision of 2017 HB 2206 be retained in new legislation. The KMS representative also requested provisions related to medical history, jointly developed rules and regulations with the State Board of Pharmacy concerning controlled substances and prescribing through telemedicine, and references to follow-up care and continuity of care be included.

- The ATA representative encouraged State officials to not create two competing standards for health care professionals.

- A Committee member requested the Office of Revisor of Statutes include language in legislation requiring rules and regulations to be adopted by required agencies by a date certain.

Topic #3 – Coverage and Reimbursement Parity:

- On this topic, the parties discussed both coverage and reimbursement parity (reimbursement parity is also known as payment parity, and these terms are used interchangeably).

- The Aetna representative expressed a broad definition of telemedicine would give the most flexibility and suggested that regulating payment would be difficult if the legislation is broad.

- The Chairperson stated coverage parity would be included in the legislation, but suggested bill language would likely state the payor and provider would negotiate the reimbursement rate.

- The FreeState representative noted concern with not including reimbursement parity in legislation and stated Medicaid and Medicare have 100 percent payment parity and those models should be utilized.

- The ATA representative noted, in the last four to five years, states have strayed away from legislating reimbursement parity.

- The KDHE representative stated KDHE does not pay a different amount for an in-person visit versus a telemedicine visit.

- Participants discussed facility fees and provider fees. The KHA representative requested clarification on if the pieces of 2017 legislation would cover both facility and provider fees. The KAMU representative noted current policy is vague, especially related to originating sites, and payment parity would provide necessary clarity.

Conclusions and Recommendations

Following discussion, the Committee made the following recommendations:

- The Committee notes the importance of keeping the patient first when crafting legislation;

- The Committee does not recommend the 2017 telemedicine legislation currently residing in the House Committee on Health and Human Services (HB 2206 and HB 2254); and

- The Committee recommends the introduction of comprehensive telemedicine legislation by the parties, to begin in the House, early in the 2018 Legislative Session.

Report of the Special Committee on Utilities to the 2018 Kansas Legislature

Chairperson: Senator Robert Olson

Vice-chairperson: Representative Joe Seiwert

Other Members: Senators Tom Hawk and Mike Petersen; and Representatives Randy Garber, Annie Kuether, and Mark Schreiber

Study Topic

Study and Make Recommendations Regarding Rural Broadband Deployment

The Committee is directed to identify ways to get broadband services deployed to all Kansans at affordable rates, including, but not limited to, discussion of the following topics:

- Consider incentives for broadband deployment in unserved and underserved areas of the state;
- Consider whether guidelines should exist regarding overbuilding an existing provider in order to reach and affordably serve unserved and underserved Kansans;
- Define "unserved" and "underserved" in terms of broadband speeds, affordability, and length of time a digital divide between urban and rural areas should exist because advanced delivery technologies are not installed;
- Establish what technologies should be supported as appropriate to deliver reliable, affordable broadband in Kansas; and
- Identify what actions the State can take to facilitate development of competitive broadband markets in rural areas, including incentives for partnerships between communities, rural electric cooperatives, incumbent providers, and alternative providers.

December 2017

Special Committee on Utilities

Report

The Special Committee on Utilities was not convened during the 2017 Interim.

Report of the Joint Committee on Corrections and Juvenile Justice Oversight to the 2018 Kansas Legislature

CHAIRPERSON: Representative J. Russell Jennings

VICE-CHAIRPERSON: Senator Molly Baumgardner

RANKING MINORITY MEMBER: Representative Dennis "Boog" Highberger

OTHER MEMBERS: Senators Ed Berger, Oletha Faust-Goudeau, Pat Pettey, Mary Pilcher-Cook, Mary Jo Taylor, and Rick Wilborn; and Representatives Larry Campbell, Sydney Carlin, Leo Delperdang, Gail Finney, and Susan Humphries

CHARGE

KSA 2017 Supp. 46-2801 directs the Committee to monitor inmate and juvenile offender populations and to review and study the programs, activities, plans, and operations of the Kansas Department of Corrections. In addition, the Committee is to study:

- Implementation of juvenile justice reform;
- Offense proportionality in the adult sentencing grid; and
- The impact of juvenile immediate intervention programs (diversions) and adjudications on future employment and their use for impeachment of witnesses (review and consider Judicial Council Report on 2017 HB 2352).

Joint Committee on Corrections and Juvenile Justice Oversight

Annual Report

Conclusions and Recommendations

The Joint Committee recommended:

- The House Committee on Appropriations and the Senate Committee on Ways and Means consider a plan to restore $1.5 million in funding for inmate treatment programs in state institutions for each of the next three years;
- The House Committee on Corrections and Juvenile Justice not pass HB 2352 as proposed or as amended, but continue to study the issue and consider legislation changing how juvenile dispositions are treated with regard to future application of the offender;
- The House Committee on Corrections and Juvenile Justice monitor the state budget and, if possible, recommend passage and funding of 2017 HB 2087, HB 2088, and HB 2090, concerning modifications to the SB 123 program;
- The House Committee on Corrections and Juvenile Justice recommend to the full House a bill similar to 2017 HB 2092, aligning all financial loss crimes with the current threshold of $1,500;
- The Joint Committee on State Building Construction and the State Finance Council delay the process for approving construction at the Lansing Correctional Facility until February 15, 2018, to give the Legislature an opportunity to more fully vet and approve plans for construction;
- The House Committee on Corrections and Juvenile Justice and the Senate Committee on Judiciary meet jointly to discuss human trafficking with input from the Attorney General's Human Trafficking Advisory Board, representatives of the Wichita State University Center for Human Trafficking, and other stakeholders;
- The House Corrections and Juvenile Justice and Senate Judiciary Committees continue to study possible changes to Kansas' Romeo and Juliet laws; and
- The Kansas Sentencing Commission reconvene its proportionality committee and make recommendations based on the category and severity of crimes to the 2018 Joint Committee on Corrections and Juvenile Justice Oversight and the 2019 Legislature.

The Joint Committee also recommended sending letters to Chief Justice Lawton Nuss concerning implementation of multidisciplinary teams required to be appointed pursuant to KSA 2016 Supp. 38-2393; the Secretary for Children and Families concerning the placement of runaways and status offenders in detention; and the Secretary of Corrections asking for more detail on the substantial increase in capacity at El Dorado Correctional Facility without the need for additional staff.

Proposed Legislation: The Committee requests legislation to:

- Stay limits on overall case lengths for juvenile offenders who abscond from supervision such that the case timeline does not begin until the dispositional order is entered;
- Clarify a fee may be assessed as part of applications under the Immediate Intervention Program, specify the fee shall not exceed $100, and allow juvenile corrections advisory boards to determine the amount of the fee;
- Amend KSA 2017 Supp. 75-52,161(d)(7) to change "calculate" to "monitor," as requested by the Juvenile Justice Oversight Committee; and
- Allow a juvenile's attorney to waive appearance at the 14-day detention review hearing in KSA 2017 Supp. 38-2343, or allow the juvenile to appear *via* audio-video communications.

Background

The 1997 Legislature created the Joint Committee on Corrections and Juvenile Justice Oversight to provide legislative oversight of the Kansas Department of Corrections (KDOC) and the Juvenile Justice Authority (JJA). Pursuant to Executive Reorganization Order No. 42, on July 1, 2013, the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice were transferred to KDOC and the Secretary of Corrections. Statewide, there are eight correctional facilities: El Dorado Correctional Facility (EDCF), Ellsworth Correctional Facility, Hutchinson Correctional Facility, Lansing Correctional Facility, Larned Correctional Mental Health Facility, Norton Correctional Facility, Topeka Correctional Facility, and Winfield Correctional Facility. KDOC also operates parole offices throughout the state and is responsible for the administration of funding and oversight of local community corrections programs.

There is one operational juvenile correctional facility (JCF): Kansas Juvenile Correctional Complex. Individuals as young as 10 and as old as 17 years of age may be adjudicated as juvenile offenders (JOs) and remain in custody in a JCF to age 22.5 and in the community to age 23.

The Committee is comprised of 14 members, with 7 members each from the House and the Senate. In odd years, the chairperson and ranking minority member are House members and the vice-chairperson is a Senate member; in even years, the chairperson and ranking minority member are Senate members and the vice-chairperson is a House member.

The Committee's duties, as outlined in KSA 2017 Supp. 46-2801(k), are to monitor the inmate population and review and study KDOC's programs, activities, and plans regarding its statutorily prescribed duties, including the implementation of expansion projects; the operation of correctional, food service, and other programs for inmates; community corrections; parole; and the condition and operation of the correctional institutions and other facilities under KDOC's control and supervision. The Committee is also charged to review and study the adult correctional programs, activities, and facilities of counties, cities, and other local governmental entities, including the programs and activities of private entities operating community correctional programs and facilities, and the condition and operation of jails and other local governmental facilities for the incarceration of adult offenders.

Similarly, the Committee is charged to review and study programs, activities, and plans involving JOs, including the responsibility for their care, custody, control, and rehabilitation, and the condition and operation of the JCFs. Further, the Committee is charged to review and study the JO programs, activities, and facilities of counties, cities, school districts, and other local governmental entities, including programs for the reduction and prevention of juvenile crime and delinquency; programs and activities of private entities operating community juvenile programs and facilities; and the condition and operation of local governmental residential or custodial facilities for the care, treatment, or training of JOs.

Committee Activities

The Committee requested three meeting days and was granted two by the Legislative Coordinating Council. In addition to its statutory duties, the Committee was charged to study the following topics:

- Implementation of juvenile justice reform;
- Offense proportionality in the adult sentencing grid; and
- The impact of juvenile immediate intervention programs (diversions) and adjudications on future employment and their use for impeachment of witness (review and consider Judicial Council Report on 2017 HB 2352).

The Committee met November 1 and 2, 2017.

November 1

KDOC Operations

The Committee began with an update regarding KDOC operations provided by the Secretary of Corrections (Secretary). The Secretary discussed efforts toward population management, including the use of double bunking to increase adult bed space capacity. He stated the EDCF added 660 beds through double bunking, and he discussed the costs associated with the additional beds, including the avoidance of costly construction. He presented a graph showing that, from 2013 to 2016, there were more inmates than beds, and in 2017 the number of beds available will be more than is needed due to this change. The Secretary noted that in October 2017, an Association of State Correctional Administrators survey showed 39 state correctional agencies cited lack of space due to cell size as the reason for not utilizing double-bunked cells.

The Secretary also spoke about KDOC programs and provided a graph showing the funding available for such programs from 2008 to 2018. He reviewed the unmet needs of programs, noting the graph shows GED and vocational training programs combined with sustained employment result in significant reductions in recidivism.

The Secretary discussed the mental health needs of inmates, indicating 39 percent of adult inmates have identified mental illnesses. KDOC's goal is to help this population transition into the community as opposed to going to a mental health facility. The Secretary noted the addition of high-acuity behavior health beds at the EDCF in FY 2017 and FY 2018 and described how these units work with newly developed restrictive housing diversion programs for offenders with serious mental illness. He also noted a plan at Lansing to add similar beds and staff training provided through the American Correctional Association's Correctional Behavior Health Certification Program.

The Secretary discussed 2017 turnover rates and recent pay raises, noting turnover rates are a correctional issue nationally, not just a local issue. He presented information showing EDCF has the highest turnover at 46.11 percent, and Winfield Correctional Facility has the lowest at 25.38 percent. The Secretary continued by discussing positive signs at EDCF, including fewer open positions after the pay raise. He provided a snapshot of other states' salaries compared to their turnover rates and stated private facilities with higher pay rates also have vacancies and staffing issues. Data showed turnover rates were high across all prisons, whether operated by the State or a private company. The Secretary stated one of his biggest concerns about high turnover is the level of experience that goes along with this, noting 52.94 percent of staff have less than two years of experience. He provided slides that show specific correctional officer pay, including the difference in pay for uniformed and non-uniformed positions that require a bachelor's degree. This shows a disincentive for staff to move into higher responsibility positions as the pay rates are similar.

The Secretary also presented information on the serious incidents at EDCF in 2017 and gave a brief update on the contract process for construction at the Lansing Correctional Facility. The Secretary stated he hoped to complete contract negotiations this month [November] and present to the budget committees for further approval. He said KDOC hoped to award a contract in December and start construction in May or June, and KDOC estimates completion after 18 months, in December 2019.

Committee members expressed concerns about a possible correlation between double bunking and the EDCF incident and a lack of additional staff while capacity had increased significantly. The Secretary stated he did not believe there was a correlation, noting the inmates are not new to double bunking. Further, at Larned Correctional Mental Health Facility, staff have found double bunking in the mental health population decreased suicide rates. Committee members also asked questions about the Lansing Correctional Facility construction project and the savings the project is meant to capture, noting concerns about Lansing's turnover rate, the availability of staff to fill vacancies, and other long-term issues. Given these concerns, members asked what the impact would be if there were a delay in the project to allow more time to look at these issues. The Secretary identified issues such as the cost of materials going up, noting the estimated increase for next year is 5 or 6 percent.

Juvenile Services and Ongoing Implementation of Juvenile Justice Reform

The Deputy Secretary of Corrections (Deputy Secretary) discussed the multi-year process of implementing the juvenile justice reforms of 2016 SB 367 and 2017 House Sub. for SB 42 and noted Kansas is in the 17th month of this process. The Deputy Secretary reviewed the scope of reform and implementation research, updated the Committee on juvenile services' contributions to implementation of those reforms, highlighted data trends in juvenile justice and efforts to increase data capacity, and recognized the efforts of the many stakeholders who are reforming the system. The Deputy Secretary also discussed strengthening community supervision to align with the bills and noted examples, such as an emphasis on program or services delivery, while reducing the use of standard contacts in probation work and graduated responses and incentives.

The Deputy Secretary discussed reinvestment in community-based services and funding for specific statewide contracts, such as functional family therapy, sex offender assessment and treatment, and moral reconation therapy. The Deputy Secretary detailed efforts to build on pilot projects that began as early as 2013, investing in a core group of evidence-based programs accessible by all counties. He also reviewed new grant funding for community-based services, listed dollar amounts for approved Reinvestment Grants, and provided total amounts of reinvested dollars.

Finally, the Deputy Secretary discussed training and stated it is essential to implementation of evidence-based programs and practices, noting KDOC had provided more than 9,500 hours of training in FY 2017.

Prisoner Review Board

The Chairperson of the Prisoner Review Board presented testimony on the Board's primary work areas, including parole suitability hearings, final violation hearings and revocation waiver review, special conditions of post-incarceration supervision, and other file reviews such as pardon, discharge, functional incapacitation, and medical release. He also provided data on specific offender populations; parolees; public forums for those eligible for parole; final violation hearings, including offender rights and standard of proof information; and other file reviews, such as revocation hearings.

The Chairperson of the Prison Review Board responded to questions from Committee members concerning repeat offenders, parole supervision, program participation and completion as a factor in the release determination, and whether lack of access to these programs has hindered offenders being released.

Ongoing Implementation of Juvenile Justice Reform

The Director of Trial Court Programs (Trial Court Programs Director), Office of Judicial Administration (OJA), discussed Judicial Branch efforts toward implementation of 2016 SB 367. The Trial Court Programs Director also serves as chairperson of the SB 367 Judicial Branch

Implementation Team and the OJA representative on the Juvenile Justice Oversight Committee. She provided updates on collaborating with KDOC, the Supreme Court's approved graduated response grid, the earned discharge credit, the inter-rater reliability and validation study, and the development and implementation of the detention risk assessment tool. The Trial Court Programs Director also presented updates on new training protocols for judges, county and district attorneys, and defense attorneys and court service officers.

A representative of the Kansas Community Corrections Association (KCCA) endorsed the impact of SB 367, but emphasized the need for sustained funding of community-based programs as the legislation has eliminated other options. Additionally, the KCCA identified the following concerns: a lack of services targeted at lower-risk youth and consistency and availability of services statewide, particularly in rural areas; a lack of emergency placement options for youth who cannot return to their homes and the possibility some youth are diverted to the child welfare system; scheduling, transportation, and cost issues related to the 14-day hearing required for virtually every youth in detention; conflicts between KDOC procedures and forms concerning the Immediate Intervention Program (IIP) and district attorney concerns that these forms violate legal authority and responsibilities, as well as possible statutory conflicts with IIP standards; and the utility of the response grid.

A representative of Riley County Community Corrections stated "the premise behind SB 367 . . . was long overdue in Kansas," but also identified the following concerns: limited access to adequate records to complete the Kansas Detention Assessment Instrument (KDAI), particularly during non-business hours; lack of emergency placement options; delays in implementing multidisciplinary teams; inability to immediately impose graduated responses; and a lack of resources for cognitive-behavioral programs in small- to mid-sized districts.

A representative of Juvenile Services for the Sedgwick County Division of Corrections stated he agreed with the Riley County representative and identified additional problematic areas in implementation of SB 367, including the lack of training and coordinated implementation in line with the rolling dates in the bill; inability to share the entirety of the KDAI with the court as requested; lack of consensus surrounding the IIP; loss of funds for detention center operation costs with the replacement of the Juvenile Detention Facility Fund with the Alternatives to Detention Fund; and lack of a state data exchange contemplated by the law.

The Chairperson of the Juvenile Justice Oversight Committee (JJOC) presented an update from the JJOC. The JJOC Chairperson emphasized implementation of the report will take time and that, while not everyone is happy with SB 367, he hopes everyone will work on implementing the bill as enacted and improving on it. He noted he does not have the authority to ensure all agencies are working towards this implementation. The JJOC Chairperson stated his only suggested change to the law would be to not ask the JJOC to calculate anything, but rather to let the agencies themselves do their own calculations.

A representative of the Kansas County and District Attorneys Association (KCDAA) discussed concerns with the ability to place an offender in secure detention, case and probation term limits, waiver to adult status and extended juvenile jurisdiction prosecution, the detention risk assessment tool, and co-occurrence of child in need of care and juvenile offenses and recommended amendments in each of these areas.

Adult Inmate Prison Population Projections

The Executive Director of the Kansas Sentencing Commission presented information on current prison population characteristics; changes in population from FY 2016 to FY 2017; five-year prison admission trends; information on guideline new commitments; a comparison of admission types from FY 2016 and FY 2017 for males and females; information on parole and post-release supervision condition violators; and adult prison population trends and projections. Projections indicate population will exceed capacity within the ten-year projection window.

Proportionality in the Sentencing Grid

The Executive Director of the Kansas Sentencing Commission also presented information on proportionality of sentences within

Kansas statutes. He presented information on the Sentencing Commission's efforts on this issue, beginning in 2007, when the Kansas Criminal Code Recodification Commission asked the Sentencing Commission to review proportionality, to the present time. The Executive Director stated the Sentencing Commission recommends it reestablishes a proportionality committee to study the issue in preparation for the 2019 Legislative Session as well as collaborate with stakeholders to explore merging grids. A representative of the KCDAA also provided testimony on proportionality issues in the Kansas Criminal Code and indicated the KCDAA and its members are in the position to assist if needed or asked.

Preliminary Committee Comments and Recommendations

A Committee member expressed her interest in the issue of eliminating human trafficking, asked whether the Committee should be involved, and recommended the founder and Executive Director of the Wichita State University Center for Combating Human Trafficking. Committee members stated their interest in joint informational hearings.

November 2

Impact of Juvenile Adjudications and Diversions

The Chairperson of the Kansas Judicial Council's Criminal Law Advisory Committee presented the Judicial Council's report on 2017 HB 2352, which was approved by the Judicial Council on October 17, 2017. The report recommends against the passage of HB 2352 in its original form or as amended, noting the barrier is in the regulations governing the certification of law enforcement officers, as well as some constitutional issues, and amending KSA 60-421 would not change that.

Two private citizens presented testimony concerning how a juvenile adjudication has limited future employment opportunities, specifically employment as a law enforcement officer. A Committee member identified the issue of sealing records as another approach.

Romeo and Juliet Laws

Representative Highberger addressed the Committee about the current Romeo and Juliet law in Kansas, how it can still negatively impact youth, and the need to change the current language. Romeo and Juliet statutes generally provide lesser penalties for minors who engage in voluntary sexual conduct. Staff of the Kansas Legislative Research Department presented information on these laws in other states and identified different approaches in other states.

A concerned citizen and parent spoke about his concerns that under current Kansas law, a minor can be convicted of a felony for consensual sexual exploration. He shared details of how his son was almost convicted of such a crime and how it has affected his son's life.

A representative of the Kansas Association of Criminal Defense Lawyers presented testimony on the Association's belief that laws need to change in order to address the penalties youth suffer for consensual acts with other youth. She presented information on the current law, the changes proposed in 2017 HB 2290, and areas of the law on which the Association encourages discussion. Specifically, Romeo and Juliet laws do not include such acts as texting or electronic solicitation.

Efforts to Address Opioid Abuse in Kansas

The Kansas Attorney General provided testimony on Kansas' and national efforts to address the opioid abuse crisis. He noted methamphetamine remains the most problematic substance abuse issue in Kansas, and he asked lawmakers to focus on efforts to ensure opioid abuse in Kansas does not reach epidemic levels as it has in other areas of the country. The Attorney General also discussed efforts to dispose of unused medications, legislative changes to opioid overdose-reversal medication laws, encouraging insurance companies to review related policies, and urging congressional leaders to make treatment for drug addiction more affordable and accessible by passing new legislation in the Medicaid program, specifically the "Road to Recovery Act."

Legislation to Expand the SB 123 Program

The Executive Director of the Kansas Sentencing Commission presented testimony on legislation expanding the SB 123 program. He explained the program's mission to ensure public safety while effectively addressing recidivism by providing community-based substance abuse treatment to targeted, non-violent drug offenders. He also described 2017 legislation introduced by the Sentencing Commission: HB 2087, HB 2088, and HB 2090.

Conclusions and Recommendations

As information from KDOC indicates, a significant number of offenders are in need of and would benefit from treatment programs provided in the state correctional facilities as funds for such programs have been reduced in recent years. The Committee recommends the House Committee on Appropriations and Senate Committee on Ways and Means consider a plan to restore funding for inmate treatment programs in Kansas institutions in the amount of $1.5 million each over the next three years. Funds could be used for vocational programs, including those involving partnerships with private industries, and should be used to provide programs recommended for inmates to be eligible for parole. In the event such appropriations are made, the Committee requests the Secretary of Corrections report to the 2018 Joint Committee on Corrections and Juvenile Justice Oversight on how those funds are being used to implement and expand programs.

In light of the report provided by the Kansas Judicial Council, the Committee recommends the House Committee on Corrections and Juvenile Justice not pass 2017 HB 2352 as proposed or as amended, but should continue to study the issue and consider legislation changing how juvenile dispositions are treated with regard to future application of the offender. As part of its consideration, the House Committee should consider information on how other states have addressed these issues, including automatic expungement and the potential financial impact of these reforms.

Given the potential cost avoidance that would result from modifications to the SB 123 program *via* 2017 HB 2087, HB 2088, and HB 2090, but also acknowledging the current state budget may not be able to fully fund these three bills, the Committee recommends the House Committee on Corrections and Juvenile Justice monitor the state budget and, if possible, recommend passage and funding of the bills.

Given the long-term impact of construction on state operations, the lack of transparency in the bidding process, and notwithstanding the proviso in 2017 HB 2052 Sec. 39 concerning the sale of certain property in Leavenworth County, the Committee recommends the Joint Committee on State Building Construction and the State Finance Council delay the process for approving construction at the Lansing Correctional Facility until February 15, 2018, to give the Legislature an opportunity to more fully vet and approve plans for construction. Specifically, consideration should be given to whether Lansing is the appropriate location for the construction, the availability of sufficient staff and competitive pay for such staff, the potential cost avoidance or savings, and how the project will be funded until these savings are realized.

The Committee recommends the standing House Committee on Corrections and Juvenile Justice and the Senate Committee on Judiciary meet jointly to discuss human trafficking with input from the Attorney General's Human Trafficking Advisory Board, representatives of the Wichita State University Center for Human Trafficking, and other stakeholders.

The Committee requests the Kansas Sentencing Commission reconvene its proportionality committee and make recommendations based on the category and severity of crimes to the 2018 Joint Committee on Corrections and Juvenile Justice Oversight and the 2019 Legislature.

Similarly, the Committee recommends the House Committee on Corrections and Juvenile Justice recommend for passage a bill similar to 2017 HB 2092, aligning all financial loss crimes with the current threshold of $1,500. During the 2017 Legislative Session, the House Committee recommended the bill favorably for passage;

however, the bill was enacted without its original contents.

The Committee recommends the House Committee on Corrections and Juvenile Justice and the Senate Committee on Judiciary continue to study possible changes to Kansas' Romeo and Juliet laws, with Representative Highberger helping to develop background information to bring about a thoughtful change.

The Committee will send letters (included in the appendix to this report) to:

- The Kansas Chief Justice, explaining concerns had been brought to the Committee about implementation of multidisciplinary teams required to be appointed pursuant to KSA 2017 Supp. 38-2393; encouraging judicial districts to comply with this part of the law in order to execute the law uniformly across the state; and requesting a report by February 1, 2018, of any progress or failure of districts to perform as required under the law;

- The Secretary for Children and Families concerning the placement of runaways and status offenders in detention; reminding the Secretary of the fast-approaching implementation date of July 1, 2019, and the need for short-term care for children in need of care who fall in this category; stating the Committee expects the Department for Children and Families (DCF) and its contractors to be prepared to implement the law; and strongly encouraging DCF to find a permanent solution for how it provides necessary services to runaways and victims of human trafficking; and

- The Secretary of Corrections asking for more detail on the substantial increase in capacity at EDCF without the need for additional staff; expressing concerns that a lack of staffing will lead to further burnout, turnover, and violent episodes within the facilities; and encouraging the Secretary to ask for additional staffing if needed. In addressing capacity issues, the Committee encourages KDOC to consider electronic surveillance, as permitted by law, to help ease demand for lower security beds and to inform the Legislature of any necessary changes of law to facilitate creation or expansion of such programs.

The Committee requests legislation to:

- Stay limits on overall case lengths for juvenile offenders who abscond from supervision such that the case timeline does not begin until the dispositional order is entered and, in the event a juvenile absconds, time does not toll until the juvenile is found and brought back to the jurisdiction;

- Clarify a fee may be assessed as part of applications under the Immediate Intervention Program; specify the fee shall not exceed $100; provide that in the event a juvenile is unable to pay the fee in whole, the juvenile may negotiate to pay a portion of the fee or participate in community service to satisfy the obligation; prohibit KDOC from reducing the amount of grants awarded by the amount of fees collected and from transferring funds to KDOC or the State General Fund; and allow juvenile corrections advisory boards to determine the amount of the fee;

- Amend KSA 2017 Supp. 75-52,161(d)(7) to change "calculate" to "monitor," as requested by the JJOC; and

- Allow a juvenile's attorney to waive appearance at the 14-day detention review hearing in KSA 2017 Supp. 38-2343, or allow the juvenile to appear *via* audio-video communications.

Report of the Joint Committee on Information Technology to the 2018 Kansas Legislature

Chairperson: Representative Blake Carpenter

Vice-chairperson: Senator Mike Petersen

Other Members: Senators Marci Francisco, Tom Holland, Dinah Sykes, and Caryn Tyson; and Representatives Pam Curtis, Keith Esau, Kyle Hoffman, and Brandon Whipple

Charge

The Committee is directed to:

- Review, monitor, and report on technology plans and expenditures;
- Review and monitor state agency and institution technology plans and expenditures;
- Make recommendations to the Senate Committee on Ways and Means and House Committee on Appropriations on implementation plans, budget estimates, and three-year strategic information technology plans of state agencies and institutions;
- Evaluate the status of the Kansas Eligibility Enforcement System project;
- Evaluate the status of cybersecurity preparedness within the State;
- Follow up with the Kansas Department of Commerce on activity related to the data breach that occurred in March 2017;
- Allow members of the private sector to present relevant information to the Committee; and
- Review information technology security reports and information technology project reports, in executive session, from the Legislative Division of Post Audit.

December 2017

Joint Committee on Information Technology

Annual Report

Conclusions and Recommendations

The Committee agreed on the following recommendations to the 2018 Legislature:

- Request the Office of Information Technology Services (OITS) present a clear roadmap for the process of mandating actions to improve cybersecurity for state agencies. OITS should ensure the roadmap treats all agencies fairly;
- Request OITS include in its plans the expectation that, if agencies are given the option to take control of their own cybersecurity efforts, agencies be required to consent to a cybersecurity responsibility statement, which would specify actions necessary to improve cybersecurity within each agency and identify individuals within each agency responsible for oversight of cybersecurity activities;
- Elevate the relevance of the cybersecurity discussion, the importance of preventative action, and the responsibility of the State to protect the data entrusted to the State by its citizens;
- Determine how agencies may implement any changes necessary to improve cybersecurity;
- Continue investigation into what needs to be accomplished to allow archiving of the livestream of committee hearings held in the Old Supreme Court Room;
- Enable OITS to provide oversight beyond the initial stages of a project;
- Encourage OITS to develop more tools that will provide better project portfolio management, such as automated reporting tools and software, and work toward better collaboration and integration of systems to avoid duplicative projects; and
- Schedule a meeting of the Joint Committee on Information Technology early in the 2018 Session to consider OITS' proposed roadmap for information technology security and make recommendations for legislative action in the 2018 Session, including discussion on 2017 HB 2331 and 2017 SB 204.

Proposed Legislation: None

Background

The Joint Committee on Information Technology (Committee) has statutory duties assigned by its authorizing legislation in KSA 46-2101 *et. seq.* The Committee may set its own agenda, meet on call of its Chairperson at any time and any place within the state, and introduce legislation. The Committee consists of ten members: five senators and five representatives.

The duties assigned to the Committee by KSA 46-2102 and by KSA 2017 Supp. 75-7201 *et seq.* are as follows:

- Study computers, telecommunications, and other information technologies used by state agencies and institutions. The state governmental entities defined by KSA 2017 Supp. 75-7201 include executive, judicial, and legislative agencies and Board of Regents institutions;
- Review proposed new acquisitions, including implementation plans, project budget estimates, and three-year strategic information technology (IT) plans of state agencies and institutions. All state governmental entities are required to comply with provisions of KSA 2017 Supp. 75-7209 *et. seq.* in submitting such information for review by the Committee;
- Monitor newly implemented technologies of state agencies and institutions;
- Make recommendations to the Senate Committee on Ways and Means and the House Committee on Appropriations on implementation plans, budget estimates, and three-year plans of state agencies and institutions; and
- Report annually to the Legislative Coordinating Council (LCC) and make special reports to other legislative committees as deemed appropriate.

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

KSA 2017 Supp. 75-7210 requires the legislative, executive, and judicial chief information technology officers (CITOs) to submit annually to the Committee all IT project budget estimates and revisions, all three-year plans, and all deviations from the state IT architecture. The Legislative CITO is directed to review the estimates and revisions and the three-year plans and the deviations, and then to make recommendations to the Committee regarding the merits of and appropriations for the projects. In addition, the Executive and Judicial CITOs are required to report to the Legislative CITO the progress regarding implementation of projects and proposed expenditures, including revisions to such proposed expenditures.

Committee Activities

The Committee met during the 2017 Interim, as authorized by the LCC, on September 8 and 22, 2017. In addition to these interim meetings, the Committee met during the 2017 Session on March 23, May 3, and May 10, 2017. In addition, the Committee toured the Kansas Intelligence Fusion Center jointly with the House Committee on Government, Technology, and Security on May 23, 2017.

March 23

The Executive CITO presented the most recent Kansas Information Technology Office (KITO) quarterly report of IT projects and explained why four projects were in "alert" status. Members posed questions to the Chief Information Officer (CIO) of the Kansas Department of Health and Environment (KDHE) regarding the Medicaid Management Information System modernization project. The CIO also briefly outlined the history of the Kansas Eligibility Enforcement System (KEES) and provided a status update on that project. The Committee also elected a new Chairperson and Vice-chairperson.

May 3

The CIO of KDHE provided a more thorough update on KEES. The CIO explained that the major challenge in implementing the system has been integrating the older legacy systems into KEES. The CIO then answered several questions posed by members.

In a closed (executive) session, representatives of the Kansas Department of Commerce (KDC) briefed the Committee on the breach occurring within that agency's data system, affecting many Kansas job-seekers.

May 10

The Committee continued discussion with representatives of KDC, in executive session, regarding the data breach. The Committee returned to an executive session to hear an overview of the Kansas Intelligence Fusion Center.

September 8

A representative of the Legislative Division of Post Audit (LPA) presented the most recent IT audits of the Office of the Attorney General, the Kansas Department of Education, and Larned State Hospital. A portion of the LPA representative's presentation was conducted in executive session. LPA staff also presented an update on the KanDrive project undertaken by the Kansas Department of Revenue as a function of LPA's IT project monitoring authority. LPA noted the project was in "caution" status due to concerns regarding the scope, schedule, and quality of the project. LPA also noted enhancements to the project have raised the cost of the project to $8.6 million from the original $6.4 million.

The Judicial CITO presented a status update on projects within the Judicial Branch, including a centralized case management system for both district courts and appellate courts, judicial tools software, and an upgrade of the Judicial Branch website. The CITO explained the proposed case management system will increase efficiency, improve data quality and performance measurements, and enable work-sharing among district courts. He further explained, due to the proposed case management system upgrade, it is necessary to also upgrade the Judicial Branch website.

The Acting Legislative CITO told the Committee the LCC was in the process of recruiting and hiring a new Legislative CITO. The Director of Application Services for the Kansas Legislative Office of Information Services (KLOIS) presented on new and continuing projects within the Legislature, including a new Senate chamber voting system, improvements to the Kansas Legislative Information Systems and Services Law Making system used by the Office of Revisor of Statutes, House and Senate chamber automation, improvements to the committee system, and testing for deployment of Windows 10. The Director for Technical Services for KLOIS also presented an overview of new services offered within the Legislature, including audio streaming from committee rooms, new computers for staff and legislators issued prior to the 2018 Session, and a pilot program to explore the benefits of data encryption.

The Executive CITO presented the most recent quarterly report, highlighting projects in "caution" and "alert" status. He also referenced projects recently approved.

The Executive Deputy Chief Information Security Officer (CISO) presented an overview of how cybersecurity funds allocated to the Office of Information Technology Services (OITS) in the 2017 Session will be used in the coming year: tools and services such as data logging, central user analysis, agency-wide incident response, and denial-of-service protection. He also cited the need for a long-term fiscal solution to enable OITS to provide centralized authority in order to coordinate resources across agencies to improve state cybersecurity.

September 22

The Committee again heard from the CIO of KDHE for an update on KEES. He noted the system went live statewide on August 28, 2017; ongoing support and maintenance will regularly update the system and a new operations manager will work with the vendor (Accenture) to enhance the system. The CIO then answered questions from members, including on three lessons learned from managing the project: 1) dividing such a large project into three phases enabled the team to maintain control of the project; 2) unwavering executive support kept the project stable; and 3) maintaining a good relationship with the vendor while holding the vendor accountable for the specific terms of the contract was a challenging balancing act.

The Deputy Attorney of KDC updated the Committee on the extensive data breach that occurred in March 2017. The Deputy Attorney said KDC clients whose data had been compromised were notified *via* e-mail; clients without valid email addresses were not notified by any other manner. The Committee then heard the remainder of KDC's presentation in executive session.

The Executive CISO responded to questions presented by members at the September 8 meeting. The CISO stated a number of obstacles must be overcome in making state agencies secure from cyberattacks; among them are a lack of centralized authority, a dearth of cybersecurity professionals in state government, and a lack of funding for cybsersecurity measures. The CISO recommended the Committee use 2017 SB 204, a cybersecurity bill then in the Senate Committee on Ways and Means, as a template for legislation introduced in the 2018 Session.

The Executive CITO presented a summary of portfolio project management (PPM). He stated it is an approach that provides better project execution and fewer project failures, and adds value through better outcomes. The CITO then made several recommendations to the Committee based on the principles of PPM, including revising the KITO project threshold of $250,000 to recognize both cost and risk and transforming KITO into an Enterprise Project Management Office.

The Secretary of Revenue provided an update on the KanLicense project. He noted earlier attempts to modernize the system were unsuccessful so those projects were stopped and the project managers took a new approach in December 2016. He noted the first approach would have cost $40 million, whereas the revamped project costs are estimated to be less than $10 million.

Conclusions and Recommendations

No legislation was recommended for introduction. The Committee agreed on the following recommendations:

- Request OITS present a clear roadmap for the process of mandating actions to improve cybersecurity for state agencies. OITS should ensure the roadmap treats all agencies fairly;
- Request OITS include in its plans the expectation that, if agencies are given the option to take control of their own cybersecurity efforts, agencies be required to consent to a cybersecurity responsibility statement, which would specify actions necessary to improve cybersecurity within each agency and identify individuals within each agency responsible for oversight of cybersecurity activities;
- Determine ways in which the Legislature may elevate the importance of the discussions surrounding cybersecurity within the State as the Legislature has the responsibility to protect data provided to the State by citizens in the course of doing business with the State;
- Determine how agencies may implement any changes necessary to improve cybersecurity;
- Continue investigation into what needs to be accomplished to allow archiving of the livestream of committee hearings held in the Old Supreme Court Room;
- Enable OITS to provide oversight beyond the initial stages of a project. (A member, noting previous consolidation initiatives and then return to distributed authority, cautioned members not to be precipitous regarding consolidation of authority);
- Encourage OITS to develop more tools that will provide better project portfolio management, such as automated reporting tools and software, and work toward better collaboration and integration of systems to avoid duplicative projects; and
- Schedule a meeting of the Joint Committee on Information Technology early in the 2018 Session to consider OITS' proposed roadmap for IT security and make recommendations for legislative action in the 2018 Session, including discussion on 2017 HB 2331 and 2017 SB 204.

Report of the Joint Committee on Kansas Security to the 2018 Kansas Legislature

Chairperson: Representative Kevin Jones

Vice-chairperson: Senator Steve Fitzgerald

Other Members: Senators John Doll, Dan Goddard, Pat Pettey, and Lynn Rogers; and Representatives Michael Houser, Jarrod Ousley, Louis Ruiz, and Eric Smith

Charge

KSA 46-3301 directs the Joint Committee to study, monitor, review, and make recommendations on matters related to the security of state officers or employees, State and other public buildings and other property and infrastructure in the state, and to consider measures for the improvement of security for the State. In addition, the Committee is authorized to address these additional topics:

- Emergency communications;
- Organization of private, civilian resources related to state emergency preparedness and security; and
- Resources and readiness of the Kansas National Guard.

December 2017

Joint Committee on Kansas Security

Annual Report

Conclusions and Recommendations

The Committee recommends the Secretary of State, for all upcoming elections, protect the integrity of Kansas voting machines and protect against hacking, and assure the voters of Kansas that voting is tamper proof.

The Committee recommends the House Committee on Appropriations and the Senate Committee on Ways and Means consider the Kansas Bureau of Investigation enhancement presented to fund agent positions, particularly investigation positions. The Committee recognizes the need for the Legislature to study Kansas' overall law enforcement capacity as compared with demands on law enforcement and as compared with capacity in other states.

The Committee recommends the House Committee on Appropriations and the Senate Committee on Ways and Means consider authorizing the Kansas Division of Emergency Management to fill a Planner II National Bio and Agro-defense Facility position for FY 2019.

The Committee recommends continuity and priority of the Kansas Department of Agriculture's Emergency Exercise Plan for biosecurity and the Kansas Agriculture Emergency Response Corps through administrative changes, by placing those duties into statute. It suggests the Department of Agriculture recommend a bill.

The Committee commends Wolf Creek Nuclear Generating Station officials on their security measures and security planning.

Proposed Legislation: The Committee requests a bill to add a designated ranking minority member to the Committee.

Background

The 2004 Legislature created the Joint Committee on Kansas Security (KSA 2017 Supp. 46-3301) to study, monitor, review, and make recommendations for the following:

- Matters relating to the security of state officers and employees;
- Security of buildings and property under the ownership or control of the State;
- Matters relating to the security of a public body or agency, public building, or facility;
- Matters relating to the security of the infrastructure of Kansas, including any information system; and
- Measures for the improvement of security for the state.

The Legislative Coordinating Council also directed the Committee to study emergency communications; organization of private, civilian resources regarding emergency preparedness; and the resources and readiness of the Kansas National Guard.

Committee Activities

The Committee met in the Statehouse on May 2 and October 3 and 5. The Committee toured Wolf Creek Nuclear Generating Station (Wolf Creek) on October 3 and, on October 4, heard presentations at Kansas State University (K-State) on the Biosecurity Research Institute (BRI), the National Bio and Agro-defense Facility (NBAF), and the TRIGA Mark II nuclear reactor. On October 4, the Committee also heard a presentation at the offices of the Kansas Department of Agriculture (KDA) in Manhattan.

Security of State Officers and Employees

State office security review. On October 5, the Secretary of Administration reported the Governor had asked her to coordinate a review of facility security and training efforts at state offices, following the September 19, 2017, shooting of a Department of Revenue employee in Department of Revenue offices in Wichita. The Secretary reported she would be working primarily with the Kansas Highway Patrol (KHP), the Adjutant General, and the Office of Information Technology Services to address physical security measures, technology needs, training opportunities, and policy updates. She noted the State manages more than 400 leased buildings across Kansas and security arrangements vary for those buildings. The Secretary offered to provide an update to the Committee in January 2018.

Capitol Complex security. The Captain of Troop K of the KHP, the Capitol Police, described the role of the Capitol Police in protecting state employees and visitors in the Capitol and the Capitol Complex. He also described the types of officers assigned to the Capitol Police and their roles. The 15 full-time uniformed officers include a 2-officer investigation team with specialized training who work closely with officers from federal, state, and local law enforcement agencies; a public resource/public information officer (a new position in 2017); and 3 officers assigned to the bicycle patrol. He stated the bicycle patrol provides quick response times in the Capitol Complex, particularly during special events.

The Captain noted access to the Capitol is restricted *via* key card access and screening processes. The Capitol Police oversee the key card process and monitor users. In the screening process, he noted Capitol Police are operating x-ray inspection systems manufactured in 2010 and "metal detector" systems. He stated the systems' warranties have expired, officers have reported the systems shut down unexpectedly, and both systems were exposed to dust and relocations during renovations in the Capitol. He provided estimates of costs prepared in 2016 for system replacement and warranties of approximately \$168,080; adding inspection to the Capitol's loading dock was estimated at \$108,505.

The Captain provided a listing of 2,355 Capitol Police activities for January through August 2017. Those activities included 1,428 car stops, 59 instances of citizen assistance and 209 of services rendered, 266 instances of investigating subjects, 23 medical calls, 9 suspicious packages, and 18 threats. He urged lawmakers who receive hateful or threatening statements to report those incidents to both their local law enforcement agencies and to the KHP.

Public Safety Communications

FirstNet. At its May meeting, the Committee reviewed Kansas' options for participation in the FirstNet Public Safety Network.

FirstNet, an independent authority within the National Telecommunications and Information Administration, was created as part of the Middle Class Tax Relief and Job Creation Act of 2012 and given the task to provide emergency responders with a nationwide high-speed, wireless broadband network dedicated to public safety use. The network could be used for voice messages, text messages, images, video, and location information, supplementing current land mobile radio communications. Each state chooses whether to opt in to the nationwide network or opt out and build its own network fully interoperable with the nationwide network. Federal law specifies governors have no more than 90 days after receiving the FirstNet proposed state plan to choose whether to opt in or opt out.

In April 2017, AT&T was selected as the FirstNet nationwide provider. Each public safety agency will choose whether to use FirstNet. User fees are expected to pay for the system.

A representative of the Legislative Division of Post Audit (LPA) reviewed that office's performance report, *Office of Information Technology Services: Reviewing the State's Options Related to the FirstNet Public Safety Network*, released in April 2017. LPA concluded that, although the State could face some risks by opting in, it would have to overcome several significant challenges in order to successfully opt out. Those challenges would include financing plus meeting deadlines for planning and implementation of this complex project. According to the report, FirstNet asserts states will not incur costs to build or maintain the network, but there are some concerns states could have costs in the future.

The Chairperson of the Kansas 911 Coordinating Council (Council Chairperson) provided information on a letter written by the Council recommending to the Governor that he opt in to the nationwide network. The Council Chairperson noted 57 dispatch centers already were using AT&T NextGeneration 911 systems selected by the 911 Coordinating Council and 30 more expected to be online in 2018. He stated his belief subscriber costs to use the FirstNet network will be at or below rates paid by first responders for their current communication services.

The Director of Intelligence and Communications, Adjutant General's Department, testified the State conducted outreach and research to determine State and first responder requirements for the network and provided that information to FirstNet. He provided a document developed by a team including state and local officials and representatives of first responder organizations to use to evaluate the AT&T proposal for Kansas prior to the Governor's decision to opt in or opt out. The Chief Information Technology Officer of the Executive Branch also provided information on the upcoming evaluation of the AT&T proposal for the State.

The Kansas Division of Emergency Management (KDEM) Response and Recovery Branch Director (KDEM Director), also provided general information about FirstNet and its implementation to the Committee on October 5. He stated a top priority will be deploying the network in places where coverage may be difficult.

(*Note*: On August 15, 2017, the Governor announced Kansas would participate in the nationwide FirstNet network.)

Kansas Interoperability Communications System (KSICS). At its meeting on October 5, the Committee received testimony from the KDEM Director regarding KSICS. KSICS is the daily means of communication for the Kansas Department of Transportation (KDOT), KHP, and 28 other state agencies using 6,237 radios. It provides daily or statewide interoperable use for 24,317 user radios associated with 1,084 non-state entities, an 800 MHz radio frequency band, and 76 antenna sites (towers) across the state. He stated KSICS is expected to continue for at least another ten years, as land mobile radios remain important to emergency communications. The spectrum is restricted by the Federal Communications Commission to public safety use.

(*Note*: The *Kansas Statewide Efficiency Review* report by Alvarez and Marsal, issued in January 2016, recommended KDOT evaluate selling or leasing the state radio system operation to commercial users. KDOT contracted with MissionCriticalPartners to further study the issue. In a report to KDOT dated July 6, 2017, the contractor reported it found limited opportunities for private sector involvement in certain aspects of KSICS operations and maintenance but increased costs to end-users would result from adoption of most options.)

Civilian Resources for Emergency Preparedness

The KDEM Director, on October 5, also updated the Committee on KDEM's roles in emergency preparedness and response. He stated emergency management is the organized analysis, planning, decision making, and assignment of available resources to mitigate, prepare for, respond to, and recover from the effects of all hazards. In Kansas, the top ten hazards in order of probability are flood, tornado, windstorm, winter storm, wildfire, agricultural infestation, hailstorm, hazardous materials release, utility or infrastructure failure, and drought. Examples of mitigation, defined as "activities aimed at or eliminating or reducing the long-term risk of property damage and loss of life from hazards and their effects," include zoning and building codes, floodplain buyouts, safe rooms, and radio repeaters. Preparedness involves planning, training, and exercises to test that training.

The KDEM Director reviewed responsibilities by level of government. He stated specific emergency actions and responsibilities are within each county's emergency operations plan, which describes how the government will respond to critical tasks in an emergency—by whom (and lines of succession), by what authority, and using what resources. Major functions of local government in emergencies include direction and control, communications, emergency public information, evacuation, mass care, and resource management. A county declaration of emergency is the first step in accessing other resources, *e.g.*, by activating mutual aid agreements, and in providing access to state assistance. He described local Citizen Corps Councils and urged involvement in them.

State government responsibilities were described by the KDEM Director as developing and maintaining a statewide comprehensive emergency management program; supplementing and facilitating local efforts before, during, and after emergencies; providing guidance and assistance to localities through program development; and coordinating and integrating resources to local needs. He noted some of the resources coordinated through state efforts are private, and personnel of the State also coordinate with private organizations, such as church denomination assistance groups. State assistance is available when capabilities do not exist within the affected county or region, the county has exhausted mutual aid and contractor support, and the county has declared an emergency.

If damages exceed per capita thresholds set annually, a federal disaster may be declared, making assistance available to the State and to local and tribal governments for public facilities or infrastructure, the KDEM Director stated. Individual assistance is also available in some instances, such as emergency loans through the U.S. Department of Agriculture, small business loans, and housing assistance.

Civilian involvement in intelligence sharing. The Adjutant General, testifying October 5, noted the Kansas Intelligence Fusion Center (KIFC) analyzes systems-level threats to Kansas critical infrastructure and works with private industry to improve cybersecurity. Analysts from private industry participate. He also noted partnerships with K-State and the University of Kansas on bio-threats.

Resources and Readiness of the Kansas National Guard

The Adjutant General appeared before the Committee on October 5 to provide an overview of the readiness and staffing of the Kansas National Guard. He thanked the Legislature and other Kansans for their support and expressed his pride in the efforts of National Guard members, civilians in KDEM and Kansas Homeland Security, and their families. He noted approximately 1,000 soldiers and airmen had deployed around the world in the previous year, and 1,200 were preparing to deploy in the next year.

The Adjutant General described ways in which the Adjutant General's Department works to reduce inefficiencies and mitigate effects of any reductions in resources. He stated this includes seeking out partnerships that better control state funding requirements. Efforts to identify opportunities to reduce costs by consolidating missions and maintenance include relocating Kansas National Guard Headquarters, the KIFC, and KDEM to Forbes Field, which also would better establish Forbes Field as a joint activity and lessen the likelihood it would be closed by a Base Realignment and Closure commission. He noted state moneys leverage matching federal dollars. He also pointed to energy-use reduction efforts.

The Adjutant General identified his top three challenges to the State and nation: the federal debt and other federal obligations will leave fewer resources available for defense; non-state actors have joined Russia, China, Iran, and North Korea as conventional and cyber threats; and few young individuals are able and willing to serve in the armed forces. He suggested benefits for Guard members, such as tuition assistance, compete with benefits available to Guard members in nearby states.

Kansas Bureau of Investigation Resources

On October 3, the Director of the Kansas Bureau of Investigation (KBI) stated the agency lacks resources to meet the expectations of citizens, law enforcement partners, and prosecutors. The KBI Executive Officer provided more detailed information.

The Executive Officer stated numbers of violent crimes (murder, rape, robbery, and aggravated assault and battery) are above the ten-year average and numbers have increased in the past two years. The numbers of burglary and theft crimes have declined, but motor vehicle thefts have increased. These increases have resulted in increased demand for KBI investigative services, the Executive Officer said, and she noted 70 percent of Kansas law enforcement agencies have ten or fewer commissioned officers.

The Executive Officer reviewed examples of crimes the KBI has not been able to investigate. The KBI has only six specially trained agents to investigate Jessica's Law crimes against children; 100 physical child abuse or endangerment offenses were reported by jurisdictions with no investigators and the KBI did not work those cases. The KBI stopped accepting white collar and other financial crimes in 2012 unless the case involves a public official; the agency investigates 50-60 cases a year involving governmental integrity. However, data show Kansans lost at least $7 million from Internet-based financial crimes and more than $86 million in reported theft losses in 2016. She noted methamphetamine remains the greatest drug threat in the region, but heroin imports increased sevenfold since 2008 and border seizures of fentanyl increased 83 percent. Human trafficking also remains a major area of concern.

A graphic the Executive Officer reviewed showed a general decline in the number of funded agent positions, from 99 in FY 2010 to 74 in FY 2017 and FY 2018. Separate graphics showed investigative declinations increased from approximately 18 percent in FY 2014 to more than 30 percent in FY 2017, and overtime expenditures increased 733 percent from FY 2012 through FY 2016 to $300,351 in FY 2016. The percentage of cases substantially completed within 90 days decreased from approximately 55 percent to approximately 33 percent from FY 2013 to the end of FY 2017.

The Executive Officer also provided information on numbers of officers assigned to major violent crime investigations and proactive narcotic enforcement: Kansas, 65 total; Oklahoma, 166 total; Nebraska, 90 total; Missouri, 103 total; Iowa, 78 total; and Arkansas, 88 total. (Colorado did not provide the requested information.)

The Assistant Director of the KBI provided information on investigation of cybercrimes. He stated, of the approximately 280,000 complaints the Federal Bureau of Investigation (FBI) receives each year, Kansas ranks 31st in the number of subjects, 32nd in the number of victims, and 33rd in financial loss; 1,963 Kansas victims reported Internet crime to the FBI in 2016. He discussed best practices for combating cybercrime, including establishing strong governance, defining who should be involved, developing collaborative public and private relationships, and generating interlocking response strategies; Michigan was offered as an example of a state following many best practices. He stated the KBI's vision for investigating cybercrime would include digital forensics, cyber investigation, investigation of child pornography and online exploitation of children, intelligence gathering, and technical support, with each of those "lanes" requiring specific skill sets and training.

The October 3 meeting was closed for 15 minutes pursuant to KSA 2016 Supp. 75-4319(a), as amended by Section 4 of Chapter 73 of the 2017 Session Laws, to allow KBI officials and Committee members to further discuss cybercrime investigations. (*Note*: Staff were not present.)

Biosecurity

Biosecurity Research Institute. The Committee and staff members received a briefing at K-State from the Director of the BRI. It focuses on infectious diseases that threaten livestock and humans, pathogens that threaten food crops, food processing methods to ensure food safety, the biology of pathogens and diseases, and arthropod-borne diseases. The BRI Director noted the BRI has 14 research laboratories with support spaces that meet biosafety level 3 (BSL-3) requirements, where scientists can study very serious threats to the nation's food supply and infectious diseases. The BRI also contains facilities for biosafety and biocontainment training, molecular virology and immunological studies, arthropod containment, and plant and cell culture. The BRI Director described, in general terms, the multiple infrastructure and safety procedures in place to prevent releases of pathogens.

National Bio and Agro-defense Facility. At the BRI, the Committee and staff received a briefing on the NBAF under construction next to the K-State campus. The $1.25 billion, 580,000-square-foot facility will provide integrated research, response, and diagnostic capabilities to protect animal and public health. The NBAF Project Manager stated the facility will include a completely isolated BSL-4 (the highest safety level) laboratory; currently, six are in operation in the nation, he said. He described in general terms design considerations and systems to prevent the release of any hazardous materials, including special air handling and special treatment of waste, and stated the three parts to security are physical, operational, and electronic.

Kansas Department of Agriculture. After introductory remarks from the Secretary of Agriculture, the Committee and staff received information from KDA staff regarding responses to plant and animal diseases.

The KDA Chief Counsel explained the statutory authority of the Secretary of Agriculture to respond to outbreaks of plant pests and animal diseases, for example, to eradicate plant pests and to quarantine animals with certain contagious or infectious diseases. If a quarantine is issued, KDA officials may enter private property; enforce directions, rules, and regulations to prevent spread of the disease; prevent animal shipments; and take other steps.

The Animal Health Commissioner described the process of a disease investigation. He described a recent outbreak of equine infectious anemia in horses linked to an informal horse racing facility in Finney County and the actions taken to identify horses with the disease and prevent further infection. All horses that tested positive for the disease had to be euthanized, with the only other option being lifelong quarantine.

The KDA Emergency Management Coordinator and the Program Manager for the Kansas Agriculture Emergency Response Corps (KAERC) provided information on a stop-movement response to an animal disease outbreak and exercises to test those response plans. They explained that, during a large-scale incident, the KAERC will use the wide range of skills of volunteers in local communities in roles not filled by state and federal staff. KAERC volunteers will complete several training courses.

The Secretary stated the KDA would need veterinarians, communications personnel, volunteer coordinators, and other trained persons to deal with any outbreak. She asked the legislators to consider giving the KDA statutory responsibility for outbreak planning and exercises and for a trained volunteer corps.

Nuclear Facilities

Wolf Creek. The Committee and staff traveled to Wolf Creek, near Burlington, on October 3 for an overview of the facility and a tour of a portion of the facility. Emergency preparedness and general security were among the issues addressed by Wolf Creek officials.

K-State. Committee members and staff received a briefing at the TRIGA Mark II Nuclear Reactor Facility at K-State from its manager. The reactor is licensed to operate at up to 1.25 megawatts and went critical in 1962. The manager described its research capabilities and, in general terms, safety for the facility.

Conclusions and Recommendations

The Committee recommends the Secretary of State, for all upcoming elections, protect the integrity of Kansas voting machines and protect against hacking, and assure the voters of Kansas that voting is tamper proof.

The Committee recommends the House Committee on Appropriations and the Senate Committee on Ways and Means consider the KBI enhancement presented to fund agent positions, particularly investigation positions. The Committee recognizes the need for the Legislature to study Kansas' overall law enforcement capacity as compared with demands on law enforcement and as compared with capacity in other states.

The Committee recommends the House Committee on Appropriations and the Senate Committee on Ways and Means consider authorizing KDEM to fill a Planner II NBAF position for FY 2019.

The Committee recommends continuity and priority of the KDA's Emergency Exercise Plan for biosecurity and the KAERC through administration changes, by placing those duties into statute. It suggests the KDA recommend a bill.

The Committee requests a bill for introduction to add a ranking minority member for each interim committee. (After consultation with staff of the Revisor of Statutes, it was determined the Committee bill would propose an amendment to KSA 2017 Supp. 46-3301 to add designation of a ranking minority member for the Joint Committee on Kansas Security. It was noted KSA 2017 Supp. 46-3301(f) authorizes the Committee to introduce only legislation deemed necessary in performing the Committee's functions. A separate bill will be drafted to designate a ranking minority member for each interim committee, to be introduced by an individual legislator or a standing committee.)

The Committee commends Wolf Creek officials on their security measures and security planning.

Report of the Legislative Budget Committee to the 2018 Kansas Legislature

CHAIRPERSON: Representative Troy Waymaster

VICE-CHAIRPERSON: Senator Carolyn McGinn

RANKING MINORITY MEMBER: Representative Kathy Wolfe Moore

OTHER MEMBERS: Senators Rick Billinger and Laura Kelly; and Representatives Erin Davis, Steven Johnson, Bill Sutton (substitute), and Jim Ward (substitute)

CHARGE

The Committee is statutorily directed to compile fiscal information, study and make recommendations on the state budget, revenues, and expenditures; and the organization and functions of the State, its departments, subdivisions, and agencies with a view of reducing the cost of state government and increasing efficiency and economy. In addition to the statutory duties, the Committee is to review the following:

- Changes to the approved budget for state agencies that will be submitted in the 2017 Interim, including the new Performance-Based Budgeting System;
- State General Fund receipts and the impact of statutory changes to be implemented in July;
- The implementation of the new school finance formula;
- The financial, possibly procedural, changes and Centers for Medicare and Medicaid Services licensing for the Osawatomie State Hospital and Larned State Hospital, along with the use of other facilities on the Larned State Hospital campus; and
- Other topics, including the new state employee health clinic; Kansas Public Employees Retirement System unfunded actuarial liability; the use of bonds in the Kansas Department of Transportation; the need for, funding of, and source for cybersecurity; changes to the Lansing Correctional Facility; and funding and the impact of the recent wildfires in Kansas.

January 2018

Legislative Budget Committee

Annual Report

Conclusions and Recommendations

Following its review and discussion, the Committee made no recommendations.

Proposed Legislation: None

Background

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

Committee Activities

The Committee met four times during the interim. On August 8, 2017, the Committee reviewed the Temporary Assistance for Needy Families (TANF) Funded Home Visitation Program, recertification status of Osawatomie State Hospital (OSH), an update on the status of the request for proposal (RFP) regarding OSH, review for the 2017 pay plan implementation, and an update on correctional facilities. The Committee met on October 5, 2017, for updates on State Fire Marshal Disaster activities, Kansas Department of Transportation (KDOT) bonding, OSH recertification, KanCare 2.0, Lansing Correctional Facility replacement, the new school finance formula, and selected Kansas Efficiency Study recommendations and agency responses. The Committee met on November 11, 2017, to review the consensus revenue estimates and receive an overview of agency budget requests. Finally, the Committee met on December 20, 2017, to review Regents universities' efficiency studies, Kansas Public Employees Retirement System (KPERS) Briefing Valuation Report, an Office of Information Technology Services (OITS) update on IT modernization, a briefing on the Comprehensive Response to School Finance Decision meeting, the status of the new state employee health clinic, and selected agency issue briefings.

Specific information about each topic follows.

Temporary Assistance for Needy Families Funded Home Visitation Program

Kansas Legislative Research Department (KLRD) staff provided an overview of the TANF Funded Home Visitation Program and included a review of background information regarding the Legislature's funding for program expansion and the intended recipient of the program funds. The Committee had concerns regarding the manner in which the agency planned to distribute the funds.

Kansas Department for Children and Families (DCF) staff provided an update on the RFP on the Home Visitation Program. The Committee members noted the clear legislative intent in the documents provided. DCF staff indicated the agency would issue the funds to the Kansas Children's Service League to comply with legislative intent.

Osawatomie State Hospital Update

The Secretary for Aging and Disability Services provided an update on RFPs to construct a 100-bed psychiatric care facility at OSH and get an engineering study of vacant buildings.

Timelines for the 100-bed psychiatric facility and the engineering study of vacant buildings were provided.

An agency representative noted that an abbreviated acute care hospital survey was concluded on August 15, 2017. The Centers for Medicare and Medicaid Services (CMS) determined OSH is in compliance. The reasonable assurance period began August 15, 2017, and extends for 90 days; if, after that time, the hospital is determined to be in compliance with all Medicare conditions of participation, the hospital will be certified for participation in the Medicaid and Medicare programs.

OSH has been approved for recertification, effective December 15, 2017. Additional paper work will be completed prior to notification of payment for claims. Working in conjunction with the Kansas Department of Health and Environment (KDHE), one-time disproportionate share hospital (DSH) retroactive payments will be made in the amount of $7.5 million for OSH and $2.3 million for Larned State Hospital (LSH). Recent surveys that were conducted at OSH and LSH were highlighted. Most concerns have already been addressed or have been improved. Committee members received an updated copy of the ligature points of concern with timelines. Issues with abuse and neglect are being addressed either by termination of employment, additional training, or retraining efforts.

Update on Pay Plan Implementation

A representative from the Kansas Department of Administration provided an update on the pay plan implementation and basis and stated the update is limited to the Legislative and Executive Branches. The Judicial Branch received an across-the-board 2.5 percent increase. The increase was based on:

- Current classified regular and unclassified benefits-eligible employees who have been continuously employed by any state agency since July 1, 2012, but have not received any increases to their regular base rate of pay since that date, are proposed to receive a 5.0 percent increase; and
- Current classified regular and unclassified benefits-eligible employees who first became employed by the State of Kansas after July 1, 2012, are proposed to receive a 2.5 percent increase.

There were five key issues that needed to be determined:

- Benefit eligibility only;
- What was meant by "increase in salary";
- What was meant by "continuously employed with no break in service";
- What date the employee first became employed with the State; and
- The cutoff date, July 2, 2017, which became the effective date.

This was determined for all Legislative and Executive Branch agencies, except for universities, which have their own pay systems. On July 17, 2017, an e-mail was sent out to all non-Regents employees stating that an employee who did not receive an increase could appeal by sending a return e-mail to the Office of Personnel Services. To date, there have been 950 appeals, and the Office has responded to all of the appeals. A few pay rates have changed, but most of the appeals submitted were due to the employee not understanding the language in the bill.

A Committee member suggested a review of methods to make the pay raise more equitable for all employees.

Representatives from selected agencies also commented on the pay plan implementation.

Lansing Correctional Facility

Overview

Department of Corrections (DOC) representatives provided information on the RFP for the Lansing Correctional Facility replacement, which includes options to either use contractor financing (lease-purchase) or state financing (bonding) the construction. DOC staff outlined the timeline associated with the process and the approvals needed to move forward.

Performance Audit Comparing the Merits of Lease and Bond Options for Replacing

Staff from the Legislative Division of Post Audit (LPA) provided an overview on the DOC performance audit "Comparing the Merits of Lease and Bond Options for Replacing the Lansing Correctional Facility." LPA staff noted that regardless of which option is chosen, the State will continue to operate the Facility and further highlighted that:

- With bond financing, the State would issue bonds to pay for construction of the new facility and would own it from the beginning; and

- With lease-purchase financing, a private firm would build and own the new facility, then lease it to the State for a period of time before eventually selling it to the State.

The analysis found bond financing with contracted maintenance likely would be the most cost-effective option, with an estimated net present cost of $176.0 million over 20 years. Bond financing with state maintenance had an estimated net present cost of $193.0 million over 20 years. A 20-year lease-purchase agreement with either a final purchase payment or the purchase price built into the lease payments had an estimated net present cost of $206.0 million over 20 years. The State's two options for rebuilding the Lansing Correctional Facility create some additional risks and benefits for the State. If the DOC chooses a lease-purchase option, there are some additional contract risks that will require hiring legal counsel with skills specific to lease financing for large-scale construction projects. A lease-purchase contract lowers the State's risks related to construction costs, property damage, and ongoing repairs. Regardless of whether lease or bond financing is used, relying on contracted maintenance increases the risk that necessary maintenance will be deferred.

Agency representatives presented an update on the Lansing Correctional Facility. Negotiations are under way from two proposals related to the Lansing Correctional Facility reconstruction project. Meetings were scheduled for project approval early November 2017. One proposal is from the GEO Group, located in Florida, and another from CoreCivic, which is located in Tennessee; both specialize in building and managing prisons. The proposals are for privately run facilities with lease or purchase agreements. Maximum security facilities currently double bunk inmates, unless there are segregation or mental illness considerations. The RFP included 1,920 beds, 64 segregation beds, 64 beds for mentally ill inmates, and 15 general population pods either maximum or medium security, which will be designed the same. The medium security facility will be razed before new construction, and the maximum security facility will be placed on hold pending further consideration. The completion of the new facility would take approximately 24 to 36 months. Discussion continued regarding staffing issues, increased caseloads, and turnover rates.

Lansing Building Proposal

A representative from the DOC presented an overview of the Lansing Building Proposal and noted that the medium facility has several structures on site that would be demolished and would utilize some of the infrastructure for the new facility. The new facility would address issues that the DOC currently faces in regard to staffing, mental health, and the medical field. As approved by the Legislature, a RFP for bonding authority and lease-purchase was developed. Approval from the State Building Advisory Commission to pursue a lease-purchase option was received. The new facility would provide improved working conditions for staff and living conditions for the inmates. The new facility would be State-operated, accomplished within existing resources, meet Americans with Disabilities Act requirements, have additional space for recidivism reducing programs, and will accommodate future expansion if needed. A review of staffing efficiencies followed with a projected savings of $17.0 million. Liability issues with the lease agreement were reviewed. CoreCivic would be responsible for repairs due to storm damage, cost overruns during construction, and replacement or repairs of items within the facility. Contracts would be managed by the DOC. The lease-purchase agreement would be a $23.0 million savings, and no capital improvement expenditures are expected for 5 years after the 20-year lease.

Representatives from CoreCivic and JE Dunn Construction provided an overview of the company and discussed the proposal for the Lansing Correctional Facility Reconstruction. A review of the states benefiting from the CoreCivic-leased prisons and full-risk maintenance services in California and Oklahoma followed. The estimated schedule is a 24-month completion timeframe that includes competitive private financing rates without impacting bonding capacity through JP Morgan. The project transfers preventative and catastrophic maintenance for the life of the lease and defers the capital outlay until the facility is ready for use.

In response to questions from Committee members, staff from CoreCivic noted property ownership, cost-effectiveness based on past experience, and cost of capital and private place market were primary factors to providing lower bids. Similarly designed facilities were reviewed, and staffing numbers and costs are in line with the Lansing Correctional Facility.

A representative from the Kansas Organization of State Employees presented testimony in opposition of the Lansing building proposal. Concerns were expressed regarding the cost of the Lansing Correctional Facility renovation, the lack of government transparency, and pre-determined project bidder and performance issues with CoreCivic, primarily in the areas of understaffing and overcrowding, which were identified in a recent audit.

El Dorado Staffing and Inmate Issues

DOC agency representatives provided an update on correctional facility staffing and inmate issues. Graphs reflected the DOC-uniformed staff turnover rate of 33.14 percent. El Dorado Correctional Facility (EDCF) and Lansing Correctional Facility have the highest turnover rates. DOC uniformed staff turnover at Lansing Correctional Facility is 37.47 percent and is 46.11 percent at Lansing Correctional Facility. Starting salaries versus turnover rates comparisons show Kansas rates fifth of the surrounding six states. The Correctional Officer I retention rate is 52.97 percent, or 518 of the 978 employees, for 0 to 2 years of employment.

State Fire Marshal Disaster Assistance Activities Update

A representative from the Office of the State Fire Marshal provided an overview of the Kansas Search and Rescue Program and reviewed disaster assistance activities in response to Hurricane Harvey. In response to the Emergency Management Assistance Compact (EMAC) request from Texas, the Kansas Search and Rescue Program sent 42 first responders to Texas. Support services were provided in the communities of Houston and Katy.

Kansas Department of Transportation Bonding Review

A representative from KDOT presented an update on the bonded indebtedness and use of current bonding authority and stated $200.0 million of the approved $400.0 million has been bonded to date. Staff reviewed the Comprehensive Highway Plan bonding authority of $890.0 million, the Comprehensive Transportation Program bonding authority of $1.27 billion, and the T-WORKS Program bonding authority of $1.37 billion. A review of the T-WORKS bonding history from FY 2011 through FY 2019 followed. The outstanding debt of approximately $2.0 billion will be completely paid in FY 2038, extended due to the bonds recently issued for 20 years, and the Comprehensive Transportation Plan's outstanding debt is scheduled for payout in 2024. A review of the amortization schedule on the debt service on outstanding bonds followed. KDOT's Standard and Poor's bonding rating is AAA, and the rating of the Kansas Turnpike Authority was recently upgraded to a AA-2, which is the highest rating for a turnpike authority.

Approximately $320.0 million in lettings, for maintenance and preservation, is anticipated in FY 2018. Special designated funds, federal funds, motor fuel taxes, and other fees totaling $923.0 million fund the highway system. KDOT staff noted 23 projects have been delayed; bonding payments remained level over the past few years; $325.0 million in outstanding Build America bonds are interest-only payments; and the Lewis and Clark Viaduct project could cost $60.0 million in FY 2018. On the $400.0 million in bonds issued in FY 2018, it is anticipated the bonding rate would be between 3.0 percent and 5.0 percent, with a premium estimate of $40.0 million.

KanCare 2.0

Overview

A KanCare 2.0 overview was presented and the managed care organization (MCO) process was reviewed. The Division of Health Care Finance (KDHE) expects six or seven responses to the RFP. The responses would be reviewed and evaluated during the first three months in 2018 with contracts awarded in June 2018. The implementation of KanCare 2.0 is scheduled to begin on January 1, 2019. A review of the provider prospective, membership communication, and the stakeholders' engagement meeting followed.

Update

A representative from KDHE provided an update on KanCare and the 2018 Schedule for KDHE Meetings and Associations and Advocacy Groups. The waiver application timeline opened on October 27, 2017, and public hearings were held throughout November 2017. There were 256 pages of comments submitted, and they are available for review on KDHE's website. The application process and negotiation of special terms and conditions with CMS will take place over the next 9-to-12-month timeframe, as well as continued work with stakeholders and legislative representatives. A representative from KDHE provided a review of KanCare utilization, cost comparison, and new services that are at no cost to the State. Kansas Medicaid has developed contingency plans regarding the Children's Health Insurance Program (CHIP) and reauthorization determination, which includes the following: a new eligibility category; system changes supporting new eligibility determination; a notification plan for CHIP participants; and a transition plan from CHIP to Medicaid. If CHIP is not reauthorized, the impact to the State General Fund (SGF) would be $37.7 million in FY 2018 and $53.3 million for FY 2019. The Kansas Medicaid Enterprise is on schedule to complete all requirements by December 2017.

School Finance

New School Finance Formula Overview

An overview of the new school finance formula reflected in SB 19, which was enacted during the 2017 Legislative Session, was provided by KLRD staff. The new Kansas School Equity and Enhancement Act provides aid to school districts based on specific calculations and allows districts to adopt a local option budget (LOB). KLRD staff stated the Kansas School Equity and Enhancement Act includes weighting, enrollment, LOB cap and equalization, inflation adjustments, accreditation and reporting, and nomenclature changes. State Aid to K-12 education for FY 2016 (actual) through FY 2019 (approved) was reviewed. KLRD staff noted the FY 2018 to FY 2019 change reflects a KPERS delayed payment.

A representative from the Kansas State Department of Education (KSDE) presented an overview of the effect of SB 19 on school district expenditures for the 2017–2018 school year. The total impact of the bill on the unified school districts is estimated to be approximately $215.3 million.

Staff of the Office of Revisor of Statutes provided an overview of the Kansas Supreme Court's fifth opinion in *Gannon v. State*. The Supreme Court ruling, issued October 2, 2017, states SB 19 fails to satisfy both adequacy and equity components of Article 6 of the *Kansas Constitution*. The State has until June 30, 2018, to correct the constitutional compliance issues, and the Court set a briefing schedule to begin on April 30, 2018.

Briefing on the Comprehensive Response to School Finance Decision Meeting

KLRD staff presented an overview on the comprehensive response to the School Finance Decision meeting. A special committee was formed in response to the *Gannon* litigation, *Gannon V*, to act as fact-finders to gather information, compile options, and identify specific matters for both chambers. Meetings included a review of the history of the school finance litigation, history of *Gannon*, SB 19, the Kansas School Equity and Enhancement Act, and the *Gannon V* opinion, information on the education consensus calculation for FY 2018 and FY 2019, and a five-year SGF profile provided by KLRD staff. KLRD staff provided scenarios on revenue and budget adjustments of 18.0 percent across-the-board reductions, or $600 million, that could be required for additional K-12 funding. A review of various state agencies and the impact of an 18.0 percent budget reduction followed. During the final Committee meeting, the members looked at reducing or eliminating the conflict over school finance and the recurrent possibility of school closures, and had a review of information from the Office of Revisor of Statutes as related to constitutional provisions governing K-12 school finance.

Review of Kansas Efficiency Study

The Committee was given a review of selected agency recommendations and agency responses to the "Kansas Statewide Efficiency Review" from Alvarez & Marsal (A&M), which included the KSDE and school districts, the Medicaid program in KDHE, the Department of Commerce, the DOC, DCF, the Department of Administration, the Department of Labor, the Department of Revenue, the Adjutant General, and KDOT.

Actual implementation and realistic savings from the A&M "Kansas Statewide Efficiency Review" will be provided to the Committee for review at the beginning of the 2018 Legislative Session. Discussion followed by Committee members regarding the process going forward as related to school funding and feasible funding options.

State Budget, Revenues, and Expenditures

Consensus Revenue Estimates for FY 2018 and FY 2019

KLRD staff presented an overview of the Consensus Estimating Group short memorandum regarding the SGF Revenue Estimate for FY 2018 and FY 2019.

The impact of the new income tax laws and legislative adjustments contained in the Omnibus Bill were reviewed.

The estimate for total taxes increased by $224.7 million and other revenues increased by $4.9 million for the two years combined. The FY 2018 estimate increased by $108.3 million and the revised estimate for FY 2019 increased by $121.2 million above the previous estimate. A review of the revised estimates, which reflects actual receipts from FY 2017 and changes within the FY 2018 and FY 2019 estimates, followed. The Kansas personal income growth has been reduced to 1.5 percent for FY 2017 and 3.1 percent projected growth for FY 2018. KLRD staff reviewed the impact on the economy and the SGF with the declining value of crop production, oil, and gas prices. Kansas employment has remained stagnant, hourly earnings increased by 0.02 percent, and an increase in corporate and sales tax receipts is projected.

Human Services Caseloads

KLRD staff explained the human services caseload impacts detailed in the Fall 2017 Human Services Consensus Caseload Estimates for FY 2018 and FY 2019.

The FY 2018 estimate is an all funds decrease of $4.6 million and an SGF increase of $16.4 million from the approved FY 2017 budget. The estimate for the TANF program reflects a decrease of $286,800 in FY 2018 and $105,035 for FY 2019 from all funding sources as a result of declining numbers of individuals receiving cash assistance. The Foster Care program reflects an increase in all funding sources of $4.7 million in FY 2018 and $4.6 million for FY 2019, as the number of children served and the cost for those services increase. The Kansas Department for Aging and Disability Services (KDADS) KanCare estimate reflects an all funds decrease of $902,431 in FY 2018 and a decrease of $25.0 million for FY 2019, attributable to an SGF expenditure correction with changes to Federal Medical Assistance Percentages (FMAP), the rate at which federal funds are distributed, and other adjusted expenditures. KanCare Medical is an all funds decrease of $17.9 million in FY 2018 and an all funds increase of $231.3 million for FY 2019, attributable to increased federal rates, which resulted in an adjusted SGF savings of $23.0 million. KDADS non-KanCare is an increase of $8.9 million in FY 2018 and $23.2 million for FY

2019 above the 2017 approved amount and is attributable to increased projected expenditures.

Expanded Lottery Act Revenue Fund

KLRD staff presented an overview of the Expanded Lottery Act Revenue Fund (ELARF) for FY 2018 through FY 2019. The State receives 27.0 percent of the four State-owned casinos gaming revenue, including 22.0 percent to the ELARF, 2.0 percent to the Problem Gambling and Addictions Grant Fund, and 3.0 percent to cities and counties that house casinos. KLRD staff reviewed the legislative-approved transfers and expenditure and estimated revenue for FY 2018, which reflects a negative ending balance of approximately $40,000, and noted 2017 Senate Sub. for HB 2002 authorized the transfer of unencumbered funds balances from ELARF to the SGF for FY 2018 and FY 2019.

Discussion followed by Committee members regarding gaming revenues and competition with casinos in bordering states. Staff noted the southeast gaming facility's projected revenue was $40.2 million in FY 2017 and $29.9 million in FY 2018. The Northeast, South Central, and Southwest Gaming Zones have reached a plateau since FY 2016.

Education Estimates

KLRD staff presented an overview on the Fall 2017 estimates for FY 2018 and FY 2019 for the Education Consensus Calculations. SGF expenditures is estimated to be a decrease of $1.7 million in FY 2018 and an estimated increase of $46.0 million for FY 2019, in order to meet statutory requirements. The new facilities' weighting and the upward revised 20 mill of approximately $7.5 million resulted in a net of all changes for the State Foundation Aid at a cost of $10.3 million in FY 2018 and $22.6 million for FY 2019. The LOB decreased by $26.4 million in FY 2018 and $8.1 million for FY 2019, which was based on the prior year. Capital Improvement Aid decreased $5.5 million in FY 2018 and $3.5 million for FY 2019. Capital Outlay Aid increased $1.8 million in FY 2018 and $4.3 million for FY 2019.

A review of the school employer contributions for KPERS followed. The increased employer contribution to KPERS was a result of increased teacher salaries. KLRD staff noted there is $1.07 billion in LOB in FY 2017 and approximately $1.00 billion in FY 2018, with the State's share an increased cost.

State General Fund Profile

KLRD staff provided an overview of the SGF Profile for FY 2018 through FY 2019. The FY 2017 receipts were approximately $72.0 million more than projected, income tax projections were approximately $1.0 million less than projected, corporate income tax was $52.0 million more than projected, retail sales were up by $14.0 million, and compensating use was up approximately $5.0 million. The FY 2018 beginning balance is $108.5 million and payments on the Pooled Money Investment Board loan will begin for FY 2019. Expenditures included approved expenditures, school finance funding, KPERS–School, caseloads, and a reappropriation of $30.1 million for a total $6.6 billion in FY 2018 and $6.7 billion for FY 2019. The actual ending balance after adjusted expenditures is $108.5 million for FY 2017, $279.7 million approved in FY 2018, and $354.9 million approved for FY 2019. The 7.5 percent statutory ending balance for FY 2019 is $503.0 million, which reflects a budget shortfall of $150.0 million, and over $300.0 million in additional revenue has been included over a three-year period. The State is in a much better position than in previous years with a $300.0 million ending balance, but KLRD staff cautioned members that the receipts above expenditures are declining and they anticipate the trend to continue in to FY 2020 and FY 2021.

Overview—Agency Budget Requests

Statewide Overview

The Committee received a copy of the "FY 2018 to FY 2019 Preliminary Agency Budget Summaries." KLRD staff presented an overview of the FY 2018 and FY 2019 preliminary agency budget requests. The information provided includes major changes to the FY 2018 and FY 2019 approved agency budgets. A review of the process for agency budget submission followed. The 2017 Legislature approved $16.2 billion in expenditures, which includes $6.6 billion from the SGF for FY 2018 and FY 2019. The approved budget included $11.9 million from the SGF for the legislative pay plan and supplementals of $16.4 billion in FY 2018 and $16.8 billion for FY 2019. This reflects an all funds increase of $386.1 million above the approved FY 2018 budget, and an all funds increase of $601.4 million above the approved FY 2019 budget. If the Legislature adopts the budget requests, the SGF would be reduced from the previously reviewed profile from $379.7 million to $298.3 million.

The FY 2018 and FY 2019 major supplemental requests followed. Staff noted that if the budget requests and adjustments for FY 2019 were granted, the SGF ending balance would be reduced to a negative $0.8 million. A review of the FY 2017 through FY 2019 all funds expenditures and SGF expenditures, as related to operating expenditures, aid to local units of government, other assistance, and capital improvements, followed.

Select Agency Overviews

Department of Education

KLRD staff presented an overview of the "FY 2018 and FY 2019 Preliminary Agency Budget Summary" for the KSDE. The agency requests $18.3 million above the approved 2017 budget in FY 2018 and $34.0 million for FY 2019 above the approved budget for supplemental requests and reappropriations, primarily for the KPERS contributions for covered payroll increases, technical education incentives, and the monumental building surcharge. A summary of operating expenditures by program funding sources and funding history and key performance measures (which now includes kindergarten students as 1.0 FTE as opposed to 0.5 FTE) followed.

A KSDE representative responded to questions from Committee members. Staff noted the unfilled positions will vary throughout the year. There were six bond issues of approximately $100.0 million that passed during the local 2017 election. Discussion followed regarding cash balances and the recommendation for local school boards to develop a three-year plan for implementation, which would be reviewed by the KSDE. A majority of the supplemental request was due to the increase in salaries and wages and a corresponding increase needed in KPERS funding. The statute related to the technical education incentive went from $1,000 to $35.00 per certificate, the representative noted. The agency representative suggested the statute should either be repealed or be fully funded. Emphasis was placed on the funding needs to address the continued growth in the technical field. A copy of the LOB change from FY 2016 through FY 2018 was distributed to Committee members.

Kansas Department for Aging and Disability Services and State Hospitals

KLRD staff presented an overview of the "FY 2018 and FY 2019 Preliminary Agency Budget Summaries" for KDADS and state hospitals

The supplemental requests for KDADS is $15.5 million in FY 2018 for the replacement of the state hospitals' patient management system and on-going maintenance and retroactive payment for Medicaid applicants in adult care homes, and $299.0 million for FY 2019 to clear waiting lists for individuals, rebase nursing facility rates, and replace the patient management system and for on-going maintenance. The funding to clear waiting lists was not included in last year's budget.

Larned State Hospital's (LSH) supplemental request in FY 2018 is $9.9 million, all from the SGF, for increased expenditures for the Sexual Predator Treatment Program to cover the DSH funds from the past overpayment from DSH, and $9.4 million, all from the SGF, for FY 2019 for increased expenditures for the Sexual Predator Treatment Program to cover funds from past overpayment of DSH and salary increases for technicians and unclassified employees who were not included in the 2017 legislative pay plan.

A representative for KDADS responded to questions from Committee members regarding federal funding and other issues concerning LSH. The KDADS representative stated a survey was conducted in August 2017 that identified three main areas of concern, primarily related to the grievance process: patient rights, investigation regarding abuse and neglect with staff upon patients, and ligature points at OSH. Discussion continued regarding adequate staffing. Challenges of recruiting and retaining nurses and mental health technicians, and culture and wage issues at LSH were also noted. A study is underway regarding a proviso for the construction of a 100-bed and 200-bed facility with comparative costs, and a building evaluation at Osawatomie State Hospital (OSH) for demolition.

Adjutant General's Department

KLRD staff presented an overview of the "FY 2018 and FY 2019 Preliminary Agency Budget Summary" for the Adjutant General's Department. The FY 2018 agency request is $16.3 million above the approved amount and the request for FY 2019 is $36.4 million above the approved amount. There are 12 supplemental requests with the budget increase, primarily for disaster relief funding, and rehabilitation and repair of armories and facilities. KLRD staff also reviewed a summary of funding sources.

Staff from the Adjutant General's Department, provided enhancement request information on the Adjutant General's Department and emphasized the importance of the Pre-Disaster Mitigation Grant, which will require the Kansas Division of Emergency Management to update the 12 regional mitigation plans and will require the agency to hire a contractor to review and update current plans. The grant would be funded by $84,417 from the SGF and $253,249 from federal funds. A review of Federal Emergency Management Agency funding requirements followed.

Department of Corrections

KLRD staff provided an overview of the "FY 2018 and FY 2019 Preliminary Budget Summary" for the DOC. The overall request is $223.0 million in FY 2018, which reflects $14.2 million above the Legislature approved amount in FY 2018, primarily due to a reappropriation from the SGF from the Evidence-Based Programs Account and cloud-based e-mail support services and licensing, and $211.0 million for FY 2019, attributable to the supplemental request to replace the server for the automated offender document system and for a funds transfer from the Kansas Juvenile Correctional Complex to the DOC. Lansing Correctional Facility and Larned Correctional Mental Health Facility agency budgets and the impact of funds transfers were reviewed. The Lansing Correctional Facility requested less than what was approved due to a transfer to the DOC Central Office to help fund pay increases statewide and vacant positions during construction of the new facility.

Staff from the DOC responded to questions from Committee members regarding the building project: there are individuals housed at the Lansing Correctional Facility in the building that is to be razed; no final decision has been made regarding the EDCF; and the current execution chamber is located at the Lansing Maximum Facility Compound and would not be impacted. DOC staff stated no bids were received for the bonding design-build option, and only a lease-purchase design bid was received. The DOC is looking at the most cost-effective means for the State while remaining budget neutral to pay for the new building by staff savings and efficiencies gained with a smaller footprint.

Department of Revenue

KLRD staff provided an overview of the "FY 2018 and FY 2019 Preliminary Agency Budget Summary" for the Department of Revenue. The agency request is an increase of $13.5 million in FY 2018 and $13.9 million for FY 2019, attributable to the Automated Tax System Fund, REAL ID implementation and maintenance costs, adjustments related to the legislative pay plan, and digital license plate production.

A representative from the Department of Revenue reviewed supplemental requests for the agency and stated the supplemental requests are for the legislative pay plan shortfall, the REAL ID Act passed by Congress regarding minimum security standards for State-issued drivers' licenses and ID cards, production of the digital license plate, and the automated tax system fund. Samples of the digital license plate were shown to Committee members.

Judicial Branch

KLRD staff provided an overview of the "FY 2018 and FY 2019 Preliminary Agency Budget Summary" for the Judicial Branch. The agency request is a decrease of $3.2 million below the FY 2017 approved amount in FY 2018, primarily due to a delay in eCourt implementation, and an increase of $24.8 million above the approved amount for FY 2019, primarily due to increasing salaries for non-judge and judge employees. For FY 2019, the agency's supplemental request totals $19.6 million, primarily for salary increases for non-judge and judge salaries and additional positions, and courtroom construction.

An agency representative presented information on the Judicial Branch FY 2018 and FY 2019 supplemental budget and detailed salary comparisons with other states. The agency representative stated Kansas judicial wages currently rank 42nd or 43rd, and for cost-of-living wages for judges, compared to other states, Kansas ranked 45th in 2016.

Department of Agriculture, Kansas Water Office, and State Fair Board

KLRD staff presented the "FY 2018 and FY 2019 Preliminary Agency Budget Summaries" for the Department of Agriculture, Kansas Water Office, and State Fair Board. The Department of Agriculture budget request in FY 2018 is $4.8 million above the FY 2017 approved amount, which is primarily due to $4.1 million in federal funding for the LIDAR (light detection and ranging) topographic mapping program, and $1.2 million for FY 2019 in order to fill vacant positions, for capital outlay, and for a projected increase in card processing fees.

The Kansas Water Office budget request in FY 2018 is $601,979 above the FY 2017 approved amount, primarily due to a transfer request to the State Water Plan Fund for Milford Lake Watershed Regional Conservation Partnership program and Harmful Algae Bloom in-lake treatment pilot. For FY 2019, the agency request totals $8.3 million for 18 supplemental requests, including 3.0 new FTE positions and the transfer from the SGF ($6.0 million) and Economic Development Initiatives Fund ($2.0 million) into the State Water Plan Fund for programs related to the Vision for the Future of Water Supply in Kansas.

The State Fair Board agency request in FY 2018 is an increase of $35,053 above the approved FY 2017 budget for capital improvements for the State Fairgrounds. For FY 2019, the agency supplemental requests total $10.6 million for capital improvements to the State Fairgrounds, to replace the EXPO Center, and to renovate the Bison Area.

A representative from the Department of Agriculture provided copies of the Kansas Department of Agriculture budget overview for FY 2018 and the adjusted budget request for the Department for FY 2018 and FY 2019. The Department continues to use performance-based budgeting and actual numbers will be available with the budget presentations in Spring 2018. Department of Agriculture staff noted the agency and the Kansas Department of Wildlife, Parks and Tourism are working together on the Kansas Water Plan. A review of the Ogallala water document followed, and everything but the water educational component was implemented.

A representative from the Kansas Water Office reviewed supplements to the agency budget and discussed priority projects focused on implementing the long-term vision of the water supply for Kansas. The supplemental requests includes three additional Water Resource Planner positions for implementation of the vision activities. Discussion followed regarding the Colorado and Montgomery County in Kansas waterways and recreational opportunities.

A representative from the State Fair Board presented background information and budget enhancement requests for the State Fair and stated communication is ongoing with Westar Energy regarding the status change from a medium to a large user, and the exploration of alternative energy options.

Regents Universities' Efficiency Studies

A representative of the Board of Regents presented on overview of the measures universities have undertaken to maximize efficiencies. Campuses continue to work on ways to reduce administrative costs, reduce electric utility costs, and simplify administrative processes through coordinated efforts across the universities, as well as the two-year colleges. Many of the efficiencies are based on the allocation of funding, competitive tuition rates, and transfer courses for students.

Kansas Public Employees Retirement System Briefing on New Valuation Report

A KPERS representative presented an overview on the KPERS' calendar year 2016 actuarial valuation. Two significant factors in the 2016 valuation included the 2017 legislative appropriation changes and the triennial experience study. A review of the State/School Employer actuarial and statutory contributions followed. KPERS payments of $1.63 billion will be made over a three-year period beginning in 2017. Of that, $258.0 million will be layered or paid over a 20-year period. A key factor impacting assumption changes was primarily due to the lowering of the investment return from 8.00 percent to 7.75 percent, which increased the unfunded actuarial liability for all groups. The KPERS representative stated the unfunded liability is still estimated to be paid off in 2023. A review of the funding status and value of assets followed. The unfunded actuarial liability increased by $522.0 million to $9.06 billion. Ideally, the trust fund is at 80 percent to 100 percent funded, which would help absorb any large economic down-turns, the KPERS representative noted. The combined rate for all groups is 67 percent. The employer contributions and funds needed to maintain "steady state" is $623.5 million for FY 2019. A review of the employer contribution rate comparisons funding projections followed.

Office of Information Technology Services Update on IT Modernization

A representative of the OITS provided an update on IT modernization. A review of the "Information Technology Consolidation Feasibility Study" followed. The representative noted over 75 percent of the servers are over eight years old, data centers are in need of significant repairs, and there is a lack of funds and qualified staff to address issues. The impact to the State has been outages, security breaches, and loss of services within several state agencies. The OITS strategy is to become a service broker by consolidating functions and services and outsourcing opportunities. The focus is on operations, data centers, and servers. A review of successful milestones followed. The impact of budget enhancements for OITS as an ongoing investment is important to an infrastructure that is updated and maintains data that is secure. The budget request of $9.5 million in FY 2018 and $4.0 million for FY 2019 would be for upfront costs, with a projected savings in following years of $4.0 million to $5.0 million. A review followed of the V-Block equipment that was purchased in prior years but was kept in storage. The OITS representative stated the vendor would take physical access and use of this equipment and the State maintains the loan, as money is still owed on the V-Block. An additional $35.0 million would have been needed to put this equipment in place due to inadequate weight and cooling issues.

State Employee Health Clinic

A representative of the Department Administration presented an overview on the status of the new State Employee Health Clinic and the bid process pursuant to KSA 75-3737a. Department of Administration staff noted the funding was capped at $2.7 million from the State Employee Health Plan. Eight entities expressed interest, and the only bidder that met the terms withdrew its bid due to negotiation issues that were not allowable and required legislation. A RFP with the Health Care Commission and the Legislature's directive to the Department of Administration agree that the process will generate more bids, allowing for contractual negotiations with a potential for savings to the plan.

Impacts of Agriculture on Commerce

A representative from the Department of Agriculture provided information on the Estimated Economic Impact of Agriculture, Food, and Food Processing Sectors. Staff emphasized the impact of Kansas agriculture, which is approximately 45 percent, or $6.5 billion, of the state's economy and does not include food retail. The importance of growing the agricultural industry will be key to statewide prosperity. In order to accomplish this goal, a growth strategy was implemented, which entailed 350 meetings throughout the state with individuals to collect feedback regarding challenges and opportunities in the industry. Agriculture development of action plans are underway, with industry leaders in 19 sectors, and will be available to legislators at the beginning of the 2018 Session. This involves promotional efforts, both nationally and internationally, for partnership development.

Conclusions and Recommendations

Following its review and discussion, the Committee made no recommendations.

Report of the Joint Committee on Pensions, Investments and Benefits to the 2018 Kansas Legislature

CHAIRPERSON: Representative Steven Johnson

VICE-CHAIRPERSON: Senator Jeff Longbine

OTHER MEMBERS: Senators Larry Alley, Laura Kelly, Ty Masterson, and Lynn Rogers; and Representatives John Barker, Daniel Hawkins, Broderick Henderson, Jim Kelly, Annie Kuether, Richard Proehl, and Tom Sawyer

CHARGE

The Committee is to consider the following:

- Legislation enacted during the 2017 Session affecting the Kansas Public Employees Retirement System (KPERS or Retirement System), particularly House Sub. for SB 21, which provides new working-after-retirement provisions;
- Performance of the pension obligation bonds issued in 2004 ($500 million) and 2015 ($1.0 billion);
- The overall funding ratio for the Retirement System;
- Various reports statutorily required to be submitted by KPERS to the Committee; and
- To fulfill the Committee's duties and responsibilities, as provided by KSA 2017 Supp. 46-2201, to monitor, review, and make recommendations regarding the Retirement System.

Joint Committee on Pensions, Investments and Benefits

Annual Report

Conclusions and Recommendations

The Committee notes, assuming all assumptions are met in the future, the Kansas Public Employees Retirement System (KPERS) would be fully funded by the end of 2036. To meet this goal, the employer contributions for the state-school group would need to be $623.5 million in FY 2019. The Committee notes those funds deposited in the KPERS Trust Fund are protected by state and federal law, and they are not subject to legislative reappropriation.

The Committee recommends the Legislature consider, during its deliberation during the 2018 Session, the extent to which State contributions to KPERS on the behalf of school districts should be counted towards education funding.

All asset classes (domestic equity, international equity, and private equity markets) produced a positive return in the third quarter of 2017. KPERS has experienced eight consecutive years of positive returns. From October 2016 to October 2017, the Trust Fund has grown by about $1.8 billion. Currently, KPERS' portfolio is worth more than $19 billion. The Committee commends the KPERS Board and its staff for the historic returns the investment portfolio has achieved.

The Committee recommends the new changes to the federal tax code be evaluated to determine whether KPERS will be impacted.

The Committee notes the State has issued two pension obligation bonds. The average annualized total return for the 2004C and 2015H bond issues are 7.38 percent and 7.95 percent, respectively. The two bond series have added approximately $332.9 million to KPERS (2004C, $259.0 million; 2015H, $73.9 million). The Committee adds that while the arbitrage has been successful, the debt service is not part of the unfunded actuarial liability.

The Committee concurs with KPERS' conclusion that KPERS is no longer prohibited from investing in companies that have a business presence in Sudan, even though some of the minor federal restrictions are still in place. Therefore, to ensure there is clarity in the future, the Committee introduces legislation that would repeal KSA 2017 Supp. 74-4921c and 74-4921d. The Committee notes the monitoring of the divestment policy has been an expense to KPERS. The Committee suggests, during the hearing process, the Legislature should consider exempting KPERS from KSA 2017 Supp. 75-3740e, pertaining to vendors' policies towards Israel, which may increase operational expenses.

The Committee requests KPERS to provide various analyses, which are described in this report, during the 2018 Session to the standing committees of the House and Senate that are responsible for retirement policy.

Proposed Legislation: A bill that would repeal the obsolete provision that prohibits the Retirement System from investing in Sudan and related reporting requirements to the Committee.

Background

The Joint Committee on Pensions, Investments and Benefits, created in 1992, is authorized by KSA 2017 Supp. 46-2201 to:

- Monitor, review, and make recommendations relative to investment policies and objectives formulated by the Kansas Public Employees Retirement System (KPERS or the Retirement System) Board of Trustees (Board);
- Review and make recommendations related to KPERS benefits; and
- Consider and make recommendations on the confirmation of members nominated by the Governor to serve on the KPERS Board.

The Committee may introduce legislation it determines to be necessary.

Committee Activities

The Committee met on November 27, 2017, to review KPERS long-term funding, the performance of pension obligation bonds, newly enacted legislation, and investment performance. The Committee acknowledged receipt of information submitted by KPERS and introduced legislation.

Review of KPERS Long-term Funding

The Committee reviewed the 2016 actuarial valuation, which is a snapshot of the financial condition of the Retirement System as of December 31, 2016. The actuarial value was estimated to be $18.256 billion. Actuarial assets are calculated by "smoothing" investment gains and losses over a five-year period. A market value higher than the actuarial value means that deferred investment gains will flow through valuations over the subsequent four years. There is an estimated $566 million in net deferred loss to be realized in the outlying years. A year ago, the net deferred loss was $515 million.

The funding status has improved for one of the five membership groups: the local government group. The funded ratio for the groups of KPERS state, school, Judges' Retirement System, and the Kansas Police and Firemen's Retirement System has decreased. The Retirement System's overall funded ratio decreased from 67.1 percent in 2015 to 66.8 percent in 2016. The unfunded actuarial liability (UAL) for the entire Retirement System increased in 2016 by $522 million, leaving $9.061 billion to be funded. Changes in actuarial assumptions and a decrease in the assumed rate of return, from 8.00 percent to 7.75 percent, have diminished KPERS' solvency. If all assumptions are met in the future, KPERS should be fully funded at the end of 2036. For KPERS funding to remain at a steady state, state-school employer contributions in FY 2019 will need to be $623.5 million, which includes $98.6 million for the normal employer cost rate, $518.5 million for the UAL, and $6.4 million for the deferred school contribution of FY 2017.

Bond Proceeds

The purpose of pension obligation bonds is arbitrage, which assumes the State will pay a lower interest on servicing the bonds than what the KPERS' portfolio can earn over time. The State has issued two pension obligation bonds. The first was in 2004 for an amount of $500 million, gross of fees (2004C bond issue), and the second was issued in 2015 for $1.0 billion, net of fees (2015H bond issue). In 2004, the Legislature approved a $500 million bond issue, which was issued with a 30-year maturity and an interest cost of 5.39 percent. KPERS received $440.165 million in net proceeds. Annual debt service is approximately $33.0 million from the Expanded Lottery Act Revenues Fund. In 2015, the Legislature approved a $1.0 billion bond issue, which was issued with a 30-year maturity and an interest cost of 4.68 percent. KPERS received $1.0 billion in net proceeds. Annual debt service is approximately $65.0 million from the State General Fund. The average annualized total returns for the 2004C and 2015H bond issues are 7.38 percent and 7.95 percent, respectively. The two bond series have added approximately $332.9 million to KPERS (2004C, $259.0 million; 2015H, $73.9 million).

Overview of 2017 Legislation Enacted; Implementation of New Provisions

Staff from the Office of Revisor of Statutes provided an overview of House Sub. for SB 21, which amended several provisions pertaining to working after retirement, and SB 205, which, in part, exempted certain employees of the Board of Regents who are covered by the Regents' retirement plan, which is not administered by KPERS, from working-after-retirement provisions.

KPERS staff, noting the working-after-retirement legislation has been positively received by the school districts, said all is on track to implement changes to working after retirement that start January 1, 2018.

Receipt of KPERS Reports

The Committee acknowledged receipt from KPERS of the statutorily required Sudan Divestment Report. The exposure to investments with significant business operations in Sudan has remained low and consistent over time, which was estimated to be $55.7 million, or 0.29 percent, of the total KPERS investment portfolio.

In 2007, legislation was enacted that restricted the Retirement System's investments in companies engaged in business operations in Sudan. The statute also imposed an annual reporting requirement to the Committee. KPERS staff explained Kansas law contains a repeal provision that triggers when the United States revokes its current sanctions against Sudan. KPERS, in consultation with its outside legal counsel, has determined the presidential executive order issued on October 12, 2017, has revoked the substantive portion of the sanctions mentioned in statute, but a few provisions of the original sanctions, such as relating to diplomatic offices and agriculture products, remain in place. KPERS suggested the Legislature might consider repealing KSA 2017 Supp. 74-4921c and 74-4921d for purposes of clarity.

Investment Performance

The third quarter of 2017 continued a strong performance in the equity markets, especially in the global market. For the third quarter, KPERS experienced a return of 3.0 percent. All asset classes (domestic equity, international equity, and private equity markets) produced a positive return. This period has been marked by an unusually low level of market volatility. KPERS has experienced eight consecutive years of positive returns. From October 2016 to October 2017, the Trust Fund grew by about $1.8 billion. Currently, the KPERS portfolio has a market value of more than $19 billion.

Conclusions and Recommendations

The Committee notes, assuming all assumptions are met in the future, KPERS would be fully funded by the end of 2036. To meet this goal, the employer contributions for the state-school group would need to be $623.5 million in FY 2019, which includes $98.6 million for the normal employer cost rate, $518.5 million for the UAL, and $6.4 million for the deferred school contribution of FY 2017.

While in recent years there have been reductions to employer contributions deposited to the KPERS Trust Fund, once those moneys are deposited, those funds may be used solely for the benefit of the KPERS members and the administration of the Retirement System. The Committee notes those funds are protected by state and federal law, and they are not subject to legislative reappropriation.

The Committee recommends the Legislature, during its deliberation during the 2018 Session, consider the extent to which state contributions to KPERS on the behalf of school districts should be counted towards education funding. The Supreme Court has suggested KPERS contributions should, at the least, be considered, but to date no court decision has addressed the utility of KPERS

The third quarter of 2017 continued strong investment performance. All asset classes (domestic equity, international equity, and private equity markets) produced a positive return. KPERS has experienced eight consecutive years of positive returns. From October 2016 to October 2017, the Trust Fund has grown by about $1.8 billion. Currently, KPERS' portfolio is worth more than $19 billion. The Committee commends the KPERS Board and its staff for the historic returns the investment portfolio has achieved.

The Committee recommends the new changes to the federal tax code be evaluated to determine whether KPERS will be impacted.

The Committee notes the State has issued two pension obligation bonds. The first was in 2004 for an amount of $500 million, gross of fees (2004C bond issue), and the second was issued in 2015 for $1.0 billion, net of fees (2015H bond issue). In 2004, the Legislature approved a $500 million bond issue, which was issued with a 30-year maturity and an interest cost of 5.39 percent. KPERS received $440,165,000 in net proceeds. Annual debt service is approximately $33.0 million from the Expanded Lottery Act Revenues Fund. In 2015, the Legislature approved a $1.0 billion bond issue, which was issued with a 30-year maturity and an interest cost of 4.68 percent. KPERS received $1.0 billion in net proceeds. Annual debt service is approximately $65.0 million from the State General Fund. The average annualized total return for the 2004C and 2015H bond issues are 7.38 percent and 7.95 percent, respectively. The two bond series have added approximately $332.9 million to KPERS (2004C, $259.0 million; 2015H, $73.9 million). The Committee adds that while the arbitrage has been successful, the debt service is not part of the UAL.

Upon receipt of the annual Sudan Divestment Report, the Committee received notice from KPERS that the substantive portion of the sanctions have been lifted by presidential executive order. The Committee concurs with KPERS' conclusion that KPERS is no longer prohibited from investing in companies that have a business presence in Sudan, even though some of the minor federal restrictions are still in place. Therefore, to ensure there is clarity in the future, the Committee introduces legislation that would repeal KSA 2017 Supp. 74-4921c and 74-4921d. The Committee notes the monitoring of the divestment policy has been an expense to KPERS. The Committee suggests the Legislature should consider, during the hearing process, exempting KPERS from KSA 2017 Supp. 75-3740e, pertaining to vendors' policies towards Israel, which may increase operational expenses.

The Committee requests KPERS provide the following information during the 2018 Session to the standing committees of the House and Senate that are responsible for retirement policy:

- An analysis of the impact on the UAL if the State paid the remaining delayed employer contributions but without the payment of interest;
- An analysis of the impact on the UAL if the State did not pay the remaining delayed employer contributions and interest;
- Clarification on the minimum employer contribution amount necessary to be paid in FY 2019 for the state-school group so as not to adversely affect the Retirement System; and
- An estimate of a re-amorization schedule, over a new 30-year period, using existing data.

Report of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight to the 2018 Kansas Legislature

Chairperson: Senator Vicki Schmidt

Vice-chairperson: Representative Daniel Hawkins

Ranking Minority Member: Senator Laura Kelly

Other Members: Senators Barbara Bollier, Bud Estes, Richard Hilderbrand (August and November meetings), and Jacob LaTurner (February and April); and Representatives Barbara Ballard, Susan Concannon, John Eplee, Jim Ward (February, August, and November), Chuck Weber, and John Wilson (April)

Charge

KSA 2017 Supp. 39-7,160 directs the Committee to oversee long-term care services, including home and community based services (HCBS). The Committee is to oversee the savings resulting from the transfer of individuals from state or private institutions to HCBS and to ensure that any proceeds resulting from the successful transfer be applied to the system for the provision of services for long-term care system. Further, the Committee is to oversee the Children's Health Insurance Program, the Program for All-Inclusive Care for the Elderly, and the state Medicaid program, 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.

January 2018

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

Annual Report

Conclusions and Recommendations

The Committee expresses the following concerns and adopts the following recommendations:

- KanCare 2.0 proceed as scheduled;
- The Kansas Department of Health and Environment (KDHE) include comprehensive dental benefits for adults in the KanCare 2.0 request for proposal;
- KanCare 2.0 include measures to reduce the waiting lists;
  - The Committee is concerned about the increase in Home and Community Based Services waiting lists;
- A comprehensive master plan addressing mental health be developed, including corrections;
- KDHE provide to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services, by February 22, 2018, effective criteria and performance measures for the KanCare Clearinghouse and call center;
- The Kansas Department for Aging and Disability Services develop policies and practices for surveying long-term care facilities that will give surveyors latitude in interpreting deficiencies, provide adequate salaries and thorough training to enhance the work of surveyors, and monitor inspections and provide reports to the Committee regarding citations and fines;
- A letter from the Committee be sent to the Centers for Medicare and Medicaid Services requesting Kansas representation on a stakeholder group reviewing the nursing home survey process and a copy of the letter be sent to the Kansas congressional delegation. (*Staff note*: After further investigation, it was determined that such stakeholder group does not exist; therefore, no action will be initiated by the Committee regarding this recommendation at this time. The Chairperson has directed staff to advise Committee members of this development at the January 2018 meeting.);
- KDHE clarify the language regarding power of attorney (POA) documents to distinguish between POA for health care and POA for finances; and
- The Child Welfare System Task Force review and clarify Medicaid eligibility for children in foster care and consider streamlining eligibility to make the transition out of foster care more consistent and efficient.

Proposed Legislation: None

Background

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services (HCBS) and KanCare Oversight operates pursuant to KSA 2017 Supp. 39-7,159, *et seq.* The previous Joint Committee on HCBS Oversight was created by the 2008 Legislature in House Sub. for SB 365. In HB 2025, the 2013 Legislature renamed and expanded the scope of the Joint Committee on HCBS Oversight to add the oversight of KanCare (the State's Medicaid managed care program). The Committee oversees long-term care services, including HCBS, which are to be provided through a comprehensive and coordinated system throughout the state. The system, in part, is designed to emphasize a delivery concept of self-direction, individual choice, services in home and community settings, and privacy. The Committee also oversees the Children's Health Insurance Program (CHIP), the Program for All-Inclusive Care for the Elderly (PACE), and the state Medicaid programs.

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

As required by statute, at the beginning of each regular session, the Committee is to submit a written report to the President of the Senate, the Speaker of the House of Representatives, the House Committee on Health and Human Services, and the Senate Committee on Public Health and Welfare. The report is to include the number of individuals transferred from state or private institutions to HCBS, as certified by the Secretary for Aging and Disability Services, and the current balance in the HCBS Savings Fund. (See Appendix A for the 2017 report.) The report also is to include information on the KanCare Program, as follows:

- Quality of care and health outcomes of individuals receiving state Medicaid services under KanCare, as compared to outcomes from the provision of state Medicaid services prior to January 1, 2013;

- Integration and coordination of health care procedures for individuals receiving state Medicaid services under KanCare;

- Availability of information to the public about the provision of state Medicaid services under KanCare, including access to health services, expenditures for health services, extent of consumer satisfaction with health services provided, and grievance procedures, including quantitative case data and summaries of case resolution by the KanCare Ombudsman;

- Provisions for community outreach and efforts to promote public understanding of KanCare;

- Comparison of caseload information for individuals receiving state Medicaid services prior to January 1, 2013, to the caseload information for individuals receiving state Medicaid services under KanCare after January 1, 2013;

- Comparison of the actual Medicaid costs expended in providing state Medicaid services under KanCare after January 1, 2013, to the actual costs expended under the provision of state Medicaid services prior to January 1, 2013, including the manner in which such cost expenditures are calculated;

- Comparison of the estimated costs expended in a managed care system of providing state Medicaid services before January 1, 2013, to the actual costs expended under KanCare after January 1, 2013; and

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

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

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

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

Committee Activities

The Committee met twice during the 2017 Session (February 24 and April 19) and twice for two days each during the interim (August 22 and 23 and November 28 and 29). In accordance with its statutory charge, the Committee's work focused on the specific topics described in the following sections.

KanCare Overview and Update

The Secretary of Health and Environment reported KDHE submitted a request for a one-year extension of the current (1115) Medicaid waiver (1115 Waiver). The Centers for Medicare and Medicaid Services (CMS) approved the request in November 2017; therefore, the current KanCare program will continue until December 31, 2018.

KanCare Cost Comparison

At the February meeting, KDHE submitted testimony stating KanCare had produced more than $1.4 billion in savings to the State and a portion of those savings were used to eliminate (as of August 2016) the physical disability (PD) waiver and reduce the intellectual and developmental disability (I/DD) waiver waiting lists. Upon discussion with the Committee, the Secretary of Health and Environment indicated the $1.4 billion could also be classified as "cost avoidance." At the November meeting, the Interim Medicaid Director provided information indicating that actual expenditures in 2017 (through September) were about $400,000 less than the 2012 projection for KanCare expenditures and about $600,000 less than was estimated for Medicaid expenditures without KanCare.

Medicaid Eligibility Backlog

At the February meeting, the Secretary of Health and Environment informed the Committee the number of unprocessed Medicaid applications was 1,680 and it was anticipated the backlog would be cleared by April 2017. At the April meeting, the Secretary reported the number of unprocessed applications was 325. At the November meeting, the Interim Medicaid Director reported, as of November 15, 2017, 2,799 unprocessed applications were past the 45-day requirement for an application to be processed. The Interim Medicaid Director also provided a chart to the Committee showing the numbers of unprocessed applications past 45 days, by month, from August 2015 to November 15, 2017.

Long-term Care Facilities

Backlog reduction. At the February meeting, the Secretary of Health and Environment informed the Committee that KDHE had a five-point plan to reduce the long-term care (LTC) facility application backlog. The plan included 90.0 percent advance payment for any LTC application pending more than 45 days, a webinar for LTC staff working on eligibility, and an established hotline for LTC facilities and staff. At the August meeting, the Secretary indicated advanced payments were not made to LTC facilities; rather, LTC facilities that applied for advanced payments had their applications expedited for processing.

Pilot project. At the February meeting, the Secretary of Health and Environment also informed the Committee that KDHE had launched a KanCare Clearinghouse Liaison pilot project. The Secretary stated KDHE initiated the pilot project to help skilled nursing centers resolve Medicaid eligibility and claims issues. The Secretary also indicated the goal was to have a statewide rollout.

The project was praised by conferees and appreciation was expressed regarding the increased communication between nursing homes and the Clearinghouse, which processed Medicaid eligibility applications. However, it was noted by conferees that pilot project participants experienced accelerated eligibility determinations but the improvement was limited to those participating in the project and was not experienced systemwide.

The Interim Medicaid Director indicated at the November meeting that KDHE would be expanding the pilot project to include all 330 nursing homes by April 2018.

KanCare 2.0

In 2017, KDHE began the process of renewing the KanCare program and the renewal program is referred to as "KanCare 2.0." KDHE is required to obtain approval from CMS prior to making changes to the current KanCare program. The requested changes are incorporated into the 1115 Waiver renewal application. The contract with MCOs to administer the current KanCare program expires December 31, 2018; therefore, KDHE is required to go through the request for proposal (RFP) process to facilitate new MCO contracts.

Request for proposal. The KanCare 2.0 RFP was posted in November 2017. The RFP indicates KanCare 2.0 contracts will take effect January 1, 2019. Several conferees recommended changes not be allowed to the KanCare system without legislative approval. (For additional stakeholder comments, see Presentations on KanCare from Individuals, Providers, and Organizations on the following page).

Office of Revisor of Statutes and KLRD staff provided information to the Committee regarding the KanCare 2.0 RFP, as follows: the five-year term of the 2.0 contract will begin January 1, 2019, and end December 31, 2023; the RFP does not present a conflict with the statutory requirement for an independent third-party review and is silent on the issue of an external entity or policy; the RFP includes significant liquidated damages, not in the current KanCare contract, for MCOs and subcontractors; the liquidated damages are assessed at the sole discretion of the State; and the RFP requires MCO staff receive training to apprise eligible Medicaid recipients of Kansas' program for work opportunities.

1115 Waiver renewal application. In June, KDHE held public meetings to collect stakeholder input. The stakeholders were asked to provide input on areas in which KDHE was proposing changes for KanCare 2.0. In November, after the renewal application was posted, KDHE held additional stakeholder public meetings.

At the November meeting, the Interim Medicaid Director indicated the 1115 Waiver renewal application would be submitted to CMS by December 31, 2017.

KLRD staff stated the 1115 Waiver renewal application includes a work requirement and a 36-month lifetime cap for certain Medicaid recipients. Neither of these provisions is in the current KanCare program.

KanCare Process Improvement Working Group

A written-only update was provided to the Committee from the Working Group at the February meeting. At the August meeting, the Kansas Medicaid Director provided an update on the Working Group's progress. The Chairperson of the Committee asked that parallel provider credentialing be placed back on the Working Group's agenda for further review. Representatives from all three MCOs provided information on various difficulties with standardization for provider credentialing across the MCOs.

Reports: Kansas Foundation for Medical Care, Inc.

At the April meeting, a representative from the Kansas Foundation for Medical Care (KFMC) explained that KFMC is an independent quality review organization and has been evaluating Medicaid services since 1995. The KFMC representative stated reviews are driven by CMS standards and assess MCO compliance and validate an MCO's performance, performance improvements, and information systems. The representative provided performance measures for each of the MCOs, including the results of consumer and mental health perception surveys.

Managed Care Organizations' Financial Update

KDHE provided testimony indicating the adjusted net income (loss) of the MCOs through June 2017 was as follows: Sunflower, $2,492,255; Amerigroup, $11,092,619; and UnitedHealthcare, $1,026,800.

Kansas Eligibility Enforcement System

The Interim Medicaid Director stated the Kansas Eligibility Enforcement System (KEES) Phase III became fully operational in September 2017. The Interim Medicaid Director further stated KEES integrates eligibility to streamline the application process, standardizes use of data and creates a single source of truth for all eligibility data, and provides a platform for beneficiaries to access information about medical and non-medical services in one location.

Osawatomie State Hospital

The Secretary for Aging and Disability Services provided an update on Osawatomie State Hospital (OSH), as follows: in preparation for re-certification from CMS, OSH increased the beds available from 120 to 158; the waiting list has been reduced; and only one bid was received for the RFP regarding building and operating OSH. The Secretary stated the sole bid was received from CorrectCare, which is involved in a number of lawsuits. However, the Secretary has visited five facilities operated by CorrectCare and was impressed. The Secretary stated that before signing a contract with a vendor, the information would be provided to the 2018 Legislature for approval.

Larned State Hospital

A representative from KDADS provided information to the Committee regarding a complaint survey conducted at Larned State Hospital by CMS and KDADS August 21-24, 2017. The KDADS representative stated a corrective action plan and updates to the plan were submitted to CMS on November 21 and 27, respectively. The plan and updates addressed ligature points and insufficient purchase orders.

KanCare Ombudsman

The KanCare Ombudsman provided information to the Committee at each meeting. In February, the Ombudsman reported the Office has a new website and would be starting a three-hour training program for community organizations that would like to learn more about Medicaid.

The number of contacts for the fourth quarter of 2016 was 523. The number of 2017 first-quarter contacts was 825 and the number during the second quarter was 835. In the third quarter of 2017, there were 970 contacts, which is up 41.0 percent from 2016. The third quarter of 2017 had the second-most contacts ever recorded by the Ombudsman's Office. Issues are not being resolved as quickly as in 2016. The Ombudsman reported the higher number of contacts and the slower resolution is likely due to increased outreach efforts and more complicated issues, respectively.

Presentations on KanCare from Individuals, Providers, and Organizations

Written and oral testimony was presented at each quarterly meeting. Some individuals and organizations stated appreciation for the help and services provided by the MCOs and relationships developed with the MCOs that have allowed problematic issues to be addressed and resolved quickly. The following is a summary of the concerns and suggested solutions presented by conferees.

Concerns

CHIP. The possibility of Congress failing to reauthorize CHIP. (*Staff note:* In December 2017, Congress granted a short-term extension of federal funding for CHIP.)

Claims. Dilatory processing of claims, and coding problems; increasing time required to process Medicaid claims; and the inconsistencies in processing claims among MCOs.

Clearinghouse. Ongoing poor communication with the Clearinghouse and erratic responses from the Clearinghouse.

Documentation. Inadequate or incomplete documentation making it difficult to evaluate the effectiveness of KanCare programs and the strength of the long-term services and supports provider network under the seven HCBS waivers.

Waiting lists. The growing waiting list for the PD Waiver and the waiting list for all HCBS Waivers; concern for the 3,000 individuals remaining on the HCBS waiting lists, some of whom have waited 7 years for services; and the waiting lists have not been reduced since KanCare was implemented.

Application backlog. The backlog and the uncompensated care resulting from the mishandling of nursing home eligibility applications.

Crisis funding. The ten-day delay for crisis funding is too long and the process is complex.

Eligibility. Difficulty navigating the Medicaid eligibility process, and the eligibility backlog.

LTC facilities. Deficiencies in KanCare service delivery have created problems for nursing homes and assisted living facilities, and care assessments have created a delay in Medicaid applications resulting in facilities not being reimbursed in a timely manner.

Children. Children's mental health services: families are not able to access the level of care they need in a timely manner, and residential facilities have more than 300 youth and children on waiting lists; the number of children served by KanCare has dropped.

MCOs. Medicaid payments exclude "natural supports" from family or friends; however, MCOs are not properly following the rule by coercing volunteers to provide services that would qualify for Medicaid payments; and MCOs are not following the agency mandate regarding premature placement of individuals diagnosed with Alzheimer's disease.

Providers. Medical providers have incurred financial loss as Medicaid reimbursement rates have dropped; financial hardship from the 4.4 percent Medicaid reimbursement cut to providers; and workforce background checks still taking too long.

KanCare 2.0. The work requirement and the 36-month lifetime limit for certain Medicaid recipients included in the request to CMS for approval of KanCare 2.0; decrease in time to file an appeal; sleep-cycle support (enhanced care services) policy changes initiated by KDADS are not being corrected; does not address self-directed care; does not address systemic problems, such as backlogs in the current system; does not address mental health concerns; will restrict due process; the service coordination process needs to be clarified: MCOs should be required to use only oversight personnel who are medically licensed; and the current system of mental health service be retained.

Other. Inconsistent VoiceCare service; failure to notify providers when a patient loses Medicaid; time and the high number of services that require pre-authorization; no expedited eligibility process for those near the end of life; contractual obligations for services to individuals with Alzheimer's disease under KanCare have not been met; and lack of providers for autism services.

Recommended solutions

KFMC review its annual evaluations of the KanCare program; expanding Medicaid would be beneficial to Kansas; the Legislature monitor the KanCare 2.0 MCO RFP as KDHE requests renewal of the 1115 Waiver with CMS; integrating targeted case management with care coordination to provide more comprehensive service for seniors; recommended home care providers receive a pay increase and benefits, as an increase would afford dignity to these caregivers; additional funding to address the HCBS waiting lists; carve out I/DD Waiver services from the managed care system; provide dental service for adults in KanCare 2.0; increase the reimbursement rate for dental providers; suspend KanCare 2.0 and allow the next governor's administration to develop a better system; more State oversight of the MCOs; increase Medicaid rates for autism services; and streamline credentialing process for applied behavioral analysis providers.

Conferees. Private citizens and representatives of the following organizations and providers testified or provided written-only testimony before the Committee: AARP Kansas; Alliance for a Healthy Kansas; Alzheimer's Association; Association of Community Mental Health Centers of Kansas; Case Management Services; Central Kansas Foundation; Children's Alliance of Kansas; Community Health Council, Wyandotte County; Community Living Opportunities; Communityworks, Inc.; Disability Rights Center of Kansas; Equi-Venture Farms, LLC; Family Service and Guidance Center; Flint Hills Community Health Center; Genesis Family Heartland Community Health Center; GraceMed Health Clinic; Integrated Behavioral Technologies, InterHab; Jenian, Inc.; Johnson County Area Agency on Aging; KanCare Advocates Network; Kansas Action for Children; Kansas Adult Care Executives; Kansas Advocates for Better Care (KABC); Kansas Appleseed Center for Law and Justice; Kansas Association for the Medically Underserved; Kansas Association of Area Agencies on Aging and Disabilities; Kansas Association of Centers for Independent Living and the Self-Direction Care Providers of Kansas; Kansas Association of Community Action Programs; Kansas Association of Pediatric Dentists; Kansas Council on Developmental Disabilities; Kansas Health Care Association and Kansas Center for Assisted Living; Kansas Dental Association; Kansas Home Care Association; Kansas Hospital Association; KVC Health Systems; LeadingAge Kansas; Life Centers Family Support Organization; MidAmerica Alliance for Access; Mother and Child Health Coalition; National Association of Social Workers, Kansas Chapter; Oral Health Kansas; Pathways Alternative Center for Education; Residential Treatment Services of Southeast Kansas; Riverfront Senior Residence; Sisters of Charity of Leavenworth; Southeast Kansas Independent Living Resource Center; Stormont Vail Health; United Community Services of Johnson County; and Wyandotte County Fetal and Infant Mortality Review Board.

Managed Care Organization Testimony

Representatives of all three MCOs provided testimony and responses to presentations by individuals, organizations, and providers at each meeting.

A representative from Amerigroup provided information regarding Amerigroup's involvement with communities, strategies for dealing with the opioid crisis, and improved sleep-cycle support. The Amerigroup representative also stated 19.0 percent of Amerigroup's services are self-directed and 81.0 percent are agency-directed; Amerigroup uses only licensed providers, whether in- or out-of-state; and Amerigroup's 2016 profit was 0.2 percent and, as of November 2017, a 0.2 percent loss for 2017.

Representatives from UnitedHealthcare Community Plan provided information regarding sleep-cycle support, a multi-tiered pharmacy plan for opioid management, and information on sequential care for youth in foster care. A UnitedHealthcare representative also stated all physicians employed by UnitedHealthcare are licensed in Kansas and UnitedHealthcare's profit margin for 2016 was 0.3 percent and was the same for the first two quarters of 2017.

Representatives from Sunflower discussed the organization's approach for sleep-cycle support and the initiatives Sunflower has in place to address opioid addiction. A representative from Sunflower also stated Sunflower's 2016 profit margin is 0.004 percent.

Representatives from each MCO discussed how their respective organizations address health care effectiveness data and information set requirements.

Managed Care Organization Incentives

The Interim Medicaid Director explained 14 pay-for-performance measures serve as incentives for the MCOs. The Director stated that in calendar year 2015, UnitedHealthcare met 63.6 percent of the measures; Sunflower, 53.0 percent; and Amerigroup, 59.0 percent. Under the current KanCare contract, MCOs are being paid and then must reimburse KDHE for areas where they did not meet the measures. Beginning in 2019, KDHE will shift to paying incentives based on what measures have been met.

Medicaid Managed Care Study

In late 2017, Leavitt Partners began conducting a study reviewing KanCare's costs and utilization, quality of care, and program initiatives. A representative from Leavitt Partners presented information to the Committee about the first of three topics: cost and utilization. The Leavitt Partners representative stated that under KanCare, Medicaid spent about $1.7 billion less than the projected trend and, during the first year of KanCare, expenditures shifted from hospital settings to HCBS settings. The remainder of the study is projected to be completed in 2018.

Clearinghouse

KDHE contracts with Maximus to operate the Clearinghouse. A representative of Maximus outlined steps being taken to correct errors and backlog issues at the Clearinghouse.

Human Services Consensus Caseload

Staff from the Division of the Budget, Kansas Department for Children and Families (DCF), KDHE, KDADS, Kansas Department of Corrections, and KLRD met April 18, 2017, to revise the estimates on caseload expenditures for FY 2017 and FY 2018, and October 31, 2017, to revise estimates on caseload expenditures for FY 2018 and FY 2019. The caseload estimates include expenditures for KanCare medical programs; non-KanCare programs, including Nursing Facilities for Mental Health (state only) and Frail Elderly (FE); PD Waiver Assessments; Temporary Assistance to Needy Families, the Reintegration and Foster Care contracts, and Out-of-Home Placements.

Spring

The estimate for FY 2017 is an increase of $25.1 million from all funding sources and $14.2 million from the State General Fund (SGF) as compared to the budget recommended by the Governor and adjusted by 2017 Senate Sub. for Sub. for HB 2052, the current year rescission bill.

Since an appropriations bill for FY 2018 and FY 2019 had not yet been passed, the starting point for the April estimates was the Governor's recommendations for FY 2018 and FY 2019. The estimate for FY 2018 is an increase of $19.6 million from all funding sources and a SGF decrease of $3.0 million compared to the FY 2018 Governor's recommendation. The estimate for FY 2019 is an increase of $4.1 million from all funding sources and a SGF increase of $6.4 million above the FY 2019 Governor's recommendation. The combined estimate for FY 2017, FY 2018, and FY 2019 is an all funds increase of $48.8 million and a SGF increase of $17.6 million.

Fall

The estimate for FY 2018 is a decrease of $4.6 million from all funds and an increase of $16.4 million from the SGF when compared with the budget approved by the 2017 Legislature. The estimate for FY 2019 is an increase of $259.1 million from all funds, including $50.0 million from the SGF above the approved amount; a combined estimate for FY 2018 and FY 2019 results in an all funds increase of $254.5 million and a SGF increase of $66.4 million.

Quarterly Home and Community Based Services Report

At each Committee meeting, written testimony was provided by KDADS on the average monthly caseloads and average census for state institutions and LTC facilities. A representative from KDADS provided information on savings on transfers to

HCBS waivers and the HCBS Savings Fund balance. (See Addendum A.)

Update on Renewal of Waivers

KDADS received CMS approval for the Serious Emotional Disturbance Waiver on April 28, 2017. At the August meeting, a representative of KDADS reported that community mental health centers (CMHCs) provide eligibility determinations, plans of care, and service provisions. CMS has informed KDADS that CMHCs cannot continue to perform all three duties due to an inherent conflict of interest. KDADS is pursing a contract with third-party assessors to provide side-by-side assessments.

KDADS received CMS approval for the Autism Waiver on June 14, 2017. Three behavioral services moved from the Waiver to the State Plan.

Waiting Lists Update

At the November meeting, the KDADS Commissioner for Community Services and Program Commission reported as of November 14, 2017, the HCBS I/DD waiting list had 3,603 individuals and 8,963 individuals were receiving services, and 1,318 individuals were on the HCBS PD waiting list and 5,953 individuals were receiving services.

Program for All-inclusive Care for the Elderly

At the November meeting, the KDADS Commissioner for Community Services and Program Commission provided the following information regarding PACE: Midland, Via Christi Hope (VCH), and Bluestem are PACE sites and had a combined enrollment of 556 individuals; KDADS was reviewing proposals for a new PACE site to be located in eastern Kansas; and an audit was performed by the State and CMS of VCH's program after concerns were reported. The Commissioner indicated CMS, KDHE, and KDADS were monitoring VCH's plan of correction.

Anti-psychotic Drugs for Dementia Patients

At the November meeting, the Interim Medicaid Director discussed the the recent goals published by CMS regarding reducing anti-psychotic drugs for dementia patients. A representative of KDHE stated the agency is reviewing best practices and will provide guidance for state policies and policies for MCOs. A representative from KABC stated the State is not providing leadership in reducing the use of anti-psychotic drugs and is not educating MCOs regarding state policies. The KABC representative recommended verifiable informed consent be provided prior to administering anti-psychotic drugs, KDADS provide better training for staff, and KDHE improve oversight of the MCOs.

Foster Care and Medicaid

A representative of DCF provided information about issues related to Medicaid services for children in foster care. The representative stated DCF created a Medicaid liaison to coordinate Medicaid services for foster children.

Oversight of Long-term Care Facilities

A representative of a LTC facility stated response by CMS and KDADS to deficiencies is excessive and punitive. The representative asked that the Committee encourage surveyors to write deficiencies commensurate with the level of harm the deficiency poses and to give an agency discretion to prevent G-level (actual harm that is not immediate jeopardy) deficiencies from triggering a ban on admissions.

A representative from LeadingAge Kansas stated, in the past two years, citations for "immediate jeopardy" have increased exponentially and these citations have an immediate and negative effect on person-centered care and can be financially devastating to high-quality facilities.

The KDADS Commissioner for Survey, Certification and Credentialing responded to questions from Committee members. The Commissioner reported KDADS has 20 vacant survey positions, and in August 2017, new regulations regarding immediate jeopardy were issued by CMS, which has resulted in a drop in reporting.

Conclusions and Recommendations

The Committee adopted the following recommendations:

- KanCare 2.0 proceed as scheduled;
- KDHE include comprehensive dental benefits for adults in the KanCare 2.0 RFP;
- KanCare 2.0 include measures to reduce the waiting lists; the Committee is concerned about the increase in HCBS waiting lists;
- A comprehensive master plan addressing mental health be developed, including corrections;
- KDHE provide to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services, by February 22, 2018, effective criteria and performance measures for the KanCare Clearinghouse and call center;
- KDADS develop policies and practices for surveying LTC facilities that will give surveyors latitude in interpreting deficiencies, provide adequate salaries and thorough training to enhance the work of surveyors, and monitor inspections and provide reports to the Committee regarding citations and fines;
- A letter from the Committee be sent to CMS requesting Kansas representation on a stakeholder group reviewing the nursing home survey process and a copy of the letter be sent to the Kansas congressional delegation. (*Staff note*: After further investigation, it was determined that such stakeholder group does not exist; therefore, no action will be initiated by the Committee regarding this recommendation. The Chairperson directed staff to advise Committee members of this development at the January 2018 meeting.);
- KDHE clarify the language regarding power of attorney (POA) documents to distinguish between POA for health care and POA for finances; and
- The Child Welfare System Task Force review and clarify Medicaid eligibility for children in foster care and consider streamlining eligibility to make the transition out of foster care more consistent and efficient.

APPENDIX A

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

ANNUAL REPORT FOR THE 2017 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 2016 Supp. 39-7,159) creating a comprehensive and coordinated statewide system for long-term care services became effective July 1, 2008.

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

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

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

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

Number of Individuals Transferred—The following table provides a summary of the number of individuals transferred from developmental disability (DD) institutional settings into HCBS during state fiscal year 2017, together with the number of individuals added to home and community based services due to crisis or other eligible program movement during state fiscal year 2017. The following abbreviations are used in the table:

- ICF/MR — Intermediate Care Facility for the Mentally Retarded
- SMRH — State Mental Retardation Hospital
- MFP — Money Follows the Person program
- SFY — State Fiscal Year

DD INSTITUTIONAL SETTINGS AND WAIVER SERVICES*	
Private ICFs/MR: Average Monthly Caseload SFY 2017	133
State DD Hospitals – SMRH: Average Monthly Caseload SFY 2017	300
MFP: Number discharged into MFP program – DD SFY 2017	30
I/DD Waiver Community Services: Average Monthly Caseload SFY 2017	8,926
*Monthly averages are based upon program eligibility.	
Sources: SFY 2017—Medicaid eligibility data as of November 28, 2017. The data include people coded as eligible for services or temporarily eligible.	

The following table provides a summary of the number of individuals transferred from nursing facility institutional settings into HCBS during SFY 2017. These additional abbreviations are used in the table:

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

FE / PD / TBI INSTITUTIONAL SETTINGS AND WAIVER SERVICES*	
Nursing Homes-Average Monthly Caseload SFY 2017	10,047
MFP FE: Number discharged into MFP program receiving FE Services	54
MFP PD: Number discharged into MFP program receiving PD Services	102
MFP TBI: Number discharged into MFP program receiving TBI Services	4
Head Injury Rehabilitation Facility	28
FE Waiver: Average Monthly Caseload SFY 2017	4,863
PD Waiver: Average Monthly Caseload SFY 2017	6,071
TBI Waiver: Average Monthly Caseload SFY 2017	453
*Monthly averages are based upon program eligibility.	
Sources: SFY 2017—Medicaid eligibility data as of November 28, 2017. The data include people coded as eligible for services or temporarily eligible.	

Average Daily Census in State Institutions and Long-Term Care Facilities

Kansas Neurological Institute: Average Daily Census

FY 2011 – 153

FY 2012 – 152

FY 2013 – 145

FY 2014 – 143

FY 2015 – 144

FY 2016 – 141

FY 2017 – 142

Parsons State Hospital: Average Daily Census

FY 2011 – 186

FY 2012 – 175

FY 2013 – 176

FY 2014 – 174

FY 2015 – 173

FY 2016 – 163

FY 2017 – 160

Private ICFs/MR: Monthly Average*

FY 2011 – 188

FY 2012 – 166

FY 2013 – 155

FY 2014 – 143

FY 2015 – 140

FY 2016 – 137

FY 2017 – 133

Nursing Facilities: Monthly Average*

FY 2011 – 10,789

FY 2012 – 10,761

FY 2013 – 10,788

FY 2014 – 10,783

FY 2015 – 10,491

FY 2016 – 10,235

FY 2017 – 10,047

*Monthly averages are based upon Medicaid eligibility data.

Savings Resulting from the Transfer of Individuals to HCBS

The “savings” through Money Follows the Person are realized only if and when an individual is moved into a community setting from an institutional setting and the bed is closed. This process would result in a decreased budget for private ICFs/MR and an increase in the MR/DD (HCBS/DD) Waiver budget as a result of the transfers.

For nursing facilities and state ICFs/MR, the process is consistent with regard to individuals moving to the community. The difference is seen in “savings.” As stated above, savings are seen only if the bed is closed. In nursing facilities and state ICFs/MR, the beds may be refilled when there is a request by an individual for admission that requires the level of care provided by that facility. Therefore, the beds are not closed. Further, even when a bed is closed, only incremental savings are realized in the facility until an entire unit or wing of a facility can be closed.

As certified by the Secretary for Aging and Disability Services, despite individuals moving into community settings that does have the effect of cost avoidance, the savings resulting from moving the individuals to home and community based services, as of December 31, 2017, 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 December 31, 2017, was $0.

Minority Report to the 2018 Legislature

January 2018

From: Senator Laura Kelly

To: 2017 Member of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight

Re: KanCare 2.0

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight voted to recommend that the 2018 Legislature proceed with the KanCare 2.0 request for proposal (RFP) and the 1115 Waiver renewal application. I strongly disagree with this recommendation.

I submit to the 2018 Legislature that proceeding with the RFP and application, as written, is not in the best interest of Medicaid recipients or the State of Kansas. Since its inception, KanCare has been plagued with problems, most of which have not yet been resolved. The Committee still routinely hears complaints about many aspects of the KanCare system almost five years after it was implemented. This continues to trouble me and many of our colleagues.

Some of the ongoing complaints presented to the Committee include inconsistent processing of claims by the managed care organizations (MCOs); the backlog of applications which negatively impacts individual applicants and nursing facilities; the inability of the Clearinghouse to process applications in an efficient manner; and the lack of standardized credentialing for providers by MCOs.

Additionally, the current RFP requires a five-year contract with the MCOs, beginning January 1, 2019. Therefore, the 2019 Administration will not have any opportunity to provide input regarding the operation of this important and troubled program.

It is my recommendation that the 2018 Legislature require the Kansas Department of Health and Environment to halt KanCare 2.0 and request another one year extension of the current KanCare program. This will allow time to fix ongoing problems and allow the new administration to provide input into a system for which it will ultimately be responsible.

Note: Senator Barbara Bollier and Representative Barbara Ballard concur with the above report.

MINORITY REPORT

REP. JIM WARD

KANCARE OVERSIGHT COMMITTEE

Conclusions:

1. KDHE is the single state Medicaid agency and solely responsible for the Medicaid program in Kansas.

2. There are consistent and serious problems with the Kansas Medicaid program as operated under KanCare and its three Managed Care Organizations. (MCOs)

3. Hospitals, nursing homes and other health providers have had great difficulty getting timely payments for services.

4. Eligible Kansans needing health care have faced long waiting lists.

5. KanCare has presented eligible people needing health care unclear and difficult application procedures.

6. The restricted ombudsman currently in place provides little real help to Kansans trying to navigate the various challenges presented by KanCare.

7. In a letter dated January 13, 2017 from the Center for Medicare and Medicaid Services (CMS) numerous problems in the KanCare program were set out. Attached hereto as Exhibit #1. Based on a significant number of complaints regarding the KanCare program from beneficiaries, providers and advocates CMS took a series of steps to investigate the Kansas program including an on-site review. CMS concluded that Kansas was substantially out of compliance with Federal statutes and regulations as well as its Medicaid State Plan.

8. There were several specific findings:

    a. Kansas failed to establish clear roles and responsibilities for State employees who administer and operate KanCare program.
    b. There was limited coordination between KDHE and KDADS which posed a risk to health and safety of Managed Long Term Services and Supports participants. CMS pointed out a lack of communication and collaboration between the state agencies.
    c. Kansas did not engage in sufficient oversight of the activities of the MCOs. (private insurance companies)
    d. CMS found the State's oversight of the MCOs has diminished over the 4 years that KanCare had been in operation.
    e. Public feedback consistently describes a lack of engagement and adversarial communication from the State. Stakeholders overwhelmingly report an inability to get clear and consistent information from the State and MCOs, making it difficult for KanCare enrollees to navigate their benefits.
    f. Stakeholders also note the State often does not respond to public comments or include changes in final policy documents to address public comments.
    g. MCOs requesting participants to sign incomplete forms without specific hours of services. MCOs revising care plans without participant input.
    h. Individualized care plans taking months to complete.
    i. No MCOs require the signature of providers responsible for plan implementation.
    j. Lack of oversight and reliable data makes it difficult to determine whether sufficient providers are in the networks to serve the enrolled beneficiaries.
    k. MCO's network data contained incorrect and inconsistent information.

9. 2017 Kansas legislature passed Senate Sub. For HB 2026 which attempted to address the concerns raised by CMS and others.

10. Insufficient time has passed to evaluate the effects of Senate Sub. For HB 2026.

11. KDHE has failed to show steps required by Senate Sub. For HB 2026 have been implemented.

12. The state continues to have difficulties with safety at Osawatomie and Larned State Hospitals.

Recommendations:

1. KDHE shall postpone its request for proposals from potential insurance providers and a 1115 waiver necessary to implement KanCare 2.0. The agency may renew its request for new 1115 waiver and request for proposals from insurance providers in one year after demonstrating the problems outlined above have been resolved.

2. KDHE shall prepare a report on the implementation of each provision of Senate Sub. For HB 2026 and present it to the next meeting of the KanCare Oversight Committee.

3. Lifetime caps are inconsistent with quality health care and should not be part of the Kansas Medicaid program.

4. Lifetime caps are a barrier to health care access and will result in a deterioration of health outcomes.

5. The administration shall remove lifetime caps from any 1115 waiver application.

6. Work requirements for recipients of Medicaid in Kansas shall not be requested by any 1115 waiver until Medicaid expansion has passed into law and is fully implemented.

7. The limited ombudsman program currently in place for KanCare shall be enhanced to include the authority of the office of ombudsman to investigate complaints against KDHE, KDADS and any of the 3 MCOs. The results of said investigations shall be reported to the MCO in question and KDHE. An annual report of investigations and results be provided to KanCare Oversight Committee at each quarterly meeting.

8. The Attorney General or his designee shall appear and report progress on the hiring of an Inspector General to the KanCare Oversight Committee. The Attorney General or his designee shall report difficulties in hiring an Inspector General and make recommendations.

9. The legislature should carve out the Intellectual and Developmental Disability participants of Medicaid in Kansas from KanCare and KanCare 2.0. This community of patients shall be served under the traditional Medicaid program.

Exhibit # 1

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 East 12th Street, Suite 355
Kansas City, Missouri 64106

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

Division of Medicaid and Children's Health Operations

January 13, 2017

Susan Mosier, M.D.
Secretary and State Health Officer
Kansas Department of Health and Environment
Curtis State Office Building
1000 SW Jackson Street, Suite 340
Topeka, KS 66612

Dear Dr. Mosier:

This letter addresses the Kansas Department of Health and Environment's (KDHE) noncompliance with the requirements of the KanCare program, authorized under Section 1115 of the Social Security Act (the Act), provisions of Kansas' Home and Community-Based Services (HCBS) waivers, and Federal Medicaid statute and regulations. This noncompliance, which is detailed in the enclosed KanCare Findings and Recommendations Report, places the health, welfare, and safety of KanCare beneficiaries at risk and requires immediate action.

The KanCare program establishes a managed care delivery system through a combination 1115/1915(c) waiver for nearly all of the 425,564 Medicaid and Children's Health Insurance Program (CHIP) beneficiaries in Kansas. KanCare's average annual costs total $3.4 billion.[1] The combined nature of the program means that some of the State's most vulnerable and medically complex individuals are enrolled in managed care, such as those living in nursing facilities or enrolled in HCBS waivers.

Throughout 2016, CMS received a significant number of complaints and concerns regarding the KanCare program from beneficiaries, providers, and advocates. In response, CMS reviewed information concerning the reported issues, discussed systemic concerns with State staff, and engaged State representatives to remediate individual cases as appropriate. Ultimately, CMS conducted an on-site visit from October 24, 2016 to October 27, 2016. The on-site review consisted of interviews with State agencies responsible for the KanCare program; interviews with staff of Amerigroup Kansas, Inc., Sunflower Health Plan, and UnitedHealthcare Community Plan of Kansas, the three KanCare managed care organizations (MCOs); and three stakeholder listening sessions with KanCare beneficiaries and families, providers, and advocacy groups. Additionally, CMS requested documentation both prior to and after the onsite. Our review of the provided documentation substantiated concerns

1 *Kansas Department of Health and Environment. State Fiscal Year 2016. Kansas Medical Assistance Report (MAR) Retrieved from:* http://www.kancare.ks.gov/policies-and-reports/medical-assistance-report

regarding administrative oversight of the program. In addition, the on-site discussions and documentation review revealed a number of concerns regarding the operation of KanCare.

The results of our on-site review confirm that Kansas is substantively out of compliance with Federal statutes and regulations, as well as its Medicaid State Plan. Kansas has failed to administer the KanCare program as required by section 1902(a)(4) of the Act and 42 C.F.R. § 431.15. The results of CMS' onsite review outlined in this letter and the accompanying report are particularly concerning given the large role KanCare plays in delivering care to Medicaid beneficiaries in Kansas. We have detailed some of the key findings of the review below, but want to underscore the serious nature of these concerns and the risks it poses to beneficiaries. These concerns affect beneficiaries' receipt of services necessary to stay in the community, beneficiaries' ability to access needed care, and the State's ability to ensure the health and welfare of beneficiaries.

Administrative Authority: 42 C.F.R § 431.10(b); 42 C.F.R. § 441.745
CMS regulations require States to establish a Single State Medicaid Agency with ultimate administrative authority over the Medicaid program. The Single State Medicaid Agency is responsible for the administration and supervision of the Medicaid State Plan, as well as any State operating agencies and/or contractors that perform functions on the State Medicaid Agency's behalf.

- The State has failed to establish clear roles and responsibilities for State employees who administer and operate the KanCare program. The State relied on a memorandum of understanding between KDHE and the Kansas Department of Aging and Disability Services (KDADS) that was last updated in 2010, prior to the implementation of KanCare. The memorandum references State departments that no longer exist and lacks criteria for KDHE to evaluate performance of KDADS.
- Limited coordination between KDHE and KDADS poses a risk to the health and safety of Managed Long Term Services and Supports (MLTSS) participants, who may experience difficulty managing their benefits. Review of MCO oversight and performance reports is divided between KDHE and KDADS and the lack of communication and collaboration creates a knowledge gap between the agency that operates the HCBS waivers (KDADS) and the agency responsible for managed care contract implementation (KDHE). This lack of communication also reduces the State's ability to identify problems, determine whether identified problems are improving in any systemic way, and initiate necessary changes at the MCO level.
- Kansas did not engage in sufficient oversight of the activities of the MCOs. While the State receives many reports from the MCOs, there is no evidence of significant analysis or subsequent program changes based on those reports. For example, recent MCO reports indicate that a low percentage of required health screenings were completed, but there is no evidence that the State provided feedback to the MCOs regarding completion of health screenings. The MCOs reported receiving little feedback on submitted reports, and the feedback that is provided is verbal rather than written. Further, reporting is inconsistent among the MCOs, which limits the State's ability to track issues and identify trends

across the program. For example, the levels used by each of the three MCOs to categorize critical incidents vary, resulting in inconsistent reporting to the State.

- The State's oversight of the MCOs has diminished over the four years of KanCare operation, as evidenced by its annual onsite reviews of the MCOs and subsequent reports. The 2013 annual report was a comprehensive document, and corrective action plans were issued to the MCOs regarding identified issues. The 2014 and 2015 annual reports were each two pages long, with little content of substance.
- Public feedback consistently describes a lack of engagement and adversarial communication from the State. Comments from KanCare stakeholders at multiple stakeholder sessions overwhelmingly reflect an inability to obtain clear and consistent information from the State and MCOs, making it difficult for KanCare enrollees to navigate their benefits.
- Stakeholders further noted that the State often does not respond to public comments or include changes in final policy documents to address public comments. The State maintains the KanCare Advisory Committee, and the MCOs each maintain an advisory board, but these committees do not meet all applicable requirements. Furthermore, committee members indicated that the committee meetings did not provide opportunities for meaningful public input.

Person-Centered Planning Process: 42 C.F.R § 441.301(c); 42 C.F.R § 441.725(b)
CMS requires that service plans for each participant in Medicaid HCBS programs be developed through a person-centered planning process that reflects the beneficiary's individual preferences and goals. The rules require that the person-centered planning process is directed by the participant, and may include other individuals as chosen by the participant. This planning process, and the resulting person-centered service plan, assist the participant in achieving personal outcomes in the most integrated community setting, ensure delivery of services that reflect personal preferences and choices, and help assure the participant's health and welfare.

- CMS uncovered significant compliance deficiencies with the person-centered planning process, which included: MCOs requesting participants sign incomplete forms without the number of hours or types of services they would receive; MCOs revising person-centered plans without the participant's input; and MCOs failing to ensure provider signatures on person-centered plans as required.
- One MCO indicated that while a service plan is developed for each waiver participant within 14 days of entering the waiver, the required person-centered plan is not developed until 3 to 6 months after services are authorized. The delayed completion of the person-centered plans compromises safeguards meant to ensure that waiver services and supports reflect participants' individual preferences and goals.
- None of the MCOs have processes in place that ensure all final service plans are signed and agreed to by the participant or that the participant receives a copy of the final plan. All three MCOs described processes that required participants to sign "interim" or "proposed" plans that were then reviewed and possibly revised by a utilization review committee within the MCO. If changes were made, MCOs attempted to obtain participant signatures on the final plans; but MCO staff stated they are not always successful in obtaining those signatures.

- None of the three MCOs currently require the signature of providers responsible for plan implementation, as required by 42 C.F.R. § 441.725(b)(9). The lack of member and provider signatures jeopardizes waiver participants' understanding of the services they should be receiving, and delivery of those services by providers.

Provider Access and Network Adequacy: 42 C.F.R § 441.730; 42 C.F.R. § 438.206
CMS requires States to ensure that each MCO maintains a network of providers that is sufficient to provide adequate and timely access to Medicaid services covered under the contract between the State and the MCO.

- The State's approach to tracking, monitoring, and overseeing provider network adequacy and access to care for KanCare consumers is limited. Given that KanCare serves nearly all Medicaid and CHIP beneficiaries, many of whom live in rural and frontier areas known to be underserved, CMS would expect a more robust oversight process including proactive monitoring of the number of providers enrolled in each MCO's network in regions with known access issues.
- MCOs must submit multiple reports to the State regarding access to care. However, there seemed to be little analysis or trending based on these reports at the State level. CMS staff have asked KDHE staff multiple times in late 2016 for the State's analysis of network adequacy. Although KDHE provided MCO provider network reports in response to these requests, CMS has never received any evidence of the State's analysis of network adequacy.
- The provider network data produced by the MCOs for much of 2015 contained incorrect and inconsistent information on provider specialties related to HCBS, making the data not useful for analyzing trends in HCBS provider network adequacy. The MCOs report that the data now being reported is correct, after a data clean-up effort in 2015.
- This lack of oversight and reliable data makes it difficult to determine whether sufficient providers are in the networks to serve enrolled beneficiaries, and to effectively track the impact of policy changes on provider networks.

Participant Protections: 42 C.F.R. § 438.100; 42 C.F.R. § 441.301(c)(2)(xiii); 42 C.F.R. § 441.302; 42 C.F.R. § 438.440
States are required to ensure that managed care enrollees are free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation. To obtain HCBS waivers, States must assure CMS that necessary safeguards are in place to protect the health and welfare of beneficiaries and that any modification to an individual's freedoms meets specific requirements and is fully documented in the person-centered service plan. Finally, CMS requires that States and MCOs provide information to enrollees regarding grievance, appeal, and fair hearing procedures and timeframes, using a State-developed or State-approved description.

- Staff of one MCO mistakenly believed that use of restrictive interventions were not permitted in any of Kansas' HCBS waivers. However, two waivers allow for restraints, restrictions, and/or seclusion in certain circumstances. Because this MCO did not correctly understand the rules around restrictive interventions, they did not document rights restrictions in the person-centered plans as required.

Therefore, safeguards to protect beneficiaries' health and welfare with regard to restrictive interventions could not be carried out.

- The State does not have a comprehensive system for reporting, tracking, and trending critical incidents. MCO staff indicated that there was no formal, systematic process for them to report critical incidents, or resolution of critical incidents, for their members to the State; rather, they would call or email State staff to report such incidents. Recent HCBS reports provided no data to demonstrate that unexpected deaths were investigated within required timeframes; that reviews of critical incidents were initiated and reviewed within required timeframes; that the use of restraints, seclusion, or other restrictive interventions followed procedures as specified in the approved waivers; or that the unauthorized use of restrictive interventions was detected. The lack of oversight of critical incidents increases the risk that waiver recipients' rights, health, and safety could be in jeopardy.

- During the implementation of KanCare, the State permitted the MCOs to develop their own provider appeal processes. However, according to Federal rules, those processes should have been developed or approved by the State. The State recognized that difficulties resulted from the differing provider appeal processes, and asked the MCOs to develop one standardized process in late 2015. Until the new process is implemented, the MCOs continue to use differing provider appeal processes, creating administrative burden for providers who must navigate three different appeal processes.

Due to the severe and pervasive nature of the on-site review findings and the resulting impacts this has on the beneficiaries and providers, CMS is requiring Kansas to develop a Corrective Action Plan (CAP) describing the actions it will take to correct the identified noncompliance. KDHE must submit the CAP to CMS as soon as possible, and no later than February 17, 2017. The CAP must include a detailed plan addressing each of the findings identified in the attached report. The CAP must also include the milestones and dates specifying when the actions will be fully implemented; their impact on the health, welfare, and safety of waiver participants; and a strategy for ongoing review and monitoring of the KanCare program. CMS expects the State agencies responsible for the KanCare program to implement the CAP in an expeditious and transparent manner which includes engaging stakeholders on changes and planned changes. Implementation of the CAP, once approved, will be monitored by CMS.

Federal regulations at 42 C.F.R. § 430.35 allow CMS to withhold Federal Financial Participation payments from a State after a finding that the State's plan fails to comply, or to substantially comply, with the provisions of section 1902 of the Act. In the event that Kansas fails to: 1) submit the required CAP in the indicated timeframe, 2) submit a CAP that is sufficient to mitigate the issues, or 3) implement and monitor the CAP as approved by CMS, we plan to initiate formal compliance action as described in 42 C.F.R. § 430.35, including financial sanctions of State administrative funds. Kansas' execution of the CAP and measured performance improvement will ultimately inform the extension of Kansas' 1115 demonstration program , as well as future managed care contracts and 1915(c) waiver actions. KDHE is entitled to appeal the findings of noncompliance pursuant to the procedures set forth at 42 C.F.R. Part 430, Subpart D.

If you have any questions regarding this matter, please contact me at (816) 426-5925 or via email at James.Scott1@cms.hhs.gov.

Sincerely,

James G. Scott
Associate Regional Administrator
for Medicaid and Children's Health Operations

cc:
Vikki Wachino
Mike Nardone
Eliot Fishman
Mike Randol
Christiane Swartz
Tim Keck
Codi Thurness
Brandt Haehn
Brad Ridley
Susan Fout

Report of the Joint Committee on State Building Construction to the 2018 Kansas Legislature

CHAIRPERSON: Representative Adam Lusker

VICE-CHAIRPERSON: Senator Rick Billinger

OTHER MEMBERS: Senators Marci Francisco, Laura Kelly, Carolyn McGinn, and John Skubal; and Representatives John Alcala, Steve Alford, J.R. Claeys, and Steve Huebert

CHARGE

The Committee is authorized by KSA 46-1701, which includes provisions allowing the Committee to meet on call of its chairperson at any time and any place within the state and to introduce legislation. The Committee is to:

- Study, review, and make recommendations on all agency five-year capital improvement plans;
- Review leases, land sales, and other statutorily required reports by agencies; and
- Travel throughout the state to observe State-owned buildings.

January 2018

Joint Committee on State Building Construction

Annual Report

Conclusions and Recommendations

The Joint Committee recommended all of the agencies' five-year capital improvement plans except for the following:

- Department of Corrections—The motion to approve the agency's five-year capital improvement plan made no recommendation on the Lansing Correctional Facility construction project for a new facility.
- The Committee recommended the Department of Corrections restart the bidding process for the Lansing Correctional Facility construction project for a new facility and write the request for proposals to receive design-build proposals.
- The Committee recommended the Department of Corrections bring in stakeholders for the new Lansing Correctional Facility construction project, including mental health groups and the Sentencing Commission.

Proposed Legislation: None

Background

The Joint Committee on State Building Construction was established during the 1978 Session. The Special Committee on Ways and Means recommended the bill creating the Committee, 1978 HB 2722, as a result of its interim study of state building construction procedures.

The Committee was expanded from six members to ten members by 1999 HB 2065. It is composed of five members of the Senate and five members of the House of Representatives. Two members each are appointed by the President of the Senate, the Senate Minority Leader, the Speaker of the House of Representatives, and the House Minority Leader. The Chairperson of the Senate Committee on Ways and Means and the Chairperson of the House Committee on Appropriations serve on the Committee, or each may appoint a member of such committee to serve (KSA 46-1701).

Terms of office are until the first day of the regular legislative session in odd-numbered years. A quorum of the Committee is six members. The chairperson and vice-chairperson are elected by the members of the Committee at the beginning of each regular session of the Legislature and serve until the first day of the next regular session. In odd-numbered years, the Chairperson is to be a Representative and the Vice-chairperson is to be a Senator; in even-numbered years, the Chairperson is to be a Senator and the Vice-chairperson is to be a representative (KSA 46-1701).

The Committee may meet at any location in Kansas on call of the Chairperson, and is authorized to introduce legislation. Members receive the normal *per diem* compensation and expense reimbursements for attending meetings during periods when the Legislature is not in session (KSA 46-1701).

The primary responsibilities of the Committee are set forth in KSA 2016 Supp. 46-1702. The Committee is to review and make recommendations on all agency capital improvement budget estimates and five-year capital improvement plans, including all project program statements presented in support of appropriation requests, and to continually review and monitor the progress and results of all state capital construction projects. The Committee also studies reports on capital improvement budget estimates that are submitted by the State Building Advisory Commission. The Committee makes annual reports to the Legislature through the Legislative Coordinating Council (LCC) and other such special reports to the appropriate committees of the House of Representatives and the Senate (KSA 2016 Supp. 46-1702).

Each state agency budget estimate for a capital improvement project is submitted to the Committee, the Division of the Budget, and the State Building Advisory Commission by July 1 of each year. Each estimate includes a written program statement describing the project in detail (KSA 2016 Supp. 75-3717b). The budget estimate requirement does not apply to federally funded projects of the Adjutant General or to projects for buildings or facilities of Kansas Correctional Industries of the Department of Corrections that are funded from the Correctional Industries Fund. In those cases, the Adjutant General reports to the Committee each January regarding the federally funded projects, and the Director of Kansas Correctional Industries advises and consults with the Committee prior to commencing such projects for Kansas Correctional Industries (KSA 2016 Supp. 75-3717b and 75-5282).

The Secretary of Administration issues monthly progress reports on capital improvement projects, including all actions relating to change orders or changes in plans. The Secretary of Administration is required to first advise and consult with the Committee on each change order or change in plans having an increase in project costs of $125,000 or more, prior to approving the change order or change in plans (KSA 2016 Supp. 75-1264). (This threshold was increased from $25,000 to $75,000 in 2000 HB 2017 and to $125,000 in 2008 HB 2744.) Similar requirements were prescribed in 2002 for projects undertaken by the State Board of Regents for research and development facilities and state educational facilities (KSA 2016 Supp. 76-786), and in 2004 for projects undertaken by the Kansas Bioscience Authority (KSA 2016 Supp. 74-99b16).

If the Committee will not be meeting within ten business days, and the Secretary of Administration determines it is in the best interest of the State to approve a change order or change in plans with an increase in project costs of $125,000 or more, 2000 HB 2017 provided an alternative to prior approval by the Committee. Under these circumstances, a summary description of the proposed change order or change in plans is mailed to each member of the Committee, and a member may request a presentation and review of the proposal at a meeting of the Committee. If, within seven business days of the date the notice was mailed, two or more members notify the Director of Legislative Research of a request to have a meeting on the matter, the Director will notify the Chairperson of the Committee, who will call a meeting as soon as possible. At that point, the Secretary of Administration is not to approve the proposed action prior to a presentation of the matter at a meeting of the Committee. If two or more members do not request the proposed matter be heard by the Committee, the Secretary of Administration is deemed to have advised and consulted with the Committee and may approve the proposed change order, change in plans, or change in proposed use (KSA 2016 Supp. 75-1264).

The "comprehensive energy bill," 2009 Senate Sub. for HB 2369, required the State to establish energy efficiency performance standards for State-owned and -leased real property, and for the construction of state buildings. State agencies are required to conduct energy audits at least every five years on all State-owned property, and the Secretary of Administration is prohibited from approving, renewing, or extending any building lease unless the lessor has submitted an energy audit for the building. Each year, the Secretary of Administration shall submit a report to the Committee that identifies properties where an excessive amount of energy is being used (KSA 2016 Supp. 75-37,128).

Committee Activities

The LCC approved three meeting days for the Joint Committee on State Building Construction, of which there was to be one travel day. Those meetings were held September 26-27 and November 30, 2017. The Committee reviewed agencies' five-year capital improvement plans and traveled to agency-occupied buildings around Topeka. All five-year capital improvement plans were approved, although the Department of Corrections' plan was modified as noted in the conclusions and recommendations.

Five-Year Plans

Kansas Department of Labor. The Chief Fiscal Officer of the Kansas Department of Labor spoke to the Committee regarding capital improvements for the Department of Labor. She spoke of the specific requests the Department had submitted for FY 2018 to FY 2023. An agency representative stated windows were replaced due to age.

Kansas Insurance Department. The Comptroller of the Kansas Insurance Department spoke to the Committee regarding the Department's capital improvement plan for FY 2018 through FY 2023. It was stated the windows on the agency's building were either replaced or repaired and all were repainted.

Kansas Department of Wildlife, Parks and Tourism. The Budget Director for the agency explained the capital improvement plan for FY 2018 through FY 2023 and how the funds are spent on the different projects. The agency was also asking for expanded funds for upgrades to various projects across the state.

Kansas Department for Children and Families. The Deputy Secretary of Operations for the agency described the capital improvement projects for the Myriad building, which the State will own outright in 2029. The Department pays into a fund for improvements in the amount of $64,725 ($0.75 per square foot) annually, with the current balance in the account being $708,883.

Judicial Branch. The Chief Financial Officer of the agency presented the capital improvement plan. There was discussion over using docket fees for the security guard relocation. The agency representative stated the security guard issue was deemed a higher priority than filling positions.

Department of Administration. The Director of Facilities and Property Management for the agency spoke about the capital improvement plan. There was discussion about the window replacement on buildings and energy efficiencies that might be gained.

Board of Regents. The Director of Facilities for the agency spoke about the deferred and annual maintenance program at the universities. There was discussion about the backlog of maintenance projects and the agency representative stated, at a certain point, it was cheaper to tear down older buildings than to continue to try to maintain them. There was additional discussion about the Educational Building Fund.

University of Kansas (KU). The University Architect spoke about KU capital improvement projects. He provided updates on current projects and asked to amend two projects for FY 2018: the Regents Center/Biotech Lab and Watkins Memorial Health Center. The agency also provided information on two projects funded with gifts and by the KU Endowment Association: the Horejsi Family Athletics Center, including a new volleyball facility and the Hoglund ballpark renovations.

University of Kansas Medical Center. The Director of Projects and Planning for the agency discussed four construction projects, including a new Medical Education Building in Wichita.

Kansas State University. The Associate Vice President for Facilities discussed numerous construction projects, which include the Kansas Veterinary Diagnostic and Research Center.

Wichita State University. The Associate Vice President for Facilities discussed numerous projects at the agency and provided an update on the construction projects within the Innovation Campus.

Emporia State University. The Vice President of Administration and Finance spoke to the Committee about the projects being undertaken at the university. The major focus was on the Morse Central and Northeast resident hall demolition and Abigail Morse Hall renovation.

Pittsburg State University. The Interim Director of Planning, Design and Construction for the university discussed current and future construction projects for the agency and provided an update on the Block 22 project in downtown Pittsburg.

Fort Hays State University. The Director of Facilities Planning at the university provided an update on the construction projects and capital improvement plan for the agency.

Department of Corrections. The Director of Capital Improvements for the agency provided information on the capital improvement plan for FY 2018 through FY 2023. There was also an update of information on proposed new construction at the Lansing Correctional Facility. There was a presentation on the funding of the Lansing Correctional Facility project by a representative of the Legislative Division of Post Audit (LPA) and additional information from a representative of the Office of Revisor of Statutes.

The Secretary of Corrections spoke to the Committee about the Lansing Correctional Facility project and the findings of the LPA study. There was much discussion about the project and, at the time of the agency presentation, the Committee took no action on the agency's five-year capital improvement plan.

Department of Commerce. The Building Services Manager for the agency provided information on its capital improvement projects and budget. There was discussion about the maintenance of the elevators.

Kansas Schools for the Blind and the Deaf. The Chief Operating Officer for the agencies provided information on the capital improvement plans. He stated this is the last year for debt service payments for the School for the Blind and the debt service payments for the School for the Deaf will end in FY 2020.

State Historical Society. The Executive Director of the agency provided information on its capital improvement projects throughout the state.

Kansas Bureau of Investigation. The Executive Officer of the agency presented its five-year capital improvement plan to the Committee. The Committee discussed roof replacements and the need for back-up generators.

Kansas Department for Aging and Disability Services and state hospitals. The Facilities Architect for the agency provided information on the capital improvement projects and plan for the agency and all the state hospitals throughout the state.

Kansas State Fair. The General Manger for the agency provided information on the capital improvement projects and plan for the agency. There was discussion on the stormwater utility rate and the demand transfer from the State General Fund that has been inconsistent throughout the years.

Adjutant General's Department. The Director of Public Works for the agency provided information on the capital improvement plan for the agency. There was discussion on the Fort Leavenworth readiness project.

Kansas Commission on Veterans' Affairs Office. The Director of the agency provided information on the capital improvement plan for the agency. There was discussion of the effects of a hail storm at the facility in WaKeeney.

Kansas Department of Transportation. The Director of Operations provided information on the capital improvement plan for the agency. There was discussion on re-roofing projects.

Kansas Highway Patrol. The Chief Financial Officer provided information on the capital improvement projects for the agency. There was discussion on a lease lot on Highway 24 in Topeka.

Additional Discussions and Reviews

In addition to the Committee reviewing the agency's five-year capital improvement plans, the Committee asked to review the safety issues at the Department of Revenue and received additional information on the Lansing Correctional Facility.

Department of Revenue. The Secretary of Revenue addressed the Committee and answered questions about an incident that occurred in

Wichita (the shooting of a Department of Revenue employee on September 19, 2017, at Department offices). The Secretary stated the agency must deal with two separate security issues. Internal Revenue Service requirements (IRS *Publication 1075*) deal with the security of documents and records the agency handles. The agency must also provide safety for employees with proper security measures. There was discussion on the security that was provided in Wichita and efforts being taken to increase security there. There was also discussion of security at the Topeka facility.

Department of Corrections. The Secretary of Corrections addressed the Committee and provided testimony on the proposed agreement with CoreCivic to provide a new correctional facility at the Lansing Correctional Facility as a lease purchase after 20 years.

The Secretary noted the central prison facilities were built in 1860 and need costly upgrades and increasingly expensive maintenance; he stated a new prison will provide more effective staffing and lower maintenance costs and will improve security; it will also reduce staff turnover (currently at 36 percent, as of the September meeting). By building at the present location, the Department of Corrections can utilize existing infrastructure, staffing, and community support. The proposed project includes 2 housing units (a 1,920-bed maximum security unit and a 512-bed minimum security unit with 75 percent 2-person cells and 25 percent 4-person cells) and modern ancillary support systems, all of which will provide significant staffing efficiencies and cost savings.

Reviewing the financing options, the Secretary stated no bids were received for a bond-financed design-build facility and only 2 bids were received for a 20-year lease purchase. CoreCivic was chosen as the vendor for a lease-purchase facility costing $13.2 million annually. He stated the 20-year costs to the State with the existing facility total $950,777,950; 20-year costs for a new facility with CoreCivic total $927,101,749. The Secretary provided an overview of the advantages for the proposed project and outlined the consequences of delaying the project.

Tours of Facilities. The Committee toured the following facilities, all in Topeka:

- Kansas Department of Revenue, Scott Building, 120 SE 10th Ave.;
- Department for Children and Families, Athene Building, 555 S. Kansas Ave.;
- Department for Children and Families, Myriad Building, 500 Van Buren Street;
- Kansas Bureau of Investigation Headquarters, 1620 SW Tyler Street;
- Kansas Department of Revenue, Zibell Building, 300 SW 29th Street; and
- Department for Aging and Disability Services, Kansas Neurological Institute, 3107 SW 21st Street.

Statutorily Required Reports

Excess Property Report. The Director of Operations, Kansas Department of Transportation, provided the Excess Property Report required by KSA 2016 Supp. 75-3516. There was no discussion.

Excessive energy use of State-owned buildings. The Director of the Office of Facilities and Property Management provided the Committee with the recent additions to the report since agencies are not required to report all buildings every year. There was discussion as to why some buildings all have the same readings at the major universities and it was thought that these buildings were all on the same meter. It was also noted there was large energy usage at the power plant buildings at the universities. There was additional discussion as to the usefulness of the report to the agencies. Each university representative responded to questions as to how they used the information from this report.

Leases and Sales

The Deputy Director and State Lease Administrator of the Office of Facilities and Property Management of the Department of

Administration provided the following leases to the Committee, all of which were recommended by the Committee:

- Lease for the Kansas State Board of Indigents' Defense Services in Topeka;
- Lease for the Department of Corrections in Salina; and
- Lease for the Kansas Department for Children and Families in McPherson.

Conclusions and Recommendations

The Committee recommended all of the agencies' five-year capital improvement plans except for the Lansing Correctional Facility construction project as part of the Department of Corrections' plan.

The Committee also recommended the Department of Corrections restart the bidding process for the Lansing Correctional Facility construction project for a new facility and write the request for proposals to receive design-build proposals.

The Committee also recommended the Department of Corrections bring in stakeholders for the new Lansing Correctional Facility construction project, including mental health groups and the Sentencing Commission.

Report of the Capitol Preservation Committee to the 2018 Kansas Legislature

Chairperson: Jennie Chinn, State Historical Society

Senate President's Appointees: Senator Elaine Bowers; and Harrison Hems

House Speaker's Appointees: Representative Fred Patton; and Melinda Gaul

Senate Minority Leader's Appointee: Tim Graham

Governor's Appointees: Kim Borchers and Jeremy Stohs (one position vacant)

House Minority Leader's Appointee: Representative Valdenia Winn

Other Members (*Ex Officio*): Frank Burnam, Kansas Department of Administration; and Peter Jasso, Kansas Creative Arts Industries Commission

Charge

The Committee is directed to:

- Review progress of the *Brown v. Board of Education* mural; and
- Consider Capitol grounds plans (which may include the *Ad Astra* Plaza).

Capitol Preservation Committee

Annual Report

Conclusions and Recommendations

The Committee directed Michael Young, the artist of the *Brown v. Board of Education* mural, to:

- Review the facial features of the male child on the right side of the mural to ensure his features are not depicted in a cartoon-like manner;
- Paint the teacher's hairstyle in a manner that reflects the era, but is still timeless; and
- Leave the subtle depiction of the Ku Klux Klan in the background of the mural to reflect history and allow the audience to interpret the piece of art.

The Committee recommended the Kansas Department of Administration:

- Meet with Mr. Young to discuss and implement the lighting of the *Brown v. Board of Education* mural prior to the mural's ceremonial unveiling to the public;
- Continue to fix fractures in the marble flooring of the Capitol Visitor Center with epoxy and to monitor the flooring;
- Update kiosk signs in the Capitol Complex with notations of "You Are Here" to ensure accuracy and improve the visitor experience;
- Work with the State Historical Society regarding signage for parking on Saturdays; and
- Update the directional arrows on signs outside the Capitol Complex directing visitors to the main entrance and the Capitol Visitor Center.

The Committee recommended the State Historical Society:

- Closely monitor the cracks in the Overmyer murals; and
- Proceed with obtaining cost estimates to stabilize and conserve the Overmyer murals, as necessary.

The Committee recommended the Report of the Capitol Preservation Committee to the 2018 Kansas Legislature be forwarded to the Joint Committee on State Building Construction.

The Committee supported completion of the *Ad Astra* Plaza project, without providing any state financing for the completion of the project.

The Committee supported the expansion of the Law Enforcement Memorial on Capitol grounds.

The Committee supported the enactment of legislation for the Eisenhower statue on Capitol grounds.

The Committee supported the development of a Legislative Coordinating Council policy regarding non-controversial artwork in Capitol committee rooms.

Proposed Legislation: None

Background

The Capitol Preservation Committee was created by the Kansas Legislature in 2010 to approve renovation proposals in all areas of the Capitol, the Capitol Visitor Center, and the Capitol grounds to ensure the historical beauty of the areas is preserved, preserve the proper decor of those areas, assure that any art or artistic displays are historically accurate and have historic significance, approve the location and types of temporary displays, and oversee the reconfiguration or redecoration of committee rooms within the Capitol. As provided by KSA 2016 Supp. 75-2269, the Division of Legislative Administrative Services has the responsibility of implementing the recommendations of the Committee.

The Committee is made up of 12 members, with the Governor appointing 3, the President of the Senate and the Speaker of the House each appointing 2, and the Minority Leaders of the House and Senate each appointing 1. The Committee's three *ex officio* members are the Statehouse Architect, the Executive Director of the State Historical Society, and the Director of the Creative Arts Industries Commission. The Governor has the authority to appoint the chairperson from the Committee's membership.

The Committee was granted one meeting day by the Legislative Coordinating Council (LCC).

Committee activities

The Committee met on December 7, 2017, at the Statehouse. During the meeting, the Committee received an update from the artist on the progress of the *Brown v. Board of Education* mural, heard an update on the progress of fundraising efforts for the mural, discussed the deterioration of the county map and marble flooring in the Capitol Visitor Center, discussed the conservation of the Overmyer murals on the first floor of the Capitol, heard concerns regarding signage directing visitors to the main entrance and the parking garage of the Capitol, received an update on the *Ad Astra* Plaza project, heard an update on the expansion of the Law Enforcement Memorial on Capitol grounds, discussed the enactment of legislation for the Eisenhower statue on Capitol grounds, heard an informational briefing on artwork in Capitol committee rooms, and discussed the work of a subcommittee.

Progress of *Brown v. Board of Education* Mural

The Committee heard an update from the artist and an update on fundraising efforts for the mural.

Update from the artist. The Committee received an update from the artist of the *Brown v. Board of Education* mural, Michael Young. Mr. Young stated his goal for completion of the mural is February 1, 2018. He noted the changes he made to the original sketch include painting a more diverse group of students in the foreground of the mural, painting the teacher as African American, and bringing more jewel tone colors into the mural. Mr. Young also stated he added Ku Klux Klan (KKK) members in the far background of the mural to reflect history. It was noted the mural will hang outside the Old Supreme Court Room in the Statehouse and, in this room in 1925, the decision was made to prohibit the KKK in Kansas. Committee members agreed the subtle depiction of the KKK should remain in the mural.

After receiving an update on the progress of the mural, the Committee discussed the hairstyle of the teacher in the foreground of the mural, the facial features of the male child on the right side of the mural, and the installation of the lighting for the mural prior to the mural's ceremonial unveiling.

Update on fundraising efforts. The Committee received a fundraising update on the mural from the Executive Director of the Kansas African American Affairs Commission. She noted a contract for the painting and installation of the mural was signed on July 31, 2017, authorizing Mr. Young to begin work on the mural. The contract for the mural has three phases with three payments. The Committee agreed to sign off on the mural to allow Mr. Young to receive the second phase payment. The goal for the third phase, completion and installation of the mural, is scheduled for the mural's ceremonial unveiling tentatively set for February 22, 2018. The Executive Director noted three charitable foundations are receiving funds for the mural project: Topeka Community Foundation, *Brown* Mural Project SB 54, and the Kansas Department of Administration. The amount raised, to date, is $79,070, leaving a balance of $30,930 to be raised. The Executive Director also remarked on recent media exposure of the mural.

Capitol Visitor Center Concerns

The Committee heard Capitol Visitor Center concerns regarding the deterioration of the county map and marble flooring in the Capitol Visitor Center, the conservation of the Overmyer murals on the first floor of the Capitol, and signage directing visitors to the main entrance and the parking garage of the Capitol.

Deterioration of the county map and marble flooring in the Capitol Visitor Center. A representative of the Kansas Department of Administration provided the Committee with information related to fracturing in the veins of the marble on the county map and throughout the flooring of the Capitol Visitor Center. The representative noted the proposed repair is to fill the voids with colored epoxy and to avoid excessive wear on the material by cleaning the marble by dusting, vacuuming, and wet mop rather than with a machine.

Conservation of the Overmyer murals. The Committee received concerns from Capitol Visitor Center staff about cracks in the Overmyer murals on the first floor of the Capitol. The Committee discussed possible solutions and acknowledged the Overmyer murals should be stabilized and conserved.

Signage for directing visitors. The Committee heard concerns from Capitol Visitor Center staff regarding signage directing visitors to the main entrance and parking garage of the Capitol. The staff relayed that visitors are often frustrated because they have difficulty finding the entrance to the building and the parking garage.

Capitol Landscape Plan Updates

The Committee heard updates on the *Ad Astra* Plaza project and expansion of the Law Enforcement Memorial on Capitol grounds, and members discussed the enactment of legislation for the Eisenhower statue on Capitol grounds.

***Ad Astra* Plaza.** The Committee heard an update from Senator Hardy and a representative of the Kansas Department of Administration regarding the *Ad Astra* Plaza project. The *Ad Astra* statue on the top of the Capitol was to be represented on a smaller scale on the *Ad Astra* Plaza, which is located on the southwest corner of the Capitol grounds. This project received approval through the legislative process years ago.

Senator Hardy stated a plaque and pedestal exist on Capitol grounds, but there is no replica of the statue on the pedestal. The replica statue to be affixed on the pedestal in the *Ad Astra* Plaza is complete and currently in Salina. Senator Hardy assumed the responsibility of fundraising and told the Committee the amount needed to complete the project is $200,000. The Kansas Department of Administration representative noted March 2018 is the earliest construction can take place because of weather. The representative stated the Department is acting as a facilitator between the parties and no State money is involved.

Law Enforcement Memorial. A representative of the Kansas Office of the Attorney General informed the Committee there is an unfortunate need to expand the Law Enforcement

Memorial on Capitol grounds to recognize fallen law enforcement officers. Currently, the memorial has 277 names, and the names of 13 officers have been added since 2010. Because only about 40 open spaces remain, the Office of the Attorney General recommended an outer ring be added to the existing memorial. The Committee Chairperson commented the Legislature already approved the expansion of the memorial. The representative noted the final drawing of the expansion should be ready for the Committee's approval in December 2018.

Eisenhower statue. A representative of the Kansas Department of Administration provided the Committee with an update on the Eisenhower statue on the northwest corner of the Capitol grounds. Several years ago, the Committee endorsed a plan for developing the landscaping of the Capitol grounds, including the installation of a future statue on the northwest quadrant of the grounds. The representative noted there is a plaque on the northwest corner honoring President Eisenhower, which was dedicated in 2015. The representative stated private fundraising efforts have taken place for erecting the statue and the money is in hand, but enabling legislation is required before a statue or memorial can be placed on Capitol grounds. The Committee was informed the statue would be a replica of the bronze statue by Kansas artist Jim Brothers that is in the U.S. Capitol rotunda.

Artwork in Committee Rooms

The Committee heard an informational briefing on artwork in Capitol committee rooms by the Director of Legislative Administrative Services. The Director noted artworks previously placed in committee rooms were removed during the renovation of the Capitol and those pieces are in storage. The Director told the LCC he would work with the Committee and the State Historical Society to create a policy for hanging artwork in the majority of the 13 committee rooms. The Director noted the only expense would be in moving the art and hanging the pictures.

Issues to be Addressed by Subcommittee

The Chairperson said, in the past, a subcommittee of three Committee members, all from Topeka, would meet and take action on small concerns in the Capitol. The Chairperson noted she is handling such concerns herself because other subcommittee members have left the Committee. She noted major issues would continue to be presented to the full Committee on an annual basis. The Chairperson then selected a subcommittee to consist of Chairperson Chinn, Executive Director of the State Historical Society; Frank Burnam, Director, Office of Facilities and Property Management, Kansas Department of Administration; and Melinda Gaul, Legislative Director for House Speaker Ryckman. Representative Patton will serve as an adjunct subcommittee member.

Conclusions and Recommendations

Following discussion, the Committee made the following recommendations:

- The Committee directs Mr. Young to:
  - Review the facial features of the male child on the right side of the mural to ensure his features are not depicted in a cartoon-like manner;
  - Paint the teacher's hairstyle in a manner that reflects the era, but is still timeless; and
  - Leave the subtle depiction of the KKK in the background of the mural to reflect history and allow the audience to interpret the piece of art;
- The Committee recommends the Kansas Department of Administration:
  - Meet with Mr. Young to discuss and implement lighting of the mural prior to the mural's ceremonial unveiling to the public;
  - Continue to fix fractures in the marble flooring of the Capitol Visitor Center with epoxy and to monitor the flooring;
  - Update kiosk signs in the Capitol Complex with notations of "You Are

Here” to ensure accuracy and improve the visitor experience;

    - Work with the State Historical Society regarding signage for parking on Saturdays; and

    - Update the directional arrows on signs outside the Capitol Complex directing visitors to the main entrance and the Capitol Visitor Center;

- The Committee recommends the State Historical Society:

    - Closely monitor the cracks in the Overmyer murals; and

    - Proceed with obtaining cost estimates to stabilize and conserve the Overmyer murals, as necessary;

- The Committee recommends the Report of the Capitol Preservation Committee to the 2018 Kansas Legislature be forwarded to the Joint Committee on State Building Construction;

- The Committee supports completion of the *Ad Astra* Plaza project, without providing any state financing for the completion of the project;

- The Committee supports the expansion of the Law Enforcement Memorial on Capitol grounds;

- The Committee supports the enactment of legislation for the Eisenhower statue on Capitol grounds; and

- The Committee supports the development of a LCC policy regarding non-controversial artwork in Capitol committee rooms.

Report of the Child Welfare System Task Force to the 2018 Kansas Legislature

Chairperson: Representative Steve Alford

Vice-chairperson: Senator Vicki Schmidt

Legislative Members: Senators Barbara Bollier and Laura Kelly; and Representatives Linda Gallagher and Jarrod Ousley

Non-Legislative Members: Phyllis Gilmore, Secretary for Children and Families (non-voting) [until retirement, 12/1/2017]; Deneen Dryden, Director of Prevention and Protection Services (PPS), Department for Children and Families (DCF) (non-voting) [until 12/28/2017]; Patricia Long, Director of PPS, DCF (non-voting) [from 12/28/2017]; Rachel Marsh, Saint Francis Community Services (non-voting); Lindsey Stephenson, KVC Kansas (non-voting); Hon. Daniel Cahill, district court judge, appointed by the Chief Justice of the Supreme Court (Chief Justice); Mickey Edwards, state director, Kansas Court Appointed Special Advocates, appointed by the Chief Justice; Alicia Johnson-Turner, citizen review board member, appointed by the Chief Justice; Mary Tye, foster parent organization representative, appointed by the Judicial Council; Serena Hawkins, guardian *ad litem*, appointed by the Judicial Council; Ashlyn Yarnell, family law attorney, appointed by the Judicial Council; Gina Meier-Hummel, licensed social worker, appointed by the Judicial Council [until appointment as Acting Secretary for Children and Families], Acting Secretary for Children and Families (non-voting) [from 12/1/2017]; Gail Cozadd, licensed social worker, appointed by the Judicial Council [from 12/1/2017]; Dr. Katherine Melhorn, Child Death Review Board representative; Sandra Lessor, Sedgwick County District Attorney's Office, appointed by the Kansas County and District Attorneys Association; and Sgt. David Ohlde, Marysville Police Department, appointed by the Kansas Association of Chiefs of Police.

Charge

House Sub. for SB 126 (2017) directs the Secretary for Children and Families to establish a Child Welfare System Task Force (Task Force) to study the Kansas child welfare system. The bill directs the Task Force to convene working groups within the following topic areas: the general administration of child welfare by DCF; protective services; family preservation; reintegration; foster care; and permanency placement. The bill also directs the Task Force and each working group to study a number of specific topics within the areas identified above. The Task Force is to submit a preliminary report to the 2018 Legislature and a final report to the 2019 Legislature.

Child Welfare System Task Force

Preliminary Report

Conclusions and Recommendations

The Task Force identified the following concerns regarding the child welfare system:

- High turnover levels of social workers due to stress, excessive caseloads, and low pay;
- Excessive caseloads and limited funding affect timely response for needed services;
- The increasing numbers of children and youth who are forced to sleep overnight in child placement agency offices because there is nowhere else for them to go after being removed from their homes;
- A significant decrease in number of beds for children and youth in psychiatric residential treatment facilities (PRTFs) in Kansas;
- The number of children and youth who are missing from the State's child welfare system at any given time;
- An antiquated set of various computer systems within the Kansas Department for Children and Families (DCF) prevents communication between computers within DCF, as well as between DCF and the two child welfare system contractors;
- Excessive length of time for some adoptions to be completed after parental rights are terminated; and
- Lack of additional funding over recent years for family preservation services.

The Task Force adopted the following preliminary recommendations:

- A multi-year focus on recruitment and retention of social workers should be implemented, including DCF evaluation of the morale and tenure of the work force;
- Long-term incentives, supports, career path (advancement), professional development, ongoing training, supervision, student loan forgiveness, and competitive compensation for social workers who work in the child welfare system should be developed;
- Continuity of services and recordkeeping need improvement so that caseworker turnover does not affect delivery of services;
- Problems that have led to the closure of several PRTFs for children and youth should be addressed so that more PRTFs can be added;
- DCF should evaluate and explore options for combining stand-alone computer systems into a consolidated system, to respond to the recent audit performed by the Legislative

Division of Post Audit and the federal Program Improvement Plan. Such consideration should include availability of federal matching funds and the system implemented by Indiana. DCF should provide the Legislature with a clear recommendation for computer system improvement and the Legislature should provide the funding required for any necessary feasibility study;

- Prompt adoptions after parental rights have been terminated, though improving, need further attention;
- Issues regarding youth who run from placement should be addressed, including evaluation of what facilities could be used for such youth;
- There should be consideration of preventative services that could be added or increased;
- DCF should review the evolution and continuum of placements used over the years; and
- The effect on the child welfare system of the consolidation of juvenile services within the Kansas Department of Corrections should be considered.

Proposed Legislation: None

Background

The 2017 Legislature passed House Sub. for SB 126 (SB 126), directing the Secretary for Children and Families to establish a Child Welfare System Task Force (Task Force) to study the child welfare system in the State of Kansas. Previously, the 2015 and 2016 Special Committees on Foster Care Adequacy, the House Committee on Children and Seniors, and the Senate Committee on Public Health and Welfare had examined various topics related to the child welfare system. (*Note:* Reports, minutes, and testimony of these committees may be found under each committee's page at www.kslegislature.org.)

SB 126 directed the Task Force to convene working groups to study the following topics: the general administration of child welfare by the Kansas Department for Children and Families (DCF); protective services; family preservation; reintegration; foster care; and permanency placement. Additionally, the Task Force and each working group were directed to study the following topics:

- The level of oversight and supervision by DCF over each entity that contracts with DCF to provide reintegration, foster care, and adoption services;
- The duties, responsibilities, and contributions of state agencies, nongovernmental entities, and service providers that provide child welfare services in the State of Kansas;
- The level of access to child welfare services, including, but not limited to, health and mental health services and community-based services, in the State of Kansas;
- The increasing number of children in the child welfare system and contributing factors;
- The licensing standards for case managers working in the child welfare system; and
- Any other topic the Child Welfare System Task Force or working group deems necessary or appropriate.

The Task Force is to submit a preliminary report to the 2018 Legislature and a final report to the 2019 Legislature.

Organization

SB 126 established the following members and appointing authorities for the Task Force:

- The Chairperson of the Senate standing Committee on Public Health and Welfare;
- The Vice-chairperson of the Senate standing Committee on Public Health and Welfare;
- The Ranking Minority Member of the Senate standing Committee on Public Health and Welfare;
- The Chairperson of the House standing Committee on Children and Seniors;
- The Vice-chairperson of the House standing Committee on Children and Seniors;
- The Ranking Minority Member of the House standing Committee on Children and Seniors;
- The Secretary for Children and Families or the Secretary's designee, who shall be a non-voting member;
- The Director of Prevention and Protection Services for DCF, who shall be a non-voting member;
- One representative from each entity that contracts with DCF to provide foster care, family preservation, reintegration and permanency placement services, appointed by each such entity, each of whom shall be a non-voting member;
- One member appointed by the Chief Justice of the Supreme Court;
- One representative of Kansas Court Appointed Special Advocates, appointed by the Chief Justice of the Supreme Court;
- One member of a citizen review board established pursuant to the Revised Kansas Code for Care of Children, appointed by the Chief Justice of the Supreme Court;
- One member representing a foster parent organization, appointed by the Judicial Council;
- One guardian *ad litem* with experience representing children in child in need of care cases, appointed by the Judicial Council;
- One family law attorney with experience providing legal services to parents and grandparents in child in need of care cases, appointed by the Judicial Council;
- One social worker licensed by the Behavioral Sciences Regulatory Board (BSRB), appointed by the Judicial Council;
- One member of the State Child Death Review Board established by KSA 22a-243, and amendments thereto, appointed by the Board;
- One county or district attorney with experience in child in need of care cases, appointed by the Kansas County and District Attorneys Association; and
- One law enforcement officer, appointed by the Kansas Association of Chiefs of Police.

The appointments to the Task Force were completed by mid-July 2017. In November 2017, Gina Meier-Hummel resigned her position on the Task Force as the social worker licensed by the BSRB, appointed by the Judicial Council, after being named Acting Secretary for Children and

Families to succeed Secretary Gilmore upon her retirement effective December 1, 2017. Upon becoming Acting Secretary on December 1, Acting Secretary Meier-Hummel assumed the corresponding non-voting position on the Task Force. The same day, the Judicial Council named Gail Cozadd to replace Acting Secretary Meier-Hummel as the social worker representative. Effective December 28, 2017, Patricia Long replaced Deneen Dryden as the DCF Director of Prevention and Protection Services and assumed the corresponding non-voting Task Force position.

Pursuant to SB 126, staff and meeting support for the Task Force was provided by the Office of Revisor of Statutes, the Kansas Legislative Research Department (KLRD), and the Division of Legislative Administrative Services.

Working Groups

At its August 4 meeting, the Task Force voted to establish three working groups and directed each working group to study two of the topics assigned by SB 126. The working groups established were:

- General Administration of Child Welfare and Foster Care;
- Protective Services and Family Preservation; and
- Reintegration and Permanency Placement.

SB 126 directed the Task Force chairperson, vice-chairperson, and ranking minority members to appoint a chairperson and vice-chairperson for each working group. Each chairperson and vice-chairperson was then responsible for appointing members of their respective working groups, which SB 126 required consist of not more than seven non-Task Force members and not fewer than two Task Force members. Each non-Task Force member appointed to a working group was required by the bill to possess specific expertise related to the working group's assigned topic of study. Appointments of working group members were completed in September 2017. A list of working group members is attached to this report as Appendix A.

SB 126 required DCF to "provide assistance to working groups to prepare and publish meeting agendas, public notices, meeting minutes and any research, data, or information requested by a working group." With Task Force approval, DCF contracted with the Kansas Health Institute (KHI) to provide much of this staff support.

The Legislative Coordinating Council (LCC) approved three meeting days for each working group for 2017. Each working group met three times. Copies of the reports submitted by the working groups to the Task Force are attached to this report as Appendix B.

Task Force Meetings

The LCC approved six meeting days for the Task Force in 2017. The Task Force met five times: on August 4, September 19, October 10, November 14, and December 12. A teleconference meeting scheduled for August 22 was canceled.

August 4 Meeting

Following the Chairperson's welcome, members and staff of the Task Force introduced themselves. KLRD staff presented an overview of recent legislative activity related to the child welfare system, including the 2015 and 2016 Special Committees on Foster Care Adequacy and the activity of the 2017 House Committee on Children and Seniors that led to the passage of SB 126 and the creation of the Task Force. Staff reviewed the charge to and structure of the Task Force. Staff noted a resources page had been created for the Task Force (http://www.kslegresearch.org/KLRD-web/Committees/Committees-ChildWelfareSysTF-Resources.html) containing links to many of the reports, testimony, and other documents related to recent legislative activity regarding the child welfare system. The resources page will be updated with Task Force-related links and documents as the Task Force's work proceeds.

Overview of DCF Organizational Structure, Child Welfare System Case Process, and Available Data and Reports

Kathy Armstrong, Assistant General Counsel for Prevention and Protection Services, DCF, provided the Task Force with an overview of a notebook DCF provided to each Task Force member. The notebook contains a variety of information related to the Kansas child welfare system, including the DCF child welfare practice model; federal Children's Bureau factsheet; overview of federal child welfare legislation; organizational charts outlining the Kansas child welfare system; Kansas child welfare factsheet; child protective services statistical reports; placement and permanency statistical reports; independent living program reports; reports regarding progress made toward federal objectives and recommendations by Casey Family Programs and the Legislative Division of Post Audit (LPA); and assessment and prevention and child-in-need-of-care (CINC) case flowcharts.

Ms. Armstrong noted the large network of persons and entities at the federal, state, and local levels that make up the child welfare system. There is a large amount of federal law regarding the system with which the State must comply. The State must submit plans for federal review every five years for Title IV-B programs and every three years for Title IV-E programs, both of which involve the child welfare system. There is also a Child and Family Services Review (CFSR) that must be completed, focused on safety, permanency, and well-being outcomes.

Ms. Armstrong reviewed the newly implemented possible outcomes for investigations of reports of abuse/neglect. Following investigation, reports may be categorized as substantiated, affirmed, or non-substantiated. DCF does not have authority to remove children and is not a party to a CINC legal action. DCF presents the findings from its investigations to the county or district attorney, who decides whether to file a CINC action. Removal requires a court order, unless law enforcement removes the child from an unsafe situation into police protective custody (PPC).

DCF produces more than 125 reports regarding various aspects of the child welfare system, samples of which were provided in the notebook and the remainder of which are available online.

In response to questions, Ms. Armstrong addressed the role of the DCF Foster Parent and Youth Ombudsman; explained some of the common acronyms associated with the child welfare system; noted the number of children being removed for non-abuse/neglect reasons in Kansas has been reduced due to recent changes; and stated that cases initially categorized as non-abuse/neglect may later be re-categorized as abuse/neglect due to additional findings.

Responding to questions regarding one-night placements or overnight stays in contractor offices, Ms. Armstrong stated DCF would attempt to produce reports providing additional information regarding these situations. Ms. Armstrong also noted other requests by Task Force members and stated DCF would provide responses as soon as possible.

Review of the Legislative Division of Post Audit Report on Foster Care and Adoption

A LPA staff member provided a review of the latest LPA performance audit report on foster care and adoption in Kansas. The report was issued in three parts. Part One was issued in July 2016. Part Two was issued in September 2016. Part Three was issued in April 2017.

Part One of the report dealt with three questions. Question One was whether DCF was following adequate policies and procedures to ensure the safety of children during the removal and placement process. With regard to this question, LPA found:

- DCF had not yet implemented several recommendations for its child protective services (CPS) function and had not responded to all report center calls in a timely manner. As of May 2016, DCF had implemented 1 of 9 safety-related recommendations from a 2013 Casey Family Programs assessment of CPS function, and a child's safety was not assessed timely in 5 of 40 investigations reviewed by LPA;

- DCF had not ensured that background checks of individuals in foster homes happen as often or as thoroughly as it should. Three types of background checks should occur, and they should occur for both relative and foster placements;

- DCF had not always taken steps to ensure monthly in-person visits happened for children in foster care or adoptive homes or for children reintegrated with their families. LPA noted that in most of the cases reviewed, poor documentation prevented LPA from being able to tell whether case management contractors and child placing agencies (CPAs) conducted some monthly visits. Monthly in-person aftercare visits of children in adoptive placements did not occur, likely because DCF's contracts and policies are not consistent; and

- Survey respondents expressed concerns with staff turnover, morale, and training.

LPA recommendations for issues identified through Question One included completing the recommendations from the 2013 assessment for the report center; reviewing policies regarding assessment of child safety and welfare; implementing procedures to ensure assessment within the time assigned following a report center call; ensuring background and registry checks are completed annually; reconciling statutory and regulatory requirements for fingerprint-based checks of all persons residing, working, or volunteering in a foster home; ensuring persons in a foster care home who are ten years of age or older have annual background and registry checks; providing staff training on revised policies; considering annual background checks for relative placement; and regularly monitoring a sample of cases to ensure monthly in-person visits are conducted and considering penalties for non-compliance.

Question Two was whether DCF's child placement process helps ensure children are placed in foster care or adoptive homes with sufficient living space and sufficient financial resources. With regard to this question, LPA found:

- DCF allowed nearly all requests for exceptions (98 percent of approximately 1,100 such requests during one 15-month period), resulting in inadequate sleeping space for some children in foster care;

- DCF did not have an adequate process to ensure licensed foster homes have sufficient financial resources. Current laws and policies are vague with regard to this requirement, and DCF did not verify income information. LPA recommends the requirement be clarified;

- There are few requirements related to capacity, living space, or financial resources for adoptive placements, but few stakeholders had concerns; and

- CPAs both sponsor foster homes and regulate them, which may create a conflict of interest.

LPA recommendations for issues identified through Question Two included ensuring exceptions are thoroughly reviewed and only granted when in the best interest of the child, clarifying the regulatory requirement for "sufficient financial resources," and developing policies and a process to better obtain and verify detailed financial information.

Question Three was whether DCF's criteria for recommendations regarding the removal and placement of children are designed with a family preference. With regard to this question, LPA found that several aspects of the foster care and adoption system are designed to keep family members together, mainly due to federal requirements. Most stakeholders indicated there was an appropriate emphasis placed on this, but some indicated there was too much emphasis.

Part Two of the report dealt with Question Four, which was whether DCF ensures all applicable state and federal laws governing the foster care system in Kansas are followed. With regard to this question, LPA found:

- DCF had not followed some of the safety and living condition requirements reviewed in Part One of the audit, including some background checks, monthly case-management visits, and financial resource requirements;

- According to 2014 and 2015 statewide single audits, DCF materially complied with most, but not all, federal requirements. The areas with issues involved DCF controls related to monitoring and paying the contractors;

- DCF self-reported data shows Kansas met or exceeded about half of federal outcome requirements for FY 2016. DCF consistently met requirements related to relative and sibling placements, but did not consistently meet requirements related to timeliness or stability; and

- DCF must implement a program improvement plan (PIP) to address issues identified by a 2015 Child and Family Services Review (CFSR).

Part Three of the report dealt with three questions. Question Five was whether the Kansas foster care system has sufficient capacity to provide necessary foster care services. With regard to this question, LPA found:

- Both case management contractors had challenges employing enough case management staff, and a small portion of case managers had high caseload levels exceeding DCF's recommended limit of 30 cases. Both contractors use a team model to alleviate staffing shortages, and some survey respondents indicated staff morale was low due in part to high caseloads and turnover;

- Family support workers within the team model had sufficient education but not always the required experience, in part because the contractors misinterpreted the contracts' experience requirements;

- Children in foster care received most of the physical and mental health services they needed, with some exceptions where there are inadequate community resources or inadequate processes for determining whether children received needed services, which can be exacerbated by change of case managers;

- It appears many counties and cities did not have enough licensed foster homes to provide local placement options. In some cases, disparate data systems maintained by the two contractors and child placing agencies may have contributed to long-distance placements, and DCF could not monitor if children were placed in appropriate homes, in part due to lack of data collection;

- DCF could be more proactive in monitoring and collecting management information about the foster care system, making better use of existing monitoring tools, capturing additional critical data, and enforcing contractual performance requirements;

- Information DCF maintained was not adequate to ensure children were placed in appropriate foster homes. DCF needs accurate information regarding removals, placements, physical and mental health needs, and foster homes' capacities and preferences. DCF data on children in its custody, including removal and placements addresses, was incomplete and had numerous inaccuracies. Data on licensed foster homes was outdated and missing important open bed information. DCF has recently begun to expand its use of data in overseeing the foster care system; and

- Several children were placed in foster homes that did not comply with licensing standards, but DCF is making significant changes to the inspection process.

Question Six was how the state's performance on federal outcomes for children and families has changed over time. With regard to this question, LPA found:

- Kansas' performance on the 11 federal outcome measures reviewed did not change significantly from 2000 to 2013; and
- While these measures may provide useful insights into Kansas' performance, they have significant limitations, as they are self-reported and unaudited, and should not be used to compare to other states due to lack of consistent national standards and significant differences between child welfare systems.

Question Seven addressed how the cost to the State of directly providing foster care and adoption services would compare to maintaining the current privatized system. With regard to this question, LPA found:

- The State would incur an estimate of up to $8 million more in on-going costs and significant start-up costs to provide foster care and adoption services instead of private contractors;
- Most of the $161 million in costs reported by contractors for FY 2016 were related to child placement, salaries and benefits, operating expenses, child care, and transportation. DCF would have spent an estimated $164 to $169 million to provide the same services, as well as significant start-up costs; and
- There may be additional factors to consider when comparing privatization to a state-run system, including security of state funding, protection from legal action, access to charitable contributions, and stability.

LPA recommendations for issues identified through the questions in Part Three included DCF continuing to expand its capacity for data-driven decision-making; DCF addressing home inspection and renewal issues by implementing processes, policies, and procedures to monitor the license renewal process and ensure timely inspections; DCF ensuring children in foster care receive needed physical and mental health services by clearly establishing roles and responsibilities and implementing policies and procedures to ensure consistent documentation of needs and investigation of service provision problems; KVC and Saint Francis Community Services (St. Francis) complying with contractual experience requirements for family support workers, or working with DCF to amend the minimum requirements; legislative committees examining and considering amending case manager licensing requirements; and the LCC considering directing an interim study to gather information on the availability of community-wide resources.

Task Force members requested LPA provide follow-up information regarding the updated rate of waivers for sleep space requirements and a list of follow-up actions DCF has taken in response to the audit recommendations. The information regarding follow-up actions was provided after the meeting and is included in the minutes for this meeting. The updated rate of waivers was provided by DCF at the September 19 meeting.

Other Business

Working Groups

KLRD staff reviewed the SB 126 requirements and structure for Task Force working groups.

Following discussion, the Task Force voted to establish three working groups, with each working group assigned two of the topics required by SB 126. The working groups are:

- General Administration of Child Welfare and Foster Care;
- Protective Services and Family Preservation; and
- Reintegration and Permanency Placement.

The Task Force also voted to allow KHI to provide the staff support services to working groups delegated to DCF by SB 126. DCF will be contracting with KHI to provide these services.

Facilitator

Members discussed various persons and entities to be contacted regarding possible service as a facilitator for the Task Force. The Task Force decided by consensus to hold a telephone conference, open to the public *via* broadcast in a Statehouse meeting room, on August 22 to make a decision regarding a facilitator. (*Note:* This teleconference was subsequently canceled.)

Meeting Dates

For the remainder of 2017, the Task Force voted to establish a schedule of a meeting on the third Tuesday of September, with monthly meetings on the second Tuesday for the rest of the year.

September 19 Meeting

The Chairperson began the meeting with a review of Task Force rules and teleconferencing procedures.

Revisor staff presented an overview of the Kansas Open Records Act and the Kansas Open Meetings Act and their applicability to the Task Force.

Follow-up Information from August 4 Meeting

Ms. Armstrong presented the Task Force with information responding to requests from the August 4 meeting, including:

- Data regarding the number of children removed from homes for abuse/neglect reasons and non-abuse/neglect reasons;
- Steps DCF has taken to reduce the number of removals in non-abuse/neglect cases, including policy and form revisions and additional reporting and review requirements;
- Data from contractors regarding number of overnight stays in contractors' offices; and
- Updated percentage of the rate of exceptions granted for living space in foster homes. For 2017 to date, the combined approval rate for living space and capacity exception requests is 86.3 percent.

In response to questions by Task Force members, Ms. Armstrong stated the reduction in non-abuse/neglect removals has resulted from a variety of initiatives, including a new assessment tool and improvement in training, rather than just recategorization of removal reasons. DCF is working to find ways to provide more services to families. A variety of workgroups and DCF are trying to address the needs for increased facilities, beds, and psychiatric residential treatment facility (PRTF) availability.

Task Force members noted DCF is not responsible for providing PRTF placements. PRTFs are private facilities requiring pre-placement screening by managed care organizations (MCOs) for Medicaid payment. PRTF placement and payment are overseen by the Kansas Department of Health and Environment (KDHE) and Kansas Department for Aging and Disability Services (KDADS). Because there are a limited number of PRTF beds available, even when a screening determines a foster child is eligible, there may not be a placement available immediately. Both St. Francis and KVC operate PRTF facilities.

In response to a question regarding possible solutions to address the issue of one-night stays, Rachel Marsh, St. Francis, noted St. Francis has created a PRTF alternative. Issues related to funding, the number of children coming into care, and reinvestment in communities needs to be explored. Ms. Armstrong stated the recent juvenile justice reforms have moved some low or moderate risk offenders back home for community-based services, but where such offenders do not have homes they have entered the foster care system. The Juvenile Justice Oversight Committee has a data subcommittee that is examining the impact of this on the child welfare system.

Ms. Meier-Hummel noted issues related to Medicaid and out-of-state placements taken to offset income loss may be impacting the availability of PRTF beds.

Task Force members noted the importance of addressing prevention issues, including parental substance abuse.

In response to a question regarding what benefits are available for relative placements, Lindsey Stephenson, KVC Kansas, noted relatives may apply for Temporary Assistance to Needy Families (TANF) benefits or for benefits from the contractor. Daycare assistance also may be provided.

Other Task Force Business

Facilitator Proposals and Discussion

Judge Daniel Cahill introduced staff of the Office of Justice Programs Diagnostic Center, who presented *via* teleconference information regarding their work with states to facilitate evidence-based strategies to public safety issues. They discussed the technical assistance they provided to Nevada in stakeholder coordination and action planning during Nevada's child welfare system reform efforts.

Representative Gallagher reported efforts to locate other possible facilitators had been unsuccessful. After discussion regarding the desired role of a facilitator and timeline to procure a facilitator, the Task Force requested Representative Gallagher continue discussions with the Diagnostic Center regarding Task Force facilitation and voted to approve entering into an agreement with the Diagnostic Center as facilitator.

Working Group Matters

The Task Force Chairperson announced the chairpersons and vice-chairpersons of the working groups had been selected:

- General Administration of Child Welfare and Foster Care—Sandra Lessor (chairperson), Senator Kelly (vice-chairperson);
- Protective Services and Family Preservation—Sgt. David Ohlde (chairperson), Representative Ousley (vice-chairperson); and
- Reintegration and Permanency Placement—Alicia Johnson-Turner (chairperson), Representative Gallagher (vice-chairperson).

Members discussed expectations and questions for the Task Force and the working groups, including:

- The need for caution regarding confidentiality requirements when discussing individual cases within the child welfare system. Individuals may have greater latitude to discuss specific details of individual cases than agency officials have under federal or state law;
- Whether testimony should be received by working groups, the Task Force, or both;
- The charge to and focus of the Task Force is addressing system-wide issues, rather than resolving individual cases, although information arising from individual cases may help identify system-wide issues. Ms. Dryden noted concerns expressed to Task Force members regarding specific cases can be directed to the Ombudsman, Randy Lynd; and
- It could be helpful to provide parameters or prompts for potential testimony to working groups or the Task Force. Several members volunteered to draft a set of possible parameters or guidelines.

The Task Force voted to work toward a hybrid approach to permit testimony to be heard by both the working groups and the Task Force.

October 10 Meeting

Kansas Foster Care Contracts Overview

Dan Klucas, Deputy Secretary of Operations, DCF, presented the Task Force with an overview of Kansas' two current contracts with KVC Kansas and Sst. Francis. These contracts began in FY 2014 and have been extended through FY 2019. DCF plans to award new contracts for FY 2020.

Each DCF region has a monthly base payment and a monthly variable payment based on the number of children in care in the region. These rates are renegotiated annually. Mr. Klucas provided the Task Force with tables showing contract rates for FY 2014-FY 2018 and sources of foster care funding.

Mr. Klucas outlined the oversight DCF provides for the foster care contracts, including case reads; reviews and monitoring by regional prevention and protections services staff; monitoring of reimbursement, payment, and other financial information by the DCF Office of Financial Management; and audits by DCF Audit Services. In November 2016, DCF established a new Child Welfare Compliance Unit within Audit Services, which will provide independent oversight and review of the system (including both internal DCF components and external contractor components). Initial audits by this unit have been of contractor policies, procedures, and documentation for monthly visits and placements. It has begun work on audits of contractor compliance with contract terms and conditions, as well as the background check process and capacity exceptions.

In response to questions from the Task Force, Mr. Klucas stated consequences for contractors who fail to perform can include repayment, improvement plans, or consideration during the next bidding process. Payments to contractors cover all costs except for Medicaid. Mary Hoover, Audit Services Director, DCF, stated the new Unit had not yet finalized any audits, but the first reports should be complete by January 2018 and available for public review at that time.

Chad Anderson, Chief Clinical Officer, KVC Health Systems, provided the Task Force with information regarding KVC, which has served as a lead contractor for foster care since 1996. He outlined the oversight system, which includes federal oversight through U.S. Department of Health and Human Services CFSRs; state oversight through DCF administrative reviews, case file reads, and audit services; regional and community accountability through regional DCF and contractor meetings, community advisory boards, and foster parent advisory boards; and quality and fiscal accountability through systemwide financial audits and The Joint Commission (TJC) accreditation. Mr. Anderson provided a list of various data KVC submits to DCF on hourly, daily, weekly, monthly, quarterly, and as-needed bases. KVC maintains an extensive, networked database that generates 691 automated monitoring reports at various intervals. Additionally, reports can be individually queried from KVC's database for research and training purposes.

Mr. Anderson provided the Task Force with a graphic showing the "KVC Family Centered Practice Model" and noted that currently almost 50 percent of KVC youth are placed with a relative or non-related kinship provider and 77 percent of siblings are placed together. He also noted KVC provides a minimum of a full year of aftercare services after permanency is achieved, and Kansas' strength in aftercare services has drawn national attention.

In response to questions from Task Force members, Mr. Anderson stated mental health services remain a large need in the child welfare system, and substance abuse and ability to access care are also large issues to be addressed; KVC provides up-front training to staff regarding trauma-informed care; and most children in KVC Kansas PRTF beds have been in-state historically, but recently other states have become interested in accessing beds due to KVC's reputation for taking the most difficult youth. Currently, there are no requirements that PRTFs take any particular youth.

In response to a question regarding denied PRTF screens, Ms. Stephenson stated the denials came from multiple MCOs, and KVC does not work with one MCO more than another.

In response to questions regarding firearms, Mr. Anderson stated foster homes are required to report having firearms and must keep them locked and stored separately from ammunition, which also must be locked. These requirements also apply to kinship placements.

In response to further questions, Mr. Anderson stated 70 percent of KVC foster parents are trained in trauma-informed care; KVC makes training available to police departments; and although foster parents have said the required training for them should not be reduced, KVC has been trying to find ways to expedite the process and reduce the barriers to becoming a foster parent.

Cheryl Rathbun, Chief Clinical Officer, St. Francis, presented the Task Force with information regarding St. Francis. St. Francis' service design centers on practices that are family-centered, community-based, evidence-based, and trauma-informed. She highlighted four aspects demonstrating St. Francis' commitment to family-centered care:

- Family engagement standards;
- Tools and trainings for effective family and child assessment;
- Case planning techniques targeted to the assessed needs of the children and families; and
- Service coordination that meets the needs of the child and family.

Ms. Rathbun continued by providing details, examples, and resources for each of these four components, as well as a visual summary of St. Francis' methodology.

Ms. Rathbun presented information to the Task Force regarding monitoring of child welfare services. She noted oversight, accountability, and monitoring occurs at the individual child level, the organization level, the community level, the state level, and the federal level.

Judicial oversight occurs through Kansas courts' supervision of every child in foster care and application of federal laws, such as the Adoption and Safe Families Act (ASFA), and state laws, such as the Revised Kansas Code for Care of Children (CINC Code). Courts hold adjudication, review, and permanency hearings in each case. Contract standards establish processes and protocols to ensure courts are receiving necessary information from the contractors, and local and community practice standards may exist that require certain communications. Guardians *ad litem* conduct independent investigations and advocate for the best interests of their child clients. Volunteer or court-appointed entities, such as Court Appointed Special Advocates (CASAs) or citizen review boards, may provide additional monitoring.

Oversight from the executive branch of state government occurs through standards set by the U.S. Department of Health and Human Services Children's Bureau and DCF.

St. Francis maintains accreditation through TJC and has several internal monitoring processes, including an internal department that reviews quality of services to individuals and families and attempts to improve identified needs. A number of relevant reports are generated at different intervals to help assess performance of the system. St. Francis also has risk management and customer care processes.

The Kansas Legislature provides oversight through legislator inquiries, legislative post audits (36 of which have occurred since privatization), and standing, special, and interim committees.

In response to questions from the Task Force, Ms. Rathbun stated PRTFs were created in 2007 to try to shorten congregate stays and get to family-life settings more quickly; foster children have different needs than an average person when it comes to residential treatment, and the community may not have the mental health services needed; MCOs are given guidelines for PRTF screenings, and interpretation and application of these guidelines has become more standardized; a High Needs Task Force has recently been meeting to develop solutions for high needs youth, and its final report should be available soon; St. Francis has been working with DCF to increase the number of youth residential center beds, although these facilities are not intended to serve high-needs youth like PRTFs are; average length of stay in PRTFs used to be up to 14 months, then came down to about 120 days, and now is closer to 40-60 days; the reduction in length of PRTF stay was driven by MCO screening and authorization; in St. Francis' experience, the 120-day average stay length seemed to produce the best results for youth in foster care; and acute care stays have more than doubled as PRTF stays have shortened.

Follow-up Information from September 19 Meeting

The following DCF representatives presented the Task Force with information responding to requests from the September 19 meeting: Ms. Armstrong; Susan Gile, Program Administrator, Assessment, Prevention and Interstate Placements; and Tony Scott, Deputy Director of Performance Improvement. The information presented included:

- Change in categories for assessments for removal and current categories and process;
- Change in removal numbers;
- Clarification regarding categorization of drug and substance abuse;
- Efforts to recruit foster families;
- Assistance to relative placements; and
- Overview of data and assessment program and prevention program.

In response to a question regarding reducing the number of children removed for non-abuse/neglect reasons, Ms. Gile stated community health, PRTF, and prevention services would help reduce these numbers.

In response to questions regarding the difference between relative and kinship placements, Ms. Armstrong explained kinship placements are with someone with existing strong emotional ties to the child but do not have to be with a relative. Relative placements do not have to be licensed, but non-relative kinship placements do have to be licensed. Reimbursement rates for non-licensed relative, pre-license (temporary) kinship, and licensed kinship placements may differ.

Other Task Force Business

Facilitator Status Update

Representative Gallagher reported the Office of Justice Programs Diagnostic Center, which had presented at the September 19 meeting regarding possible facilitation, had informed her it would not be able to serve as a facilitator for the Task Force. She reported she had had initial conversations with Casey Family Programs regarding its ability to serve as a facilitator. Senator Kelly reported she had been working with the Annie E. Casey Foundation on a future Task Force presentation and could visit with it regarding possible facilitator services.

The Task Force voted to authorize Representative Gallagher and Senator Kelly to continue researching Casey Family Programs and the Annie E. Casey Foundation as possible facilitators for the Task Force, and to enter into an agreement with a facilitator if their evaluation proves positive.

Working Group Updates

KLRD staff reviewed the structure established by SB 126 for the Task Force and working groups and for the working group membership selection process. The chairpersons of each working group reviewed the membership of his or her respective group and plans for upcoming working group meetings. (Working group membership lists are attached as Appendix A.) The chairpersons of the General Administration of Child Welfare and Foster Care and Reintegration and Permanency Placement working groups provided preliminary reports of their initial meetings. (Full reports of these meetings are attached to this report as Appendix B.)

Testimony Parameters Discussion

KLRD staff presented a memorandum containing selected statutes and court rules addressing the confidentiality of information related to the child welfare system.

Two members distributed a draft they had prepared of a proposed application for submission of testimony from the public. Members discussed possible time limitations and the need to determine when submitted testimony would become part of the public record. The Chairperson asked members to review the proposed application for further discussion at the November 14 meeting.

Missing Children

A member noted a news article published that day, October 10, reported there were three children missing from a foster home and asked for a response from DCF and the contractor representatives. Secretary Gilmore and Mr. Anderson provided information regarding protocols for missing children. A member stated the Secretary and other DCF officials at the state level should have more current information regarding children missing from placements. Representatives of St. Francis and KVC reported there were 38 children currently missing from placements made by each contractor (76 total). The Vice-chairperson requested DCF and the contractors provide the Task Force with monthly updates of the number of children missing from foster home placements. A member suggested the Task Force or a working group further explore the potential impact of recent juvenile justice reforms on the number of missing children.

November 14 Meeting

Overview of Courts' Role in and Judicial Perspective on the Child Welfare System

The Honorable Taylor Wine, district magistrate judge in the Fourth Judicial District, provided the Task Force with an overview of a magistrate judge's role in the child welfare system. While magistrate judges have limited jurisdiction, this jurisdiction does include CINC cases. In these cases, magistrate judges oversee the temporary custody hearing, adjudication, disposition, and review hearings. Judge Wine highlighted a number of areas for improvement in the child welfare system, including:

- **Time devoted to cases.** Perhaps a maximum caseload for each caseworker could be implemented, or assistance could be provided to caseworkers in the same way paralegals provide assistance to attorneys;

- **Communication between DCF, subcontractors, and the courts.** This can be a consistent source of problems in the courts in determining which entity is responsible for which task, but at the end of the day, DCF bears ultimate responsibility;

- **Continuity between caseworkers.** The turnover rate is high and creates issues, so transitions between caseworkers needs to be improved;

- **Availability of prompt services.** Drug, alcohol, and mental health services are especially needed. While DCF and the contractors are to be credited for being aware of the services that are available, caseload, funding, and transportation issues are keeping the full amount of services needed from being delivered;

- **Accurate and timely reports to the court.** Judge Wine tries to review each case every 60-90 days, and accurate, timely reports from subcontractors are critical to this review, but inaccurate and delayed reports continue to be a problem across the state. Courts and the Task Force should recommend accurate reports be filed at least seven days in advance of a court date;

- **Realistic reintegration goals.** Contractors sometimes set reintegration goals that are higher than the minimum standards required of parents by law, requiring Judge Wine to overrule their recommendations to achieve reintegration; and

- **Prompt adoptions.** Timely approval of adoptions for children in foster homes by DCF has been an issue, although it is improving. Judge Wine encouraged the

Task Force to recommend prompt and strict timelines for agency adoptions.

Judge Wine also noted, effective July 1, 2019, a juvenile detention center can no longer be used in a CINC case, which may complicate cases involving children who run from placement. The system will need to adjust to address this issue, perhaps through providing more residential treatment facilities or alternative secure beds.

In response to questions, Judge Wine noted not every judicial district has magistrate judges, which are more prevalent in the rural areas of the state. Judge Wine believes the CINC Code and due process requires parents be provided with the opportunity for an evidentiary hearing and counsel for temporary custody hearings, although there is a difference of opinion as to these requirements and some judicial districts handle them differently.

Judge Wine stated judges have the authority to directly place children, but have more limited control over placement after placing the child in DCF custody.

Judge Wine clarified that DCF does not have the authority to remove children from a home on its own. A child may only be removed in two ways: with a valid court order obtained after DCF has presented the information supporting removal to the county or district attorney's office, or by law enforcement in an emergency situation *via* PPC.

Judge Wine stated a normal timeframe for an in-state adoption, with no delays, would be six to nine months.

Judge Cahill provided the Task Force with an overview of the CINC process. He noted the Office of Judicial Administration had provided Task Force members with copies of the CINC bench cards that help judges complete every step of a CINC case.

Judge Cahill noted a small number of CINC cases are filed as private petitions, but most are cases filed by the State that begin either with a DCF investigation leading to the filing of a petition by the county or district attorney and the issuance of a court order for removal, or with law enforcement removal of a child *via* PPC.

Judge Cahill stated that requirements under the CINC Code may be interpreted and applied in different ways in different judicial districts. For instance, Judge Cahill does not believe the CINC Code structures temporary custody hearings as evidentiary hearings, but some judges in other judicial districts do.

After walking through the process from the temporary custody hearing to disposition, Judge Cahill stated direct placement would be good to use in every case, but the statutory and contractual structure for family preservation services and reintegration efforts make such services and efforts easier to provide through a DCF placement, so he sometimes tries to arrange placement through DCF with a family he otherwise would have used for a direct placement.

In response to questions, Judge Cahill provided further detail regarding the PPC process in his district. After law enforcement removes a child from an unsafe situation, they will take the child to the local juvenile intake or assessment, unless there is reason to believe the child is a human trafficking victim, in which case the child may be taken directly to the specified facility for such cases. Law enforcement will report what information they can to the district attorney's office as well as DCF for investigation, if DCF has not yet been notified. DCF will begin communication with the district attorney's office to determine if a CINC petition should be filed and will attempt to find an immediate placement with a home or relative, although an emergency shelter may have to be used.

Ms. Lessor clarified that PPC can extend for up to 72 hours, and while DCF may be investigating the child's case, it remains the decision of law enforcement or the county or district attorney if and when to release the child from PPC, unless a court order has been entered.

In response to questions, Judge Cahill stated a previous termination of parental rights (TPR) does not create a presumption of a child-in-need-of-care in a different child's case, but it does create a presumption of unfitness in a subsequent TPR proceeding; he believes Judge Wine identified some of the most important issues related to the child welfare system; DCF's determination that a report is substantiated, unsubstantiated, or affirmed does not affect the court's weighing of the evidence in a case; it would be helpful if services were easier to provide when direct placements occur; while federal and state law require annual permanency hearings, review is needed more often, so he holds review hearings every 90 to 120 days; and recent changes in state and federal law have provided older children with the opportunity to provide more input regarding their permanency plans and other decisions in their cases.

Follow-up Information from October 10 Meeting

Steve Greene, Director of Policy and Legislative Affairs, and Tony Scott, Deputy Director of Performance Improvement, DCF, presented the Task Force with information responding to requests from the October 10 meeting, including:

- Criteria for enforcement of contracts;
- The most recent child welfare-related audit available for review;
- Ratios between administration and services costs for contractors;
- Breakdown of active foster homes and licensed beds by various categories;
- Payments for relative home placements;
- Placement type reports;
- Data on removals where parental substance abuse was a contributing factor;
- Updates on the number of missing children and ages;
- Number of PRTF beds provided by KVC;
- Required training for therapeutic foster homes; and
- Lists of subcontractors for KVC and St. Francis.

In response to a question regarding possible effects of recent TANF legislation on the foster care system, Mr. Greene stated DCF was currently analyzing the data related to this question and would update the Task Force when the analysis was complete. Representative Gallagher noted an upcoming report and conference at the University of Kansas that also was analyzing the possible effects of TANF policies on child abuse and neglect.

Senator Kelly asked if anyone present from DCF could respond to a recent article in the Kansas City Star stating that notes were shredded following DCF meetings. Mr. Greene said the only documents that were shredded were ancillary notes of observation during an interview.

Other Task Force Business

Working Group Reports

Carlie Houchen, KHI, presented the Task Force with reports from each working group from the October and November working group meetings. (Working group reports are attached to this report as Appendix B.)

Testimony Parameters and Process

Task Force members continued the discussion from the October 10 meeting regarding potential parameters and processes for public testimony, including the draft testimony application distributed at the October 10 meeting. A member reported KHI was willing to provide assistance in creating an online application form for submitting testimony, receiving applications and testimony, and forwarding the applications and testimony to the appropriate working groups. Members expressed a desire to provide an alternate means for submitting testimony for persons who have limited online access, as well as a desire to publicize the opportunity to testify to interested parties and groups throughout the state.

The Task Force voted to allow testimony to be submitted electronically and *via* alternative means to KHI for forwarding to the appropriate working group chairs, who may forward to Task Force leadership any testimony that may be of interest to the entire Task Force.

2018 Schedule

Members discussed a proposed schedule of six meetings in 2018 to be held in April, June, August, September, November, and December. KLRD staff reported that a request for six meeting days is pending before the LCC. A member proposed having a meeting in January or February instead of December. Further discussion was postponed until the December meeting.

December 12 Meeting

The Vice-chairperson chaired the December 12 meeting and began the meeting by noting that Ms. Meier-Hummel had been appointed the new Acting Secretary for Children and Families, effective December 1, and that Gail Cozadd had been appointed to fill the Task Force position vacated by Ms. Meier-Hummel, who by virtue of her position would be continuing on the Task Force as a non-voting member.

Overview: History and Privatization of Kansas Child Welfare System

A panel of persons who served in or observed the child welfare system during the privatization process presented the Task Force with their observations regarding privatization. The panelists included: Rochelle Chronister, former Secretary of Social and Rehabilitation Services; David Ranney, journalist; Bruce Linhos, former executive director, Children's Alliance; the Honorable Jim Burgess, former district court judge; Teresa Markowitz, former commissioner, Department of Social and Rehabilitation Services (SRS); and Laura Howard, former deputy secretary, health care policy, SRS.

Overview and Vision

Ms. Chronister began by noting her background as a legislator and research virologist, which kept her focused on data-driven outcomes throughout her career. A class action lawsuit filed in 1989 regarding the child welfare system led to a settlement agreement in 1993 that focused on child protection, case planning, and adoption. Some of the issues facing the system at the time included heavy caseloads for social workers and a failure to deliver services equally across the state. As Secretary, Ms. Chronister wanted to assure the safety, permanency, and well-being of children being served in the system; provide equitable services across the state; use outcomes to measure achievement, not just process-laden reviews such as those in the settlement agreement; and eliminate the previous incentive to keep beds full. Before Ms. Chronister left the Legislature, the Juvenile Justice Authority was established as a separate agency to distance child welfare from the juvenile justice system. Her experience in the Legislature led Ms. Chronister to realize a radical solution to the issue in the child welfare system was needed, especially to obtain increased funding for the system. This radical solution was privatization. While there was fear of change in the agency, by the end of the transition to privatization Kansas was being recognized as having one of the best child welfare systems in the country.

Public Perspective

Mr. Ranney presented a public perspective on the privatization process. He noted the pre-privatization system was dependent on social workers personally finding placements for children who came onto their caseloads and there was heavy reliance on large group homes. SRS repeatedly warned the Legislature it did not have sufficient funding for the system, and non-profit organizations said they could provide care for more children with additional funding. A guardian *ad litem*, Rene Netherton, filed the lawsuit in January 1989, accusing SRS of failing to care for children in its custody, that ultimately was joined by the American Civil Liberties Union and led to the 1993 settlement agreement. While the 1989 Legislative Session featured extensive debate regarding child-protection efforts and child advocates lobbied for an additional $40.7 million to address these issues, ultimately the funding increased only $5.0 million. SRS failed several quarterly audits after the settlement agreement, and Governor Graves' administration ultimately chose to privatize the system, which allowed the State to sidestep most of the court's rulings. The issues leading to and involving privatization bridged three different administrations, but money has always been an issue. Under privatization, more money did become available and outcomes improved. The purpose of privatization today seems more focused on containing costs, but initially it was about improving outcomes.

Provider Perspective

Mr. Linhos, presenting a private provider's perspective, noted before privatization some children waited up to two weeks for emergency placements. There was a level of care system organized by the level of difficulty of the children, and a social worker would fax various agencies at the appropriate level of care to try to find a placement. SRS was contracting with about 50 agencies around the state. There were no benchmarks or rational standards for outcomes. The system was driven by residential care, which meant that the children had to go where the beds were located, moving them away from their own homes. The approximately 1,200 foster homes were largely provided by SRS. The private providers supported privatization because the lead agency model could help address other agencies' needs and better cost knowledge could improve funding. There were challenges during privatization as agencies were being asked to do things they had not previously done and an increased budget was being managed through a subcontractor network. Despite the challenges, the system improved a great deal, including the data available and establishment of data-driven outcomes.

Plans and Design for Reform

Ms. Markowitz noted her current role with the Annie E. Casey Foundation (focusing on reforms for child welfare systems and juvenile justice systems) and outlined some of the reform priorities for Kansas' child welfare privatization that continue today, including:

- Access to equal services across the state;
- Stronger partnership with local providers and promoting innovation;
- State worker focus on protective services (their strength);
- Increased use of family-based care (including kinship);
- Keeping siblings together and keeping youth closer to home and in the same school;
- Strengthening recruitment and retention of foster parents;
- Reducing congregate care use;
- Reducing placement disruptions and moves (with each additional move, a child typically displays one additional negative behavior); and
- Focus on outcomes.

Ms. Markowitz discussed the initial design of the privatized system, beginning with four-year contracts with six local providers in 1996. SRS retained investigations, child protection, and oversight and contracted family preservation, foster care, and adoption. The lead agency model reduced the number of contracts the state had with providers, allowing lead agencies to subcontract as necessary. The system was intended to focus on outcomes related to safety, performance, and well-being, rather than just processes, and to generate timely and accurate data to make decisions and to improve the system as experience was gained. Ms. Markowitz reviewed some of the outcomes achieved in the first three years of the privatized system, including successfully exiting the settlement agreement, being named the best child welfare system in the nation, family preservation services available for 100 percent of Kansas counties, a majority of families being preserved, adoption increase of 81 percent, significant increase in foster homes, and all safety indicators being met.

Court Perspective

Judge Burgess provided a judicial perspective on privatization, noting the courts were not involved in the decision to privatize. Before privatization, SRS was struggling to provide the necessary services. Privatization was hard work, as many new workers immediately entered the system. He sat down with the contractors and laid out expectations and began meeting every month with the various individuals involved in the system locally to discuss what was working or not working. Judge Burgess stated this kind of communication is required to make the complex system work. He noted that contractor stability within a judicial district makes it easier to maintain communication, and that districts where the relationship between the court and SRS or the contractor was more adversarial experienced much more difficulty.

Financing and Cross-System Implications

Ms. Howard discussed financing and cross-system issues involved with privatization. Because the focus of the new system was managing to outcomes, it was important the financing design complemented this focus and provided flexibility to contractors for innovation. Financing provisions included an initial case rate of a fixed amount per child and establishment of a shared risk corridor. There was no direct link between performance and payments because there were not yet benchmarks for outcomes. The case rate bundled State General Fund moneys, federal Title IV-E funds, and federal Medicaid funding. Because of limitations on use of federal funds, state dollars had to be used for certain innovative services. SRS talked with contractors about how to capture data related to outcomes, which helped to establish outcomes to guide contractors.

Cross-system issues that arose during privatization included lack of clarity regarding financial responsibilities for certain services; differences between contractors focused on core outcome measures and other systems with a different focus; and differences in priority populations across systems.

Insights and Lessons Learned

Ms. Chronister returned to highlight lessons learned and insights from the privatization process, including:

- Length of contracts were too short;
- Needed to define differences between SRS case manager and provider case manager;
- Needed to involve more stakeholders at front end, including the courts and foster parents;
- Needed better oversight of programmatic and financial progress of providers;
- Needed more upfront training of foster parents and youth; and
- Decision to not do a pilot program was the correct decision.

Ms. Chronister noted the number of children in the system was likely to continue to rise due to the opioid crisis, and one of the first areas of focus going forward should be what resources can be directed toward that crisis.

Positives and Areas for Improvement Identified from 2015 Data

Ms. Markowitz returned to review some positives and areas for improvement for the Kansas child welfare system based upon data from the 2015 Adoption and Foster Care Analysis and Reporting System (AFCARS) report. She noted the data is interrelated and often requires a deeper dive to better understand. For example, when a death occurs in the child welfare system, it is likely that entries into the system will increase and exits will decrease, increasing the number of children in the system, as entities within the system err on the side of caution. She noted a number of strengths for Kansas, including:

- High rates of placement in family-like setting compared to other settings;
- Low rate of group care placements; and
- Low rate of stays under 30 days (children with such short stays should not enter the system in the first place, but note this low rate will affect Kansas' overall length of stay numbers).

Ms. Markowitz highlighted some data-identified areas for more assessment and improvement in Kansas, including:

- Entry and placement rates for African-American children compared to other ethnic groups;

- Number of entries double the number of children substantiated for maltreatment (so high there is no comparison nationally);

- Entries rising overall and particularly for ages 6 to 12 (rise in this age range is unique); and

- High number of youth aging out without a permanent family.

Responses to Questions

In response to questions regarding the regular meetings he held with local system stakeholders, Judge Burgess stated his district also had a local permanency planning council, similar to the state council, as well as a group focused on difficult placements and a group for front-line workers. SRS provided a coordinator to help organize these meetings. The attendees at the meetings included personnel from DCF, KVC, CASA, local mental health groups, court services officers, and prosecutors. While there were agendas with issues set for discussion, there also was value in developing lines of communication and trust. He stated the judiciary is in the best position to bring the various stakeholders together locally, but the stakeholders have to be willing to attend and participate without feeling forced to do so. The focus was not on what anyone has done wrong in the past, but what can be improved moving forward. He stated the system must be constantly focused on improvement or else it will fall behind.

In response to various questions, Ms. Markowitz stated no two states are alike in their approach to licensing and payment for relative and kinship care, but her own view is that states should pay relatives or kin for placements the State determines are necessary; technology can help improve the efficiency of data entry for social workers and allow them to focus more on the families on their caseloads; there is a natural break in cases between protection and placement services that allows for different caseworkers, but the goal should be to maintain the same placement caseworker; data shows that relative and kinship care is the best practice, is most cost-effective, and has the best outcomes; there are unique family dynamic impacts that have to be addressed in relative placements that are not present in non-relative foster placements; the Annie E. Casey Foundation has worked with the State of Indiana to develop a new child welfare case management system called Casebook, which was implemented with the assistance of some federal funding; and during privatization, SRS had a task group working with the children's rights groups to address the outstanding issues from the settlement agreement and evaluate processes that were necessary or not, leading to the development of simpler accountability measures for contractors to meet under privatization.

Mr. Ranney noted privatization was very controversial with social workers, which Secretary Chronister addressed by holding an open meeting to increase transparency and address questions and concerns. This developed into meetings regularly held by SRS before the budget proposal and after the legislative session, but they ended under Secretary Rob Siedlecki.

In response to a question regarding the additional $5 million in funding provided in 1989, Ms. Chronister stated the funding was for additional social workers. With regard to advice moving forward, Ms. Chronister stated the system must continue to move forward in some way, or else it will move backwards. Ms. Markowitz added that the best place to start is to take a deep look at the data and look at everything in totality, avoiding anecdotes in favor of qualitative and quantitative data. She has offered her assistance to Acting Secretary Meier-Hummel in this regard.

In response to a question regarding the oversight initially established for contractors, Ms. Markowitz stated 15 to 20 social workers were reassigned to oversee the contracts and review monthly reports that were submitted to be sure requirements were being timely met. A mistake made with the initial contracts was setting outcomes based around the providers, rather than based around the children in the system, which would have increased the investment the state workers had in the system.

Overview: Roles of Department of Health and Environment and Department for Aging and Disability Services in Child Welfare System

Becky Ross, Medicaid Initiatives Coordinator, KDHE, Brad Ridley, Commissioner of Financial and Information Service, KDADS, and Susan Fout, Commissioner of Behavioral Health Services, KDADS, presented the Task Force with an overview of the KDHE and KDADS roles within the child welfare system.

KDHE and KDADS serve two principal roles in the child welfare system: They serve as a payor for medical services, behavioral health and long-term services and support, and health insurance up to age 27 (if on Medicaid), and they provide oversight for PRTFs, community behavioral health services, and home and community based services (HCBS).

The departments' duties in these roles include paying for medically necessary services, including HCBS and behavioral health services, through MCOs; defining services in state plan and HCBS waivers; setting policies governing services and minimum rates; and licensing and regulation of certain providers.

Foster children are automatically eligible for Medicaid and, if they age-out of the system, they may apply for continuing Medicaid coverage until age 27. Children adopted from foster care also are eligible for Medicaid.

There are four HCBS waivers for which foster care children may be functionally eligible: serious emotional disturbance (SED), intellectual and developmental disability (I/DD), autism, and technology assisted (TA) waivers.

Children in foster care also can receive treatment in a PRTF if they are Medicaid-eligible and it is determined to be medically necessary. Alternatively, children can receive services *via* private insurance as primary payor. PRTFs provide out-of-home treatment when mental health needs cannot be met in a community setting. These needs may arise from an identified mental health diagnosis, substance use diagnosis, sexual abuse diagnosis, or mental health diagnosis with co-occurring disorder.

As of November 24, 2017, there were 8 licensed PRTFs in Kansas providing a total of 272 licensed beds.

Community behavioral health services, through a community mental health center or substance use disorder provider, may be provided under Medicaid if medically necessary. Services also may be provided *via* private insurance as primary payor.

In response to questions from the Task Force, the presenters stated the MCOs are for-profit entities; there is a staff member assigned to assist aging-out youth in applying for continuing Medicaid coverage; there is a special procedure for children who are reintegrated into a home to apply for Medicaid coverage to continue; KDHE is dependent on DCF for information regarding when a child is being reintegrated from foster care; there currently is a waiting list for PRFTs, and KDHE and KDADS are working with MCOs and community mental health centers to try to address that; PRTF beds that are open may not be available to particular youth on the waiting list due to specific characteristics of the bed or the youth; there was a change in PRTF business models about 6 or 7 years ago and more out-of-state youth began coming in to Kansas PRTFs; one PRTF recently closed due to financial issues; three PRTFs have recently requested licensing of additional beds, and some of these additional beds should be available within 60 days; KDADS is starting a pilot program with community mental health centers to begin providing services to children on the PRTF waiting list; there appears to be a discrepancy in average length of stay numbers for PRTFs between KDHE and KDADS and the contractors that they will attempt to resolve; KDADS is developing a policy that would require permission for PRTFs to take out-of-state children, but this is a complex issue; some MCOs may be conducting screenings for both in-state and out-of-state children; KDADS is trying to develop crisis beds for children on the front end and back end of PRTF stays to begin offering services while waiting for the PRTF to be available and to help with transition when leaving the PRTF.

The Vice-chairperson noted that while the screening definitions are intended to be consistent across MCOs, in practice, the interpretation and application of the definitions appears to differ, and this is an area needing additional work. MCOs also seem to have affected the changing length of stays in PRTFs.

Follow-up Information from November 14 Meeting

Acting Secretary Meier-Hummel provided a brief overview of her background in the child welfare system and outlined her initial plans, priorities, and vision for DCF, including:

- Transparency with the public, Task Force, and media;
- Leadership role in the Task Force and broader conversation;
- Focus on best practices;
- Top-to-bottom review of the agency and conversations with staff, contractors, foster parents, and birth parents;
- Contract compliance and contractor performance;
- Dedicated staff and increased communication and reporting regarding runaways and other children missing from the system;
- Increased availability of beds and prevention services;
- Review of child deaths and similar tragedies; and
- Staff changes.

In response to questions about efforts regarding missing children, Acting Secretary Meier-Hummel stated there were 79 children missing as of noon, 65 of which were verified as runaways. Five of the children have never been served an *ex parte* order, as their family hid them or fled before served. One child is a parental abduction case. There are eight children DCF is still trying to verify as runaways. DCF has a team of staff with law enforcement and military backgrounds that is looking for the children. DCF also is trying to notify law enforcement agencies in other locations if it believes a missing child's location may have changed. Judge Cahill stated that one of the important roles of the court is to be sure the policies are being followed for notifications and reporting when a child goes missing. In response to a question, Judge Cahill stated it would be unlikely an *ex parte* order would be withdrawn when a child reaches the age of 18. Acting Secretary Meier-Hummel noted she is going to be discussing border issues with Missouri, including that Missouri will not pick up missing children over the age of 18.

Acting Secretary Meier-Hummel presented the Task Force with information responding to requests from the November 14 meeting, including:

- Information regarding previous enforcement of corrective action plans or monetary fines against contractors;
- Previous contract renegotiations;
- Data regarding children in foster care who are receiving TANF or Social Security;
- How child support and social security payments are prioritized;
- Correlation between children in foster care, recent TANF legislation, and child poverty;
- Historical DCF budget information;
- Definitions related to relative and kinship care and licensing; and
- Placement types utilized by each contractor.

In response to questions, Acting Secretary Meier-Hummel stated she would be reviewing DCF's contract management to identify areas for improvement; DCF can open a family services case to provide prevention services to families in non-abuse/neglect cases, as long as the family agrees; and DCF is going to investigate and consider ways to adjust relative placements and licensing to try to access additional federal Title IV-E funding.

Other Task Force Business

Facilitator Update

Representative Gallagher reported there has been conversation regarding contacting Casey Family Programs or the Council of State Governments to serve as a facilitator for the Task Force. She requested guidance from the Task Force. Judge Cahill suggested contacting Casey Family Programs to see if it could present regarding possible facilitation at the first meeting in 2018. The Vice-chairperson noted Acting Secretary Meier-Hummel's willingness to help obtain a facilitator and requested the Acting Secretary, Representative Gallagher, Judge Cahill, Senator Kelly, and KLRD staff make arrangements to further explore Casey Family Programs' ability to provide facilitation to the Task Force.

Working Group Updates

Hina Shah, KHI, presented the Task Force with reports from each working group from the October and November working group meetings. (Working group reports are attached to this report as Appendix B.) Ms. Shah noted the working groups are hoping to have preliminary recommendations to the Task Force by July 2018 to provide the Task Force with time to consider the working group recommendations and testimony and to request any necessary follow-up information. The working groups anticipate the testimony application process will be ready in January 2018, with testimony focused on the preliminary recommendations developed by the working groups, similar to legislative testimony on a bill.

The Vice-chairperson and Revisor staff noted submitted testimony would be reviewed by working group chairpersons and vice-chairpersons to determine which testimony should be submitted to or heard by the working groups.

2018 Schedule Discussion

The Vice-chairperson outlined a proposed structure for 2018 Task Force meetings. The next meeting would be held February 2, 2018, and would include a report from the Acting Secretary on her review of DCF and intended plans for performance improvement, a report from KDHE and KDADS on KanCare 2.0 plans for foster care coordination, and an update on promising practices identified by working groups. The subsequent meeting would be held in mid to late April 2018 for reports and promising practices updates from working groups and an update on legislative activity by KLRD staff. Meetings in June, August, and October would focus on final reports from working groups and hearing testimony as recommended by the working groups. Final report discussion would begin at the October meeting, and the report would be finalized at the December meeting.

Finally, the Task Force moved into discussion of concerns and recommendations to be included in the preliminary report, as detailed in the next section.

Preliminary Findings and Recommendations

The Task Force discussed concerns and recommendations to be included in the preliminary report. The Vice-chairperson noted Acting Secretary Meier-Hummel has already announced plans to address many of the concerns, and that the preliminary report will not be the final report made by the Task Force and will not contain an all-inclusive list of findings and recommendations, but could serve as a good guide for the Task Force in 2018 and provide information to legislators and others.

Following discussion, the Task Force identified the following concerns regarding the child welfare system:

- High turnover levels of social workers due to stress, excessive caseloads, and low pay;

- Excessive caseloads and limited funding affect timely response for needed services;

- The increasing numbers of children and youth who are forced to sleep overnight in child placement agency offices because there is nowhere else for them to go after being removed from their homes;

- A significant decrease in number of beds for children and youth in PRTFs in Kansas;

- The number of children and youth who are missing from the State's child welfare system at any given time;

- An antiquated set of various computer systems within DCF prevents communication between computers within the DCF, as well as between DCF and the two child welfare system contractors;

- Excessive length of time for some adoptions to be completed after parental rights are terminated; and

- Lack of additional funding over recent years for family preservation services.

The Task Force adopted the following preliminary recommendations:

- A multi-year focus on recruitment and retention of social workers should be implemented, including DCF evaluation of the morale and tenure of the work force;

- Long-term incentives, supports, career path (advancement), professional development, ongoing training, supervision, student loan forgiveness, and competitive compensation for social workers who work in the child welfare system should be developed;

- Continuity of services and recordkeeping need improvement so that caseworker turnover does not affect delivery of services;

- Problems that have led to the closure of several PRTFs for children and youth should be addressed so that more PRTFs can be added;

- DCF should evaluate and explore options for combining stand-alone computer systems into a consolidated system, to respond to the recent LPA audit and the federal Program Improvement Plan. Such consideration should include availability of federal matching funds and the system implemented by Indiana. DCF should provide the Legislature with a clear recommendation for computer system improvement and the Legislature should provide the funding required for any necessary feasibility study;

- Prompt adoptions after parental rights are terminated, though improving, need further attention;

- Issues regarding youth who run from placement should be addressed, including evaluation of what facilities could be used for such youth;

- There should be consideration of preventative services that could be added or increased;

- DCF should review the evolution and continuum of placements used over the years; and

- The effect on the child welfare system of the consolidation of juvenile services within the Kansas Department of Corrections should be considered.

Appendix A

Child Welfare System Task Force

Working Group Members

General Administration of Child Welfare and Foster Care

Task Force Members:

Sandra Lessor, Chairperson
Senator Laura Kelly, Vice-Chairperson
Honorable Dan Cahill
Dr. Kathy Melhorn
Mary Tye

Non-Task Force Members:

Dona Booe
Kellie Hogan
Kathy Keck
Sarah Oberndorfer
Loren Pack
Susana Prochaska
Erin Rainey

Protective Services and Family Preservation

Task Force Members:

Sergeant David Ohlde, Chairperson
Representative Jarrod Ousley, Vice-Chairperson
Gina Meier-Hummel

Non-Task Force Members:

Sarah Coats
Honorable Erika DeMarco
Kathleen Holt
Connie Mayes
Tara Wallace
Honorable Taylor Wine
Kate Zigtema
Gail Cozadd (effective 12/11/2017)

Reintegration and Permanency Placement

Task Force Members:

Alicia Johnson-Turner, Chairperson
Representative Linda Gallagher, Vice-Chairperson
Mickey Edwards
Serena Hawkins
Ashlyn Yarnell

Non-Task Force Members:

Charlene Brubaker
Bethany Fields
Cara Payton
Lori Ross
Ruth Schenck
Nina Shaw-Woody
Honorable Kathleen Sloan

Appendix B

CHILD WELFARE SYSTEMS TASK FORCE
MONTHLY REPORT ON WORKING GROUPS: OCTOBER 2017

EXECUTIVE SUMMARY

In October 2017, all three Working Groups met around the October 10th Task Force meeting:

- General Administration of Child Welfare and Foster Care met on October 9th—9 of 12 members attended the meeting.
- Protective Services and Family Preservation met on October 10th and all 10 members attended the meeting—8 members were present in person and 2 members dialed in via phone.
- Reintegration and Permanency Placement met on October 9th and 8 of 12 members attended the meeting—6 members were present in person and 2 members dialed in via phone.

These meetings were focused on introductions, networking, education, knowledge needs, and issue identification.

Each chairperson/vice chairperson worked with the Kansas Health Institute (KHI) to schedule the meeting and prepare meeting agendas.

KHI facilitated brainstorming sessions for two of the three Working Groups to identify issues and knowledge needs (including testimony).

The Working Group on General Administration of Child Welfare and Foster Care invited Dawn Rouse from the Office of Judicial Administration to present information regarding federal mandates as they relate to child welfare statutes and policy.

Two of the three Working Groups requested Kyle Hamilton from the Office of the Revisor of Statutes to discuss the Kansas Open Meetings Act (KOMA)/Kansas Open Records Act (KORA) to their Working Group members.

General Administration of Child Welfare and Foster Care

Meeting Date/Time: October 9, 2017 │ 01:30 – 04:30 PM

In-Person Attendees (9): Sandra Lessor (Chair); Senator Laura Kelly (Vice Chair); Judge Dan Cahill; Mary Tye; Dona Booe; Sarah Oberndorfer; Loren Pack; Susan Prochaska; Kathy Keck

Remote Attendees: none

Unable to Attend (3): Erin Rainey; Dr. Kathy Melhorn; Kellie Hogan

Other Attendees (10): Dawn Rouse (presenter); Representative Linda Gallagher; Rachel Marsh; Steve Greene; Samuel Mil Holland; John Paul Grauer; Ben Frie; Donna Frie; Hina Shah; Krista Elliott

Meeting Summary

After introductions, Dawn Rouse, a court improvement specialist from the Office of Judicial Administration presented information on the regarding federal mandates as they relate to child welfare statutes and policy. Throughout her presentation, Ms. Rouse engaged the Working Group in a robust discussion around some of the following topics:

- Legislation related to the child welfare system including:
    - *Adoption and Safe Families Act (ASFA)* and the *Indian Child Welfare Act* and discussion focused on provisions for safety, permanency and well-being;
    - *Fostering Connections to Success and Increasing Adoptions Act of 2008* and discussion focused on provisions to support kinship options, reasonable efforts to keep siblings together, coordination with schools to provide stability, and transition plans for older youth;
    - *Preventing Sex Trafficking and Strengthening Families Act (PSTSFA)* and discussion focused on provisions for sex trafficking, reasonable efforts to keep siblings together, and normalcy for foster youth; and
    - *Child and Family Service Improvement Act of 2006* and discussion focused on provisions for procedural safeguards with permanency hearings.
- State's ability to choose how to implement this legislation—either by state legislation (CINC code in Kansas) or in a policy and procedure manual (DCF's PPM);
- Compliance of IV-E review by the federal government and qualifications for certain subsidies including a discussion on the penetration rate and funds drawn down;
- Reasonable efforts and its role in removal, prevent placement, reunification and permanency plan;
- *Another Planned Permanent Living Arrangement (APPLA)* for youth over age 16 as well as case plans for youth over age 14; and
- National Youth Transitional Database, which uses a scoring system to determine the effectiveness of states' youth transition to adulthood.

After the presentation, the chair discussed the education focus of the initial working group meetings and submission of questions or data requests to the chair and KHI as materials are reviewed. The working group members then engaged in a dialogue on prevention. The discussion entailed prevention services, data, community-based organizations, conducting assessments and other aspects related to prevention. The working group discussed federal law and the idea of Kansas formulating and adopting a value statement.

Action Items

Item	Responsible	Date due
1. Request Kyle Hamilton to present KOMA/KORA	Hina Shah (KHI)	10/18/2017

Decisions Made

none

Barriers Identified

none

Next Meeting

October 18, 2017 at 1:30 PM. Working Group will conduct a brainstorming session along with a review of KOMA/KORA with Kyle Hamilton from the Office of the Revisor of Statutes.

PROTECTIVE SERVICES AND FAMILY PRESERVATION

Meeting Date/Time: October 10, 2017 │ 03:00 – 05:00 PM

In-Person Attendees (8): Sergeant David Ohlde (Chair); Representative Jarrod Ousley (Vice Chair); Gina Meier-Hummel; Sarah Coats; Kathleen Holt; Tara Wallace; Judge Taylor Wine; Kate Zigtema

Remote Attendees (2): Judge Erika DeMarco; Connie Mayes

Unable to Attend: none

Other Attendees (8): Rachel Marsh; Lindsey Stephenson; Steve Greene; Lauren Mendoza; John Paul Grauer; Mitch DePriest; Hina Shah; Krista Elliott

MEETING SUMMARY

After introductions, the chair opened discussion on the 2013 evaluation of DCF's child protective services function by reviewing the nine recommendations suggested by the Casey Family Programs Assessment in the Performance Audit Report System, Part 1. He highlighted that only one recommendation has been implemented and the need to understand the delay or status of the other recommendations. DCF and its contractors were present and will be prepared to discuss the implementation plan and checklist at future meetings.

The group then discussed other knowledge needs and identified issues relevant to their charge through a quick brainstorming session. This included a robust discussion on the following:

- Front-end and investigation intake and processing (Protection Report Center);
- Data on non-abuse/non-neglect removals;
- Availability of services;
- Local standing order/rules versus state and federal laws and policies;
- Prevention; and
- Solicit best practices from other states.

The group identified the need for testimony from Susan Gile (DCF) to better understand the current system. They have also requested a presentation by Kansas County District Attorneys Association (KCDAA) to understand policies/current practices that impact filing decisions and mitigate risk.

ACTION ITEMS

Item	Responsible	Date due
1. Presentation by Susan Gile	Steve Greene (DCF)	11/2/2017
2. Presentation by KCDAA	Hina Shah (KHI)	12/4/2017

DECISIONS MADE

none

BARRIERS IDENTIFIED

none

NEXT MEETING

November 2, 2017 at 1:00 PM. Susan Gile from the Kansas Department of Children and Families will present information on Protection Report Center and if time permits, the group will review their brainstorming session and engage in next steps.

REINTEGRATION AND PERMANENCY PLACEMENT

Meeting Date/Time: October 9, 2017 | 09:00 AM – 12:00 PM

In-Person Attendees (6): Alicia Johnson-Turner (Chair); Representative Linda Gallagher (Vice Chair); Ashlyn Yarnell, Lori Ross, Ruth Schenck, Nina Shaw-Woody

Remote Attendees (2): Mickey Edwards, Serena Hawkins

Unable to Attend (4): Charlene Brubaker, Bethany Fields, Cara Payton, Judge Kathleen Sloan

Other Attendees (9): Rachel Marsh; Steve Greene; Samuel Mil Holland; John Paul Grauer; Ben Frie; Donna Frie; Kyle Hamilton; Hina Shah; Krista Elliott

MEETING SUMMARY

After introductions, the chair requested the Working Group members identify issues in the child welfare system related to their charge (reintegration and permanency placement). Working Group members engaged in an exercise to identify issues and prioritize them. Four broad issues were prioritized:

1. Staff turnover as related to the broader topic of workforce;
2. Older youth;
3. High needs; and
4. Availability of services.

There were some issues identified which may be more relevant for other working groups and KHI has shared these with the chairperson from these groups.

Working Group members then engaged in an exercise to conduct a deeper dive on the four prioritized issues. Working Group members identified knowledge needs and potential testimony requests for each prioritized issue to obtain a better understanding of the breadth and depth of these issues. For example:

- During the staff turnover discussion, the underlying challenge may be related to communication flows and understanding workflows and components of a case file may help the group formulate recommendations.
- During the older youth discussion, understanding changes as a result of Juvenile Justice Reform and achieving permanency were proposed. Data were also requested on children sleeping in contractor offices (KVC and St. Francis) with a focus on the age of the children.

Only the two prioritized issues listed above were discussed during the meeting due to time.

ACTION ITEMS

Item	Responsible	Date due
none		

DECISIONS MADE

none

BARRIERS IDENTIFIED

none

NEXT MEETING

November 9, 2017 at 10:00 AM. Working Group will continue the brainstorming exercise with a focus on high needs, substance abuse, services, and cost/funding.

CHILD WELFARE SYSTEMS TASK FORCE
MONTHLY REPORT ON WORKING GROUPS: NOVEMBER 2017

EXECUTIVE SUMMARY

Leading up to the November 2017 Task Force meeting, all three Working Groups had good attendance:

- General Administration of Child Welfare and Foster Care met on October 18th—11 of 12 members were present.
- Protective Services and Family Preservation met on November 2nd—all 10 members were present.
- Reintegration and Permanency Placement met on November 9th—9 of 12 members were present.

Each chairperson/vice chairperson worked with the Kansas Health Institute (KHI) to schedule the meeting and prepare meeting agendas. These meetings continued to focus on education and brainstorming.

KHI facilitated brainstorming sessions for two of the three Working Groups to identify successes, challenges and opportunities in the Child Welfare system related to their charge on topics like workforce, services, older youth, high needs and cost/funding.

The Working Group on Protective Services and Family Preservation invited Susan Gile from the Kansas Department of Children and Families to present information on the Protection Report Center to the group.

All three Working Groups are beginning to identify gaps in the system and communication flow challenges. KHI will continue to monitor the data requests/questions across all three working groups to minimize duplicative efforts and streamline research requests.

The meetings in December will continue focusing on education as well as brainstorming to determine requests for information and testimony.

GENERAL ADMINISTRATION OF CHILD WELFARE AND FOSTER CARE

Meeting Date/Time: October 18, 2017 │ 01:30 – 04:30 PM

In-Person Attendees (11): Sandra Lessor (Chair); Senator Laura Kelly (Vice Chair); Judge Dan Cahill; Mary Tye; Dona Booe; Sarah Oberndorfer; Loren Pack; Susan Prochaska; Kathy Keck; Erin Rainey; Dr. Kathy Melhorn

Remote Attendees: none

Unable to Attend (1): Kellie Hogan

Other Attendees (9): Kyle Hamilton (speaker); Rachel Marsh; Lindsey Stephenson; Steve Greene; Samuel Mil Holland; John Paul Grauer; Madeline Fox; Hina Shah; Krista Elliott

MEETING SUMMARY

The meeting began with a presentation by Kyle Hamilton on Kansas Open Meetings Acts (KOMA) and Kansas Open Records Act (KORA) followed by a brief Q&A with members.

Next, KHI facilitated an exercise to identify successes, challenges and opportunities related to the General Administration of Child Welfare and Foster Care. The group completed the exercise on the topics of workforce and services. This exercise encouraged the group to reflect upon what is done well (successes), identify challenges in a rational manner, and seek information on opportunities (e.g., best practices in other states, current pilot projects, etc.). This exercise will then guide the Working Group to develop meaningful and feasible solutions.

Due to the length of time until the next meeting, KHI will disseminate a survey to Working Group members to complete the brainstorming exercise on the topics of cost/funding, technology and communication.

ACTION ITEMS

Item	Responsible	Date due
1. Confirm with Kyle Hamilton whether a survey may be used as a brainstorming tool between meetings	Hina Shah (KHI)	11/01/2017
2. Disseminate survey to members (if approved)	Hina Shah (KHI)	11/09/2017
3. Q&A with Dan Lewien (DCF)	Steve Greene (DCF)	12/11/2017

DECISIONS MADE

none

BARRIERS IDENTIFIED

none

NEXT MEETING

December 11, 2017 at 1:30 PM. Working Group will review brainstorming results and prioritize data/testimony requests for 2018. Dan Lewien (DCF) will also be present for a Q&A session regarding cost/funding.

Protective Services and Family Preservation

Meeting Date/Time: November 2, 2017 │ 01:00 – 04:30 PM

In-Person Attendees (10): Sergeant David Ohlde (Chair); Representative Jarrod Ousley (Vice Chair); Gina Meier-Hummel, Sarah Coats, Judge Erika DeMarco, Kathleen Holt, Tara Wallace, Kate Zigtema; Judge Taylor Wine; Connie Mayes

Remote Attendees: none

Unable to Attend: none

Other Attendees (9): Rachel Marsh; Lindsey Stephenson; Steve Greene; John Paul Grauer; Mitch DePriest; Samuel Mil Holland; Linda Bass; Hina Shah; Carlie Houchen

Meeting Summary

After a brief introduction, the Chair recognized Susan Giles, Kansas Department of Children and Families (DCF), Administrator – Family and Community Supports to present information on the Protection Reports Center (PRC).

Ms. Giles stated that the presentation she shared is what is used for DCF's Mandated Reporter Training. The objectives of the presentation were to:

- Describe what to expect when calling the Kansas Protection Report Center;
- Identify the difference between risk and safety;
- Recognize decisions made regarding child safety at different points during DCF involvement, and how risk and safety factors impact these decisions; and
- Discover how decisions are made for protective actions and service recommendations.

Through her presentation, Ms. Giles highlighted the policies and regulations that guide social work practice. She described how DCF Policy and Procedure Manual must be in alignment with Kansas Administrative Regulation, Kansas Statutes Annotated and the Federal Child Abuse Prevention and Treatment Act. Some highlights include:

- KSA 38-2226 gives DCF's authority to investigate. DCF has the responsibility to determine the validity of a report and whether any action should be taken to protect the child;
- KSA 38-2223, the outlines when mandatory reporters must report. The key language was "reason to suspect.";
- KSA 38-2223(e)(1) and (2), which is a Class B misdemeanor for failure of a mandatory reporter to report;
- KSA 38-2224 (a) and (b) that protects employees from termination for making a report. Violation of this is a Class B misdemeanor; and
- KSA 38-2213 is an important statute for medical professionals. This statute tells doctors, medical professionals that they can and "shall" give DCF protected medical information.

Ms. Giles also discussed the specific criteria for determining no further action needed. These criteria include that the statutory definition of Child In Need of Care (CINC) or Policy and Procedural Manual (PPM) directives are not met: No indication of harm, report allege abuse or neglect are in the past, report concerns licensing standards only, caregiver's behavior does not harm a child or place a child in a likelihood of harm or being endangered.

Further, the response times for Non-Abuse/Neglect (NAN) or Family In Need of Assessment (FINA) can be same day, 72 hours or 20 working days. Response times for pregnant woman using substances is 72 hours. Ms. Giles clarified that the 20 working days is currently under revision to change to 7 working days.

Working Group members had several questions along the way which KHI staff noted and will submit to DCF for follow-up. Gaps were also identified such as the lag between the local law enforcement report and the update of registries, and members are interested in understanding how these gaps can be eliminated in the system.

ACTION ITEMS

Item	Responsible	Date due
1. Presentation on Risk Mitigation by KCDAA	Hina Shah (KHI)	12/04/2017
2. Q&A with Dan Lewien (DCF)	Steve Greene (DCF)	12/04/2017

DECISIONS MADE

none

BARRIERS IDENTIFIED

none

NEXT MEETING

December 4, 2017 at 1:00 PM. The group will review the questions submitted and invite the following speakers: representatives from KVC and St. Francis, state contractors for Family Preservation Services; representative from KCDAA on Risk Mitigation; and Dan Lewien (DCF) to discuss cost/funding.

REINTEGRATION AND PERMANENCY PLACEMENT

Meeting Date/Time: November 9, 2017 | 10:00 AM – 3:00 PM

In-Person Attendees (8): Alicia Johnson-Turner (Chair); Representative Linda Gallagher (Vice Chair); Ashlyn Yarnell, Lori Ross, Ruth Schenck, Nina Shaw-Woody, Mickey Edwards, Charlene Brubaker

Remote Attendees (1): Cara Payton,

Unable to Attend (3): Bethany Fields, Judge Kathleen Sloan, Serena Hawkins

Other Attendees (9): Steve Greene; Lindsey Stephenson; John Paul Grauer; Mitch DePriest; Margarita Carlson; Natalie Nelson; Madeline Fox; Hina Shah; Krista Elliott

MEETING SUMMARY

KHI facilitated an exercise to identify successes, challenges and opportunities related to Reintegration and Permanency Placement based on the prioritized topic identified during their October meeting.

The group completed the exercise on the topics of workforce, older youth, high needs and services. This exercise encouraged the group to reflect upon what is done well (successes), identify challenges in a rational manner, and seek information on opportunities (e.g., best practices in other states, current pilot projects, etc.). This exercise will then guide the working group to develop meaningful and feasible solutions.

Due to the length of time until the next meeting, KHI will disseminate a survey to Working Group members to complete the brainstorming exercise on the topics of services, cost/funding, technology and communication.

ACTION ITEMS

Item	Responsible	Date due
1. Disseminate Survey to members	Hina Shah (KHI)	11/16/2017

DECISIONS MADE

none

BARRIERS IDENTIFIED

none

NEXT MEETING

December 6, 2017 at 10:00 AM. The group will review brainstorming results and discuss other research and testimony requests.

CHILD WELFARE SYSTEMS TASK FORCE

MONTHLY REPORT ON WORKING GROUPS: DECEMBER 2017

EXECUTIVE SUMMARY

Leading up to the December 2017 Task Force meeting, all three Working Groups had good attendance:

- General Administration of Child Welfare and Foster Care met on December 11th—10 of 12 members were present.
- Protective Services and Family Preservation met on December 4th—9 of 10 members were present.
- Reintegration and Permanency Placement met on December 6th—9 of 12 members were present.

Each chairperson/vice chairperson worked with the Kansas Health Institute (KHI) to schedule the meeting and prepare meeting agendas. These meetings continued to focus on education and brainstorming.

All three working groups held a Q&A session with Dan Lewien, Office of Financial Management Director for the Kansas Department of Children and Families (DCF).

The working group on Protective Services and Family Preservation also heard testimony from DCF's contractors on family preservation services and from the Kansas County and District Attorneys Association (KCDAA) on case filings and the role of local regulations.

The other two working groups completed a survey between meetings to continue brainstorming to identify successes, challenges and opportunities in the Child Welfare system related to their charge on the topics of cost/funding, communication, services and technology. KHI compiled the results and led exercises to prioritize information and testimony requests and begin developing a preliminary list of recommendations.

KHI will continue to monitor the data requests/questions across all three working groups to minimize duplicative efforts and streamline research requests. The meetings in 2018 will focus on the development of recommendations.

The working groups would appreciate direction from the Task Force on a meeting schedule for 2018, developing recommendations and soliciting testimony.

General Administration of Child Welfare and Foster Care

Meeting Date/Time: December 11, 2017 | 01:30 – 04:30 PM

In-Person Attendees (9): Sandra Lessor (Chair); Senator Laura Kelly (Vice Chair); Judge Dan Cahill; Mary Tye; Dona Booe; Sarah Oberndorfer; Loren Pack; Susan Prochaska; Dr. Kathy Melhorn

Remote Attendees (1): Kathy Keck

Unable to Attend (2): Kellie Hogan; Erin Rainey

Other Attendees (8): Rachel Marsh; Becky Fast; Dawn Rouse; Jordan Milholland; John Paul Grauer; Unknown female; Hina Shah; Carlie Houchen

Meeting Summary

Prior to the meeting, this working group completed a brainstorming survey identifying successes, challenges and opportunities for the topics of cost/funding, technology, and communication. KHI compiled the results and disseminated them during the meeting.

After a brief introduction, the working group discussed high-level goals to inform next steps—an administrative approach to topics such as workforce, oversight, licensing, communication across agencies and entities, organizational structure, court timelines and transition planning for older youth.

Next, KHI reviewed the brainstorming survey results with the working group and led an exercise for each topic area resulting in a list of exploration areas. The group also identified information/data and testimony requests. Following are a few examples of preliminary recommendations, requests for information and requests for testimony.

Examples of Exploration Areas

- Statewide database with varying levels of access
- Address communication barriers between agencies and entities
- Mechanism to widely disseminate the Foster Care Bill of Rights
- Centralized, shared record of available foster homes and matching placement opportunities
- Sustainable workforce through accountability, manageable caseloads and adequate funding

Examples of Information/Data Requests

- Federal requirements to build child welfare case management system from the Capacity Building Center for the Court (CBCC) and Capacity Building Center for States (CBCS)
- Budgets and contracts from all agencies and entities to review funding streams
- Structure and oversight of DCF and its contractors

Examples of Testimony Requests

- Representatives from Child Advocacy Center of Sedgwick County and Child Death Review Board on communication models

After a short break, the Chair recognized Dan Lewien (DCF) for a Q&A session with working group members on costs, budgets and funding. Working group members had several questions related to the social security funds, child support, prevention fund caps, IV-E funds, shrinkage and workforce.

The meeting wrapped up with a discussion on scheduling for 2018 and the working group will await direction from the Task Force.

Action Items

Item	Responsible	Date due
1. Schedule speakers for upcoming meetings	Hina Shah (KHI)	TBD
2. Send information/data requests to appropriate agencies	Hina Shah (KHI)	TBD

Decisions Made

none

Barriers Identified

No scheduled meetings in 2018.

Next Meeting

To be determined.

PROTECTIVE SERVICES AND FAMILY PRESERVATION

Meeting Date/Time: December 4, 2017 | 01:00 – 04:45 PM

In-Person Attendees (9): Sergeant David Ohlde (Chair); Representative Jarrod Ousley (Vice Chair); Sarah Coats; Judge Erika DeMarco; Kathleen Holt; Tara Wallace; Kate Zigtema; Judge Taylor Wine; Connie Mayes

Remote Attendees: none

Unable to Attend (1): Gina Meier-Hummel

Other Attendees (24): Linda Bass; Amanda Pfannenstiel; Shawna Lyon; Rachel Marsh; Tionna Haberman; Lindsey Stephenson; Deneen Dryden; Tom Buell; Leslie Hale; Charlene Brubaker, Erica Hunter; Dan Lewien; Don Hymer; Ron Paschal; Madeline Fox; Kari Presley; Steve Kearny; Natalie Nelson; John Paul Grauer; Mitch DePriest; Ben Frie; Donna Frie; Hina Shah; Carlie Houchen

MEETING SUMMARY

After a brief introduction, the Chair recognized Linda Bass, Vice President of KVC Kansas, as well as Amanda Pfannenstiel, Corporate Clinical Director, and Shawna Lyon, Director of Family Preservation, both of Saint Francis Community Services. The presentation began with the number of family preservation allocations for FY 2018 (July 2017-June 2018). The presenters also discussed net referrals to date, an overview of the family preservation program including the referral process, assessments and case planning. The contractors discussed a number of interventions and the models at their respective organizations, and ended their presentation with outcomes data for measures like families engaged timely and babies born substance free.

Working group members had a robust discussion with the presenters and asked several questions related to staff turnover, caseloads, training and education requirements, after-hours services, parental rights, billing, intensive versus less intensive efforts and associated transitions, and trauma and mental health assessments and services. Members also discussed the impact of substance abuse on family preservation needs. KHI staff also noted questions from working group members for DCF and will submit for follow-up.

Next, the Chair recognized representatives from the Kansas County & District Attorney Association (KCDAA)—Charlene Brubaker (Ellis County); Don Hymer (Johnson County); and Ron Paschal (Sedgwick County). The presentation began with the following statement: *There are 105 counties and at least 105 ways to do things in child welfare cases.* The working group had a robust roundtable discussion with the attorneys on case filings, training, removals associated with substance abuse, necessary case information, role of law enforcement, accountability and prior substantiations. The role of local regulations versus state-wide standardization was also discussed.

Lastly, the chair recognized Dan Lewien (DCF) for a Q&A session with working group members on costs, budgets and funding related to family preservation. Due to time restraints, there were limited discussions around TANF funds and multi-generational funding, tobacco settlement, funding for mental health services and referral transfers due to funding caps.

ACTION ITEMS

Item	Responsible	Date due
1. Schedule speakers for upcoming meetings	Hina Shah (KHI)	TBD
2. Send information/data requests to appropriate agencies	Hina Shah (KHI)	TBD

Decisions Made

none

Barriers Identified

No scheduled meetings in 2018.

Next Meeting

To be determined.

REINTEGRATION AND PERMANENCY PLACEMENT

Meeting Date/Time: December 6, 2017 | 10:00 AM – 3:00 PM

In-Person Attendees (6): Alicia Johnson-Turner (Chair); Representative Linda Gallagher (Vice Chair); Ruth Schenck; Charlene Brubaker; Judge Kathleen Sloan; Serena Hawkins

Remote Attendees (3): Cara Payton; Ashlyn Yarnell; Lori Ross

Unable to Attend (3): Bethany Fields; Nina Shaw-Woody; Mickey Edwards

Other Attendees (11): Dan Lewien; Lindsey Stephenson; Rachel Marsh; John Paul Grauer; Mitch DePriest; Natalie Nelson; Madeline Fox; Ben Frie; Donna Frie; Deneen Dryden; Hina Shah; Carlie Houchen

MEETING SUMMARY

Prior to the meeting, this working group completed a brainstorming survey identifying successes, challenges, and opportunities for the topics of cost/funding, services, technology and communication. KHI compiled the results and disseminated them during the meeting.

After a brief introduction, the Chair recognized Dan Lewien (DCF) for a Q&A session with working group members on costs, budgets and funding related to reintegration and permanency. Members had several questions related to location of foster homes, social security, kin/relative monies and after care.

The working group then developed a value statement to guide next steps: *Timely and sustained permanency taking into consideration the age of the child. Access to appropriate and necessary services for family as they work towards reintegration and meeting the needs of the child.*

Next, KHI reviewed the brainstorming survey results with the working group and led an exercise for each topic area resulting in a list of preliminary recommendations as well as identification and prioritization of information/data and testimony requests. Following are a few examples of preliminary recommendations, requests for information and requests for testimony.

Examples of Preliminary Recommendations

- Thoughtful training on the role of the foster parent at the outset of placement and implementation of co-parenting techniques
- Addressing the needs of older youth in transition in the system
- Need for mental health services for foster care youth
- Efficiencies in transportation needs
- Effective communication strategies amongst all stakeholders—looking closely at schools, guardian ad litem (GAL), court services officers (CSOs) and case managers
- Updating technology particularly for placements—ideas around a portal

Examples of Information/Data Requests

- Funding mechanism for after care;
- Example case transfer form;
- PRTF queue and funding; and
- Payment for kinship placements in other states

Examples of Testimony Requests

- Beth Gonzalez (DCF) on core competency training;
- Shane Heit (KVC Health Systems) on waiver services;
- Julie Brewer (United Community Services of Johnson County) on transitioning youth; and
- Don Hymer (KCDAA) on impact of Juvenile Justice Reform on Foster Care

The meeting wrapped up with a discussion on scheduling for 2018 and the working group will await direction from the Task Force.

ACTION ITEMS

Item	Responsible	Date due
1. Schedule speakers for upcoming meetings	Hina Shah (KHI)	TBD
2. Send information/data requests to appropriate agencies	Hina Shah (KHI)	TBD

DECISIONS MADE

none

BARRIERS IDENTIFIED

No scheduled meetings in 2018.

NEXT MEETING

To be determined.

Report of the Health Care Stabilization Fund Oversight Committee to the 2018 Kansas Legislature

Chairperson: Gary Hayzlett

Legislative Members: Senators Laura Kelly and Vicki Schmidt; and Representatives Eber Phelps and Richard Proehl

Non-Legislative Members: Darrell Conrade, Dennis George, Dr. Jimmie Gleason, and Dr. James Rider (two health care provider provisions are vacant)

Charge

This Committee annually receives a report on the status of the Health Care Stabilization Fund and makes recommendations regarding the financial status of the Fund.

December 2017

Health Care Stabilization Fund Oversight Committee

Annual Report

Conclusions and Recommendations

The Health Care Stabilization Fund Oversight Committee considered two items central to its statutory charge: whether this committee should continue its work and whether a second, independent analysis of the Health Care Stabilization Fund (HCSF or the Fund) is necessary. This oversight committee continues in its belief that the Committee serves a vital role as a link among the HCSF Board of Governors, the health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability insurance marketplace, which allows for more affordable coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and did not request the independent review.

The Committee considered information presented by the Board of Governors' representatives, including its required statutory report, the Board of Governors' actuary, and health care provider and insurance company representatives. The Committee agreed on the following recommendations and comments:

- **Actuarial report and health of the HCSF; provider surcharge rate recommendations.** The Committee notes the report provided by the Board of Governors' actuary reviewed the financial performance of the HCSF and outlined positive indicators, including a strong balance sheet and a solid income statement. The actuary reviewed options considered by and the recommendation made by the Board, which will result in a decrease in most surcharge rates for health care providers. The actuary indicated this rate reduction, a decline of about 2.6 percent from calendar year 2017 rates, will become effective January 1, 2018.

    - The Committee supports continued monitoring of indicators associated with enactment of 2014 law, including the relative loss experience among provider classes and rating by years of compliance for tail coverage. (As a result of 2014 law, tail coverage for inactive health care providers became effective immediately upon inactivation of the provider license and cancellation of professional liability insurance coverage.)

    - The Committee appreciates the constant effort on behalf of the Board of Governors and its staff to monitor the cash balance of the HCSF. The Committee notes the laddered investment strategy prescribed by statute and delegated to the Director of Investments at the Pooled Money Investment Board, which allows the Board of Governors to maintain its fiduciary duty as protector of the fiscal integrity of the Fund and its statutory duty to assure sufficient liquidity to pay claims in a timely manner.

- **Reimbursement of the HCSF.** The Committee notes the fulfillment of the reimbursement schedule established by 2010 SB 414. This law allowed for reimbursement of deferred payments to the HCSF for administrative services provided to the self-insurance programs at the University of Kansas (KU) Faculty and Foundations and the University of Kansas Medical Center and Wichita Center for Graduate Medical Education (WCGME) residents for state fiscal years 2010, 2011, 2012, and 2013. The Committee notes normal reimbursements occurred starting July 1, 2013, and 20 percent of the accrued receivables (totaled $7,720,422.23 on June 30, 2013) were paid each July 1, pursuant to the statutory schedule. The final payment of $1,544,084.45 was received on July 1, 2017.

- **Telemedicine and *locum tenens*.** The Committee recognizes two contemporary issues of concern to the Board of Governors and Kansas health care providers. The Committee notes information presented by the Board of Governors and discussed with health care provider representatives and the Board's decision that non-resident telemedicine providers and *locum tenens* should be held to the same standards of accountability as any Kansas resident health care provider and, therefore, should be required to comply with the Health Care Provider Insurance Availability Act (HCPIAA). The Committee further notes the Legislative Coordinating Council assigned telemedicine legislation to the 2017 Special Committee on Health for its consideration and recommendations.

- **Health Care Provider Insurance Availability Act.** The Committee notes no amendments to this Act were submitted for its consideration.

- **Fund to be held in trust.** The Committee recommends the following language to the Legislative Coordinating Council, the Legislature, and the Governor regarding the HCSF:

  - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the State General Fund (SGF). The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on behalf of each individual health care provider. Those payments made to the HCSF by health care providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the HCPIAA, the HCSF is required to be "held in trust in the state treasury and accounted for separately from other state funds"; and

  - Further, this Committee believes the following to be true: All surcharge payments, reimbursements, and other receipts made payable to the HCSF shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such Fund shall remain therein and not be credited to or transferred to the SGF or to any other fund.

Proposed Legislation: None

Background

The Committee was created by the 1989 Legislature and is described in KSA 2017 Supp. 40-3403b. The 11-member Committee consists of 4 legislators; 4 health care providers; 1 insurance industry representative; 1 person from the general public at large, with no affiliation with health care providers or with the insurance industry; and the Chairperson of the HCSF Board of Governors or another member of the Board designated by the Chairperson. The law charges the Committee to report its activities to the Legislative Coordinating

Council (LCC) and to make recommendations to the Legislature regarding the Health Care Stabilization Fund (HCSF or the Fund). The reports of the Committee are on file in the Legislative Research Department.

The Committee met October 2, 2017.

Committee Activities

Report of Willis Towers Watson

The Willis Towers Watson actuarial report serves an addendum to the report to the Board of Governors dated March 6, 2017, provided to the HCSF Board of Governors based on HCSF data as of December 31, 2016. The actuary addressed forecasts of the HCSF's position at June 30, 2017, and June 30, 2018, based on the company's annual review, along with the prior estimate for June 2017. The HCSF's position at June 30, 2017, was as follows: the HCSF held assets of $285.87 million and liabilities of $236.42 million, with $49.45 million in reserve. The projection for June 30, 2018, is as follows: assets of $290.41 million, liabilities of $240.95 million, with $49.45 million in reserve. The actuary stated the forecasts of unassigned reserves assume an estimate of surcharge revenue in fiscal year (FY) 2018 of $28.1 million, a 2.0 percent interest rate for estimating the tail liabilities on a present-value basis, a 3.1 percent yield on HCSF assets for estimating investment income, continued full reimbursement for University of Kansas/Wichita Center for Graduate Medical Education (KU/WCGME) (generally referred to as the residents in training program) claims, and no change in current Kansas tort law or HCSF law. The actuary noted, based on the analysis provided to the Board of Governors in March, the HCSF could reduce its calendar year (CY) 2018 surcharge rates by 2.0 percent and still maintain its unassigned reserves at approximately $50 million. It was also suggested the Board of Governors consider a modest reduction in rates for CY 2018, perhaps by continuing to lessen the difference in rates by years of compliance (YOC) and making adjustments by specialty.

The actuary stated the company remains pleased with the HCSF's financial performance both in terms of having a strong balance sheet and a solid income statement, with the latter allowing the HCSF to lower most surcharge rates that will become effective January 1, 2018. The actuary indicated there will be an overall rate reduction of about 2.5 percent from CY 2017 rates.

The actuary reviewed the HCSF's liabilities at June 30, 2017. The liabilities highlighted included claims made against active providers as $75.4 million; associated defense costs as $13.3 million; claims against inactive providers, as known on June 30, 2017, as $7.9 million; tail liability of inactive providers as $128.1 million; future payments as $9.8 million; claims handling as $8.1 million; and other, which is mainly plaintiff verdicts on appeals, as $2.2 million. Total gross liabilities were $244.8 million; the HCSF is reimbursed $8.4 million for the KU/WCGME programs, for a final net liability of $236.4 million. The actuary stated the gross liabilities includes the KU/WCGME claims without reimbursement, explaining that if there should be another situation in which those reimbursements were held temporarily, the vulnerability to the HCSF is $8.4 million. The actuary further discussed the tail liability of inactive providers, noting this amount is difficult to estimate and has grown due to the 2014 change in law that allowed any provider who has been in the HCSF to be covered for claims after the provider becomes inactive. The actuary explained the liability is recognized today even though those claims may not occur for another 10 to 20 years or paid for another 20 to 30 years.

The actuary also reviewed the HCSF's rate level indications for CY 2018, noting the indications assume a break-even target. The actuary highlighted payments, with settlements and defense costs of $29.63 million; change in liabilities of $5.49 million; administrative expenses of $1.81 million; and transfers to the Health Care Provider Insurance Availability Act (HCPIAA) Availability Plan and the Kansas Department of Health and Environment assumed at $200,000 (this amount assumes no transfer to the Availability Plan); in total, the cost for the HCSF to "break even" for another year is $37.12 million. The actuary stated the HCSF has two sources of revenue: an investment income assumption of $8.80 million based on a 3.1 percent yield on those assets; and surcharge payments from providers of $28.32 million. The actuary also noted, if the Board of Governors did nothing with its surcharge rates, it is believed the HCSF would have collected more than that at $28.86 million. Therefore, there would be a negative rate level indication, which provides an opportunity to lower rates overall to the providers for CY 2018; the Board of Governors chose to do so. (*Note*: see information on indications by provider class for the surcharge rates approved by the Board.) In response to a Committee member's questions about administrative expenses, the Executive Director for the Board of Governors clarified those expenses would include routine state operations such as salaries, rent, fees to the Office of Information Technology, and other similar state agency operating expenses such as human resources support.

The actuary discussed trends in the HCSF's loss experience and investment income indicating the HCSF has had a remarkably favorable situation regarding the inflation in its business, because basically it has been 0 for about 13 years. The actuary provided an assumption of going forward at a 210 basis point spread (that is assuming an investment yield of 3.1 percent and inflation of 1.0 percent). He then reported on trends in the HCSF's experience for active and inactive providers by program year and also reported on the HCSF's investment yield, indicating it continues to show a gradual decline. The actuary indicated his company may have to lower the assumption from 3.1 percent when it completes its review in a few months.

The actuary provided an overview on the rating by YOC. With the enactment of 2014 HB 2516, the HCSF provides tail coverage at no additional cost to all providers upon becoming inactive. He stated that changed the amount to be charged to providers who are new to the system versus the amount charged before. The actuary indicated the HCSF Board of Governors has moved over the past few years to normalize those rates by YOC. He stated now the rate for a new provider is up to 35 percent of the rate for someone who has been in for 5 years, up from only 20 percent 3 years ago. The actuary indicated he is comfortable the Board has made a lot of progress on this issue and may be able to retain the current rate for a year or two. The actuary stated he can see the benefits of having a lower first-year and second-year rate from the company's perspective to attract new providers to the state.

The actuary provided an overview regarding indications by provider class. This report indicates the analysis of experience by HCSF class continues to show differences in relative loss experience among classes. The actuary explained the rate structure of the HCSF and the different classes that are charged and segregated for each type of health care provider, stating from an outside actuarial perspective, the goal is having each class stand on its own (equitable rates across the classes, rather than one class subsidizing another class' loss experience). The actuary noted more classes are in the middle range for loss experience (an increase or decrease of less than 15 percent). Classes with decreases or increases greater than 15 percent are noted below:

- Decrease greater than 15 percent: Class 13 (registered nurse anesthetists); Class 8 (surgery specialty – general, plastic, emergency room with major); Class 24 (nursing facilities); Class 18 (mental health centers); and Class 3 (physicians, minor surgery); and

- Increase greater than 15 percent: Class 9 (surgery specialty – cardiovascular, orthopedic, traumatic); Class 11 (surgery specialty – neurosurgery); Class 22 (nurse midwives); and Class 15 (Availability Plan insureds).

Committee discussion topics included differences between classes, with some classes' rates set as a dollar amount, while other provider classes pay a percentage-based rate. The actuary noted Classes 1 through 14 pay set dollar amounts; Classes 15 and above pay a percentage of the underlying basic coverage premium that these providers pay for the first $200,000. For example, a nurse midwife, Class 22, paying $10,000 in premium for a basic coverage policy would pay the HCSF 38 percent of that $10,000. The actuary commented the percentage rate would be based on what the underlying insurance company is charging, not a set dollar amount. It was noted established loss experience would be needed before some current percentage-based rates could transition to set dollar amounts. The discussion also included the Availability Plan insureds and this class' loss experience. The Executive Director for the Board of Governors explained the Legislature chose to have a relationship between the HCSF and the Availability Plan where, if the Availability Plan experiences losses in a particular fiscal year, money is transferred from the HCSF to the Availability Plan to offset those loses. If, however, the Availability Plan collects more premiums than it suffers in losses, then they transfer that surplus to the HCSF. The Availability Plan guarantees all health care providers, as defined in HCPIAA, will have access to the basic layer, $200,000 per claim, $600,000 annual aggregate, basic coverage.

The actuary provided both a history of surcharge rate changes since 2004 and an overview of the three options for CY 2018 surcharge rates that were provided to the Board of Governors. The actuary highlighted the Board of Governors' decision on the surcharge rate changes and indicated the estimated overall impact of these changes to be a 2.6 percent decrease in surcharge revenue. In response to a Committee question, the actuary indicated this will be the fourth year the rate changes take place on January 1. He explained that historically surcharge rates were determined on a July 1 to June 30 basis.

Comments

In addition to the report from the HCSF Board of Governors' actuary, the Committee received information from Committee staff detailing resource materials provided for its consideration, including a bill summary from the Kansas Legislative Research Department (KLRD) and copy of the enrolled version of 2017 HB 2118 (L. 2017, ch. 35); an updated memorandum on the HCSF and medical malpractice law; information from the KLRD *Appropriations Report* detailing the approved Board of Governors' expenditures for FY 2017, FY 2018, and FY 2019, including any recommendations the Governor made or changes to the budget on the Governor's behalf and on the Legislature's behalf; and the Committee's conclusions and recommendations contained in its most recent annual report.

Committee staff briefly highlighted HB 2118, which amended and created law supplemental to the HCPIAA and amended the Nurse Practice Act to address requirements and exclusions from coverage pertaining to the liability of the HCSF and charitable providers and certain exempt licensees of the Board of Nursing. Further comment was provided by the Executive Director for the Board of Governors.

Chief Counsel's Update

The Deputy Director and Chief Counsel for the Board of Governors addressed the FY 2017 medical professional liability experience (based on all claims resolved in FY 2017, including judgments and settlements). Of the 16 cases involving 23 Kansas health care providers tried to juries during FY 2017, 14 were tried to juries in Kansas courts and 2 cases were tried in Jackson County, Missouri. The trials were held in the following jurisdictions: Johnson County (5); Saline County (3); Brown County (1); Cloud County (1); Cowley County (1); Douglas County (1); Sedgwick County (1); Wilson County (1); and Jackson County, Missouri (2). Of those 16 cases tried, 14 resulted in defense verdicts, including both tried in Jackson County, Missouri.

The Chief Counsel noted 2 more cases went to trial than during the previous year, but the number of trials has gone down in the past 15 to 20 years. She indicated that in FY 2018 to date, two cases have gone to trial and further stated, over the next few years, more cases are likely to be filed in Missouri due to the KU Hospital Authority and the KU Cancer Center having a number of clinics in Missouri.

The Chief Counsel highlighted the claims settled by the HCSF, noting in FY 2017, 64 claims in 53 cases were settled involving HCSF moneys and describing FY 2017 as an "average year." Settlement amounts incurred by the HCSF for the fiscal year totaled $21,745,583; the primary insurance carriers contributed $11,057,500 to these claims. In addition, excess insurance carriers provided coverage for 4 of these claims for a total of $1,425,000. So, for these 64 claims involving the HCSF, the total settlement amount was $34,228,083. The Chief Counsel noted this is 12 fewer cases and about $1.8 million less than in the previous fiscal year. She stated it was a good year in terms of the total amount of settlements, but it is always important to keep in mind the severity of claims and settlements. The Chief Counsel noted that in FY 2017, 13 claims were in the "large" category of settlement over $600,000. Of the 64 claims in which the HCSF is involved, 8 involved inactive health care providers for which the HCSF has first-dollar coverage. In addition to the settlements involving HCSF contributions, the HCSF was notified primary insurance carriers settled an additional 82 claims in 74 cases. The total amount of these reported settlements was $8,622,021. The Chief Counsel's testimony also included a historical report of HCSF total settlements and verdicts, from FY 1977 to FY 2017. She stated, in addition to the $21,745,583 in settlements, there was one verdict for $800,000 from the HCSF, totaling 65 claims this past year involving $22,545,583 from the HCSF.

The Chief Counsel also reported 276 new cases during FY 2017. She indicated from FY 2009 to FY 2014 there was a five-year decrease in the number of claims and since then a small increase. She stated the increase was to be expected due to the 2014 Legislature adding five new categories of health care providers under the HCSF coverage provisions in the HCPIAA: physician assistants, nurse midwives, nursing homes, assisted living facilities, and residential health care facilities. The Chief Counsel reported claims are starting to come in on the added health care providers. For FY 2017, there were 28 more cases than for FY 2016. The Chief Counsel indicated 27 new claims were in regard to adult care homes and pointed out the increase in the number of new claims was mostly due to the new health care providers and stated, considering this factor, there has not really been an increase in the number of new claims this past year.

In response to a Committee question, the Chief Counsel indicated health care providers that live in Kansas are covered wherever they may practice. She noted a health care provider who lives in Kansas and practices in Missouri must pay an additional 30 percent surcharge due to claims tending to be higher; the Missouri tort laws are not as favorable as those in Kansas. She stated some health care providers practice in Nebraska, Oklahoma, or Colorado and indicated there is no additional surcharge for practicing in those states. In response to a question, the Chief Counsel stated doctors helping in disaster areas are covered by the HCSF; if there were any claims from health care providers who go out of state, their primary coverage in the HCSF would provide coverage. She added that previously when WCGME residents wanted to assist with a disaster in another state, they were told if their program declared the residents' assistance in that area as part of their residency training program, they would be covered if any claims arose from providing assistance in those areas. Responding to a question about claims payment and resolution, the Chief Counsel indicated a primary carrier may determine a claim is beyond $200,000 and will tender its limits to the HCSF. The HCSF will continue with the defense of the case, most often with the same attorney, and continue with the defense until resolution of the case, whether it goes to trial or is settled. She noted, on occasion, some health care providers, usually hospitals, will have coverage in excess of HCSF. The Chief Counsel also indicated there are instances when it is determined a claim needs to be resolved and the HCSF Board of Governors determines the claim would more than likely exceed the HCSF's $800,000 coverage and the $200,000 that was tendered to the HCSF; in those circumstances, the Board of Governors will tender onto the excess insurance carrier.

The Chief Counsel addressed the self-insurance programs and reimbursement for the KU Foundation and Faculty program and medical residents. She stated the FY 2017 KU Foundations and Faculty program incurred $2,673,879 in attorney fees, expenses, and settlements; $500,000 came from the Private Practice Reserve Fund and $2,173,879 came from the State General Fund (SGF). The Chief Attorney indicated the $2.7 million was an increase from the past several years primarily because of the number of settlements; there were ten settlements involving KU full-time faculty members this past year. That compares to four the year before and seven in 2015. This past year there were two big cases involving a number of KU providers in these claims, accounting for $1.0 million of the $1,730,000 in settlements. The Chief Counsel noted, with more settlements, there will be increased attorney fees and expenses; these expenses increased about $300,000 this past year.

In regard to the self-insurance programs for the residents in training at the KU Medical Center in Kansas City and affiliated programs in Wichita and Salina, there have not been any settlements for the past couple of years involving residents. For the third year in a row, there has been a decrease in the total amounts spent on these programs of $642,342. However, for FY 2018, the Chief Counsel reported, at least two settlements involving residents for $400,000 are already anticipated.

The Chief Counsel report also listed the historical expenditures by fiscal year for the KU Foundations and Faculty and the residents in training. The Chief Counsel indicated the ten-year average for the faculty self-insurance program is about $1.6 million, which is running above the historical average. For the residency program, that ten-year average is about $862,000, which for four years has been below average. She also provided information about moneys paid by the HCSF as an excess carrier, stating for those claims involving the KU faculty members, the HCSF paid $1,766,666 out of its excess coverage. The Chief Counsel stated $1.5 million of that came from one large case. She anticipates next year that amount will decrease.

She next addressed the reimbursement of expenses for administrative services provided by the Board of Governors noting, in 2010, the Legislature reached a compromise (SB 414; L. 2010, ch. 55) that for four fiscal years (FY 2010, FY 2011, FY 2012, and FY 2013), the HCSF would not be reimbursed. Beginning with FY 2014, two things would occur: quarterly reimbursements were to begin and, for five fiscal years (FY 2014 through FY 2018), the HCSF was to be reimbursed 20 percent of the accrued receivables for those four years the HCSF was not reimbursed. At the end of June 30, 2013, the amount of accrued receivables was $7,720,422.23 for which the HCSF had not been reimbursed. The Chief Counsel indicated that on July 1, 2017, which was the beginning of FY 2018, the fifth and final installment payment was received.

In response to Committee questions regarding attorney fees, the Chief Counsel stated there are claims in which a lot of money is spent to defend the case, and then the case is dismissed. She indicated most cases that are filed are dismissed and do not go to settlement, but those cases still need defended. The Chief Counsel stated the attorney fees listed are to defend all claims that have been made against the Foundations and Faculty program or residents, not just those that went to trial or resulted in settlement.

Medical Malpractice Insurance Marketplace; Update on Availability Plan

The President and CEO for the Kansas Medical Mutual Insurance Company (KaMMCO) indicated the marketplace in Kansas and across the country is pretty healthy and stable. He stated many companies are writing this business and rates are at all-time lows. The KaMMCO conferee indicated the companies are well-capitalized and, while the results are not quite as good as they were a few years ago, overall the industry is profitable and, as a result, there is no difficulty in finding coverage for most lines of professional liability insurance. The conferee highlighted two marketplace concerns: more claims being filed and more complex cases, along with more obstetrical claims. He provided approximate numbers of those in the HCPIAA Availability Plan (Availability Plan): 201 either MDs or DOs; 31 corporations or other types of providers; 3 hospitals; 4 long-term-care facilities; 10 other facilities, such as surgical centers; and 35 moonlighting residents (mostly covering rural emergency rooms, according to the conferee). In response to a Committee question about a separate plan for moonlighting residents, the Executive Director clarified that residents in training are self-insured by the State of Kansas and do not have a basic policy in place.

The KaMMCO conferee also provided an outlook for the industry, stating this is a very robust, competitive market, and he believes it is going to stay that way for a while. The conferee addressed some of the things KaMMCO will be watching that can have an impact on the industry and the HCSF, such as the Affordable Care Act, the Medicare Access and CHIP [Children's Health Insurance Program] Reauthorization Act, and the opioid crisis in America and Kansas, described as the next set of professional liability insurance litigation. The conferee discussed his perspective on the health care provider groups that asked to come into the HCSF a few years ago following *Miller v. Johnson*, and what drove them to seek coverage by the HCSF. The conferee concluded by noting it is a pretty stable industry environment and has been that way for a number of years, benefiting health care providers.

In response to a question regarding telemedicine, the KaMMCO conferee stated he does not think there is enough experience yet to learn all the ramifications. He indicated KaMMCO will have to wrestle with the policy questions of what to do when care is being provided outside of state borders and what that means in terms of not just compliance with the HCSF but where liability for those acts or omissions may land. He stated the KaMMCO will pay close attention and be part of the conversation. A Committee member noted telemedicine is similar to mail-order pharmacies where out-of-state pharmacists provide all the care an in-state pharmacist does. The member indicated the issue was addressed, and the providers must be licensed in the state to which the medication is being delivered or where the patient resides. The member stated it is a similar path of continuity of care and taking care of the patient. There was some discussion regarding the opioid crisis and the health care community, including restriction of the days' supply and upcoming studies, including one conducted by the Kansas Hospital Association. The KaMMCO conferee indicated everyone in the health care community views this as something for which they all have roles in trying to help fix.

Comments from Health Care Provider Representatives

The Executive Director of the Kansas Medical Society (KMS) commented that HCPIAA is doing exactly what it was intended to do: provide stability and structure to health care malpractice coverage for Kansas physicians. He noted the present is a time of active change, reform, and upheaval in the practice of medicine. He stated Kansas physicians sincerely appreciate the stability and the leadership demonstrated not only by the Legislature but by the Oversight Committee to provide stability for this environment. The KMS conferee urged the continuation of this Committee, noting the Committee sees trends over periods of time and issues that might be coming, and it has the foresight and experience to be able to act on those. He also stated KMS does not see the need for an additional actuarial service. The KMS conferee concluded by stating the KMS encourages a continuation of the Committee in its current structure.

Written testimony submitted by the Kansas Association of Osteopathic Medicine stated support for the operation of the HCSF and success of the public-private partnership established under the HCPIAA. The testimony supported the continuation of the Committee and indicated a separate, independent actuarial analysis was not necessary. The testimony also indicated support for the Fund's investment strategy and payment of claims in a timely manner.

Board of Governors' Statutory Report

The Executive Director provided the Board of Governors' statutory annual report (as required by KSA 2016 Supp. 40-3403(b)(1)(C)). These were among the items detailed in the FY 2017 report:

- Net premium surcharge revenue collections amounted to $28,121,164. The lowest surcharge rate for a health care provider was $100 (for a first-year provider, opting for lowest coverage option) and the highest surcharge rate was $16,510 for a neurosurgeon with four or more years of HCSF liability exposure (selecting the highest coverage option). Application of the Missouri modification factor for this Kansas resident neurosurgeon (if licensed in Missouri) would result in a total premium surcharge of $21,463 for this health care practitioner;

- The average compensation per settlement (53 cases involving 64 claims were settled) was $339,775. These amounts are in addition to compensation paid by primary insurers (typically $200,000 per claim). The report states amounts reported for verdicts and settlements were not necessarily paid during FY 2017 and total claims paid during the fiscal year amounted to $23,976,127; and

- The balance sheet, as of June 30, 2017, indicated total assets of $286,690,985 and total liabilities of $238,059,073.

The Executive Director provided a brief history of the HCPIAA and its three principal features that remain intact: a requirement that all health care providers, as defined in KSA 2016 Supp. 40-3401, maintain professional liability coverage; creation of a joint underwriting association, the "HCPIAA Availability Plan", to provide professional liability insurance coverage for those health care providers who cannot purchase coverage in the commercial insurance market; and creation of the HCSF to provide excess coverage above the primary coverage purchased by health care providers and to serve as reinsurer of the Availability Plan.

The Executive Director also provided an update regarding 2017 HB 2118 that clarifies, if an incident giving rise to a medical malpractice claim is the result of professional services rendered by a charitable health care provider (as defined in the Kansas Tort Claims Act), or if the claim is covered under the Federal Tort Claims Act, the HCSF is not liable. He indicated the law also allows the commercial insurance carriers to exclude coverage for such claims in their basic insurance policies. The Executive Director stated the Board of Governors is unaware of any problems or flaws in the 2017 bill that need to be addressed by the Legislature in the 2018 Session.

The Executive Director highlighted contemporary issues for the Board of Governors and health care providers—telemedicine and *locum tenens*—commenting on two distinct concerns: organizations employing physicians to provide online medical care directly to consumers or *via* provider participation agreement with health insurers (telemedicine) and companies offering to provide temporary physician staffing support. He noted the Board of Governors has made its one-page nonresident certification form as simple as possible and allows proration of the annual surcharge if a nonresident works in Kansas part-time or on an intermittent basis. For Kansas resident health care providers who are employed by either telemedicine or *locum tenens* companies, professional liability insurance coverage must be obtained in compliance with the HCPIAA (the insurance carrier must be approved to sell such coverage) or the provider must choose to change his or her Kansas license to inactive status. The Executive Director indicated these topics have been discussed with the Board of Governors and ultimately it decided that non-resident telemedicine providers and *locum tenens* should be held to the same standards of accountability as any Kansas resident health care provider and therefore, those providers should be required to comply with the HCPIAA.

The Executive Director discussed the HCSF's cash-flow management, stating it is important to keep in mind the statutory obligation to pay claims in a timely manner. He also stated the Board of Governors carefully watches the cash balance to ensure enough cash is on hand to pay those claims that the Chief Counsel has identified must be paid within the succeeding couple of weeks. The Executive Director stated the Board of Governors makes a diligent effort to ensure sufficient surcharge revenue is collected, so it will never experience unfunded liabilities. He highlighted the Board of Governors' investment strategy and related statutory requirementlls (KSA 2016 Supp. 40-3406; KSA 2016 Supp. 40-3403(a)), noting investments are laddered over a ten-year period to assure reliable cash flow. He also commented in support of maintaining this conservative investment strategy as the Board has a fiduciary duty to protect the fiscal integrity of the Fund. His testimony indicated the Board does not believe the Legislature should amend this investment law to allow the Board to pursue higher risk investments.

HCPIAA Amendments

No amendments were brought before the Committee.

Conclusions and Recommendations

The Committee considered two items central to its statutory charge: whether this committee should continue its work and whether a second, independent analysis of the HCSF is necessary. This oversight committee continues in its belief that the Committee serves a vital role as a link among the HCSF Board of Governors, the health care providers, and the Legislature and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability insurance marketplace, which allows for more affordable coverage to health care providers in Kansas. The Committee is satisfied with the actuarial analysis presented and did not request the independent review.

The Committee considered information presented by the Board of Governors' representatives, including its required statutory report, the Board of Governors' actuary, and health care provider and insurance company representatives. The Committee agreed to make the following recommendations and comments:

- **Actuarial report and health of the HCSF; provider surcharge rate recommendations.** The Committee notes the report provided by the Board of Governors' actuary reviewed the financial performance of the HCSF and outlined positive indicators including a strong balance sheet and a solid income statement. The actuary reviewed options considered by and the recommendation made by the Board, which will result in a decrease in most surcharge rates for health care providers. The actuary indicated this rate reduction, a decline of about 2.6 percent from CY 2017 rates, will become effective January 1, 2018.
  - The Committee supports continued monitoring of indicators associated with enactment of 2014 law, including the relative loss experience among provider classes and rating by YOC for tail coverage. (As a result of 2014 law, tail coverage for inactive health care providers became effective immediately upon inactivation of the provider license and cancellation of professional liability insurance coverage.)
  - The Committee appreciates the constant effort on behalf of the Board of Governors and its staff to monitor the cash balance of the HCSF. The Committee notes the laddered investment strategy prescribed by statute and delegated to the Director of Investments at the Pooled Money Investment Board which allows the Board of Governors to maintain its fiduciary duty as protector of the fiscal integrity of the Fund and its statutory duty to assure sufficient liquidity to pay claims in a timely manner.

- **Reimbursement of the HCSF.** The Committee notes the fulfillment of the reimbursement schedule established by 2010 SB 414. This law allowed for reimbursement of deferred payments to the HCSF for administrative services provided to the self-insurance programs at the KU Faculty and Foundations and the KU Medical Center and WCGME residents for FY 2010, FY 2011, FY 2012, and FY 2013. The Committee notes normal reimbursements occurred starting July 1, 2013, and 20 percent of the accrued receivables (which totaled $7,720,422.23 on June 30, 2013) were paid each July 1, pursuant to the statutory schedule. The final payment of $1,544,084.45 was received on July 1, 2017.

- **Telemedicine and *locum tenens*.** The Committee recognizes two contemporary issues of concern to the Board of Governors and Kansas health care providers. The Committee notes information presented by the Board of Governors and discussed with health care provider representatives and the Board's decision that non-resident telemedicine providers and *locum tenens* should be held to the same standards of accountability as any Kansas resident health care provider and, therefore, should be required to comply with the HCPIAA. The Committee further notes the LCC assigned telemedicine legislation to the 2017 Special Committee on Health for its consideration and recommendations.

- **HCPIAA.** The Committee notes no amendments to this Act were submitted for its consideration.

- **Fund to be held in trust.** The Committee recommends the following language to the LCC, the Legislature, and the Governor regarding the HCSF:

- The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the SGF. The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on behalf of each individual health care provider. Those payments made to the HCSF by health care providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the HCPIAA, the HCSF is required to be "held in trust in the state treasury and accounted for separately from other state funds" (KSA 2016 Supp. 40-3203(a)); and

- Further, this Committee believes the following to be true: All surcharge payments, reimbursements, and other receipts made payable to the HCSF shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such Fund shall remain therein and not be credited to or transferred to the SGF or to any other fund.