Committee Reports to the 2020 Kansas Legislature

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Supplement

Kansas Legislative Research Department
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2019 Legislative Coordinating Council

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

Special Committee on Federal and State Affairs
Special Committee on Health
Special Committee on Medicaid Expansion

Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight
Joint Committee on Information Technology
Joint Committee on Pensions, Investments and Benefits
Legislative Budget Committee

Legislative Task Force on Dyslexia
Statewide Broadband Expansion Planning Task Force

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Foreword

This publication is the supplement to the *Committee Reports to the 2020 Legislature*. It contains the reports of the following committees: Special Committee on Federal and State Affairs; Special Committee on Health; Special Committee on Medicaid Expansion and Senate Select Committee on Healthcare Access; Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight; Joint Committee on Information Technology; Joint Committee on Pensions, Investments and Benefits; Legislative Budget Committee; Legislative Task Force on Dyslexia; and Statewide Broadband Expansion Planning Task Force.

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

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Summary of Conclusions and Recommendations

Special Committee on Federal and State Affairs

The Committee made the following recommendations.

Public policy implications, legalization and regulation of medical marijuana. The Committee recommended the standing judiciary committees consider introducing legislation providing an affirmative defense to residents of other states who have legally obtained a medical prescription for cannabis, marijuana, or THC in some form, and are traveling through or visiting Kansas.

The Committee also recommended, if the Legislature moves forward with legislation to legalize medical marijuana, the standing Federal and State Affairs Committees of both the House and Senate consider introducing such legislation using Ohio's legislation as a guide (Sub. for HB 523, passed into law in 2016).

Additionally, the Special Committee recommended the following be included in any bill considered by the Kansas Legislature:

- Smokeable forms of marijuana be prohibited;
- Vaping of marijuana be prohibited;
- Photo identification cards be required when purchasing medical marijuana; and
- Persons with prescriptions for medical marijuana be obligated to securely store marijuana if it could be accessed by minor children.

Issues and options, legality of abortions after *Hodes* decision. The Committee recommended a constitutional amendment be created by the appropriate standing committees of the Legislature and the people of Kansas be allowed to vote on clarification to the language of the *Kansas Constitution*.

Special Committee on Health

The Committee generally agreed the interested parties should attempt to resolve any issues or conflicts regarding licensure of anesthesiologist assistants identified during the meeting and present an acceptable compromise during the 2020 Session.

Special Committee on Medicaid Expansion

After discussion, the recommendations and requests of the Special Committee include the following:

- The Committee made no recommendations as to the Senate Select Committee on Healthcare Access (Senate Select Committee) bill draft 20rs1873, but requested it be included in the Committee report, changing the final word of New Section 5(a)(1) to replace "or" with "and" between phrases describing requirements for eligibility for a health insurance coverage premium assistance program;
- The Committee requested the Kansas Department of Commerce initiate a rural health care task force similar to the model established in Tennessee, in order to investigate health care issues in

rural Kansas, and provide data on the Reemployment Services and Eligibility Assessment program for the past five years and data on other programs offered by the agency under KANSASWORKS;

- The Committee requested the Kansas Hospital Association develop a transparency plan to analyze any current cost shifting to commercial insurance plans and to measure uncompensated care on an allowable, not a gross, charge perspective net of disproportionate share hospital (DSH) payments; provide patient census information and services for those hospitals in Kansas that have a daily average of ten or fewer patients; and provide information related to the hospital surcharge considered in the Senate Select Committee bill draft 20rs1873 and any considerations related to the timeline for collection of such surcharge;

- The Committee recommended the Kansas Department of Health and Environment (KDHE) correspond with the federal Centers for Medicare and Medicaid Services (CMS) to inquire whether CMS would consider a reinsurance program under a Section 1332 waiver in conjunction with a Section 1115 waiver to meet federal budget neutrality requirements;

- The Committee requested KDHE provide information on the DSH payments to each hospital for the previous three calendar years, and a separate fiscal note related to the number of children who would potentially join the Medicaid program if their parents become eligible;

- The Committee requested the Department for Children and Families provide information related to high school graduation rates of foster care children over the past ten years and the programs and partnerships, other than the Jobs for America's Graduates-Kansas program, currently used to provide services to foster care children;

- The Committee recommended any Medicaid expansion considered by the Legislature contain a provision to prohibit coverage or reimbursement for any abortion services beyond those currently provided in Medicaid and the Children's Health Insurance Program; include religious and professional conscience protections for healthcare institutions and individuals; require 20 hours of work per week or 12 college credit hours per semester; waive premiums for persons with severe mental illness (SMI) or families with a child with a serious emotional disturbance (SED); provide an exemption for lockout from the Medicaid program for persons with SMI or families with a child with SED; waive premiums for persons with severe, chronic, life-limiting illnesses; and provide an exemption from lockout from the Medicaid program for persons with severe, chronic, life-limiting illnesses; and

- The Committee requested the Legislative Coordinating Council approve one additional meeting day per quarter for the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight to monitor Medicaid expansion and review requested reports, including payments made to hospitals, pathways to work, budget projections, and health outcomes.

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

The Committee made recommendations to the Department for Aging and Disability Services (KDADS), the Department of Health and Environment (KDHE), the Legislature, and others:

- The Committee recommends a KanCare outreach worker be located at each Department for Children and Families site to assist with KanCare applications and answer questions regarding KanCare eligibility; KDADS report to the Committee on how the State administers its Olmstead plan; KDHE continue to monitor the managed care organizations (MCOs) and verify claims are paid in a timely manner; KDHE and KDADS continue to address reducing the use of anti-psychotic drugs on older adults in long-term care settings; KDADS increase the number and capacity of surveyors to identify and cite potential abuse and neglect in long-term care settings;

KDADS continue to develop a multi-year plan to eliminating the waiting list for Intellectual/Developmental Disability Home and Community Based Services (HCBS) waiver services; and KDHE and KDADS research innovative ways to address issue of temporary staffing agencies and their negative impact on rural facilities;

- The Committee recommends the Legislature allocate funding to KDADS to address the crisis in access to psychiatric residential treatment facility services for children, add to law a protected income limit of 150.0 percent of Supplemental Security Income, and consider an increase in nursing reimbursements for the Technology Assisted HCBS waiver to a level closer to the national average; and

- The Committee also recommends the MCOs develop and define a more comprehensive pediatric case management infrastructure; a stakeholder group be formed to address the state's lack of capacity or lack of network adequacy for applied behavioral supports for children qualifying under KanCare; and KDHE, KDADS, and the MCOs review how to streamline the credentialing process for KanCare providers.

Joint Committee on Information Technology

The Committee made recommendations to the 2020 Legislature related to seeking input on proposed cybersecurity legislation; exploring the establishment of an information technology (IT) capital investment fund; executing a written agreement between Legislative Administrative Services and the Office of Information Technology Services (OITS) establishing clear rates for OITS services throughout the year; determining how much the State is spending on IT, including personnel costs; and having the Department of Administration and OITS modify 201 SB 57 and introduce a new bill in the House in the 2020 Session.

Joint Committee on Pensions, Investments and Benefits

The Committee recommended the Legislative Post Audit Committee consider three studies. The Committee identified nine past interim committee reports that discuss the transfer of employees into different retirement plans. The Committee recommended further discussion and study may be necessary, suggesting within its report means to study the topic and guidelines for future discussions. Finally, the Committee recommended those standing committees of the House and Senate hold hearings on the KPERS Board of Trustees' newly approved rate of return and the assumptions behind it.

Legislative Budget Committee

The Committee made nine recommendations on issues from agriculture to information technology spending, and requested six reports from the Kansas Department of Transportation, Kansas Department of Corrections, Kansas Department for Aging and Disability Services, Legislative Division of Post Audit, and the Legislative Research Department. The Committee also recommended a decision be reached regarding the disposition of the Docking State Office Building by June 30, 2020.

Additionally, the Committee commended the agencies involved in fire suppression activities around the state and notes it will take all those agencies working together as a team to prepare and implement suppression strategies in order to be successful. Further, the Committee noted the popularity of the Kansas Department of Transportation cost-share program.

Legislative Task Force on Dyslexia

The Task Force restated its previous recommendations to the 2019 Legislature. The Task Force also requested legislation to appropriate sufficient additional funds to the Kansas State Department of Education to hire a statewide dyslexia coordinator.

Statewide Broadband Expansion Planning Task Force

The Task Force recommended the Legislature consider broadband policy and goals, including to create a broadband policy statement goal, adopt a declaration of public policy for broadband, update the current definition of broadband, and establish a goal to ensure every Kansan has access to broadband services and access at a certain speed. The Task Force also recommended the Legislature consider establishing a Broadband Grant Funding Program and provided two examples of how a potential program would be structured. The Task Force also made recommendations regarding broadband mapping and other broadband-related topics, including a survey of Internet service providers and community anchor institutions, telecommunications service providers use of the public right-of-way, and consideration of language regarding railroad crossing access for telecommunications service providers.

Report of the Special Committee on Federal and State Affairs to the 2020 Kansas Legislature

CHAIRPERSON: Representative John Barker

VICE-CHAIRPERSON: Senator Bud Estes

OTHER MEMBERS: Senators Oletha Faust-Goudeau, Richard Hilderbrand, Ty Masterson, and Caryn Tyson; Representatives Stephanie Clayton, Chris Croft, John Eplee, Susan Humphries, and Jerry Stogsdill

STUDY TOPIC

The Committee is directed to:

- Study the issues and possible options concerning the legality of abortions following the *Hodes & Nauser, MDs, PA v. Schmidt* Kansas Supreme Court decision; and

- Study the public policy implications concerning the legalization and regulation of medical marijuana.

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Special Committee on Federal and State Affairs

Report

Conclusions and Recommendations

The Special Committee on Federal and State Affairs adopts the following recommendations.

Public Policy Implications, Legalization and Regulation of Medical Marijuana

- The standing Judiciary Committees of the House and Senate should consider introducing legislation providing an affirmative defense to residents of other states who have legally obtained a medical prescription for cannabis, marijuana, or tetrahydrocannabinol (THC) in some form, and are traveling through or visiting the state of Kansas; and
- If the Legislature moves forward with legislation concerning the legalization of medical marijuana, the standing Federal and State Affairs Committees of both the House and Senate should consider using Ohio's legislation as a guide (Sub. for HB 523, passed into law in 2016). In addition, the Special Committee recommends the following be included in any bill considered by the Kansas Legislature:
    - Smokeable forms of marijuana be prohibited;
    - Vaping of marijuana be prohibited;
    - Photo identification cards be required when purchasing medical marijuana; and
    - Persons with prescriptions for medical marijuana would have an obligation to securely store marijuana if it could be accessed by minor children.

Issues and Options, Legality of Abortions after *Hodes* Decision

- A constitutional amendment should be created by the appropriate standing committees of the Legislature and the people of Kansas should be allowed to vote on clarification to the language of the *Kansas Constitution*.

Proposed Legislation: None

Background

The Legislative Coordinating Council (LCC) directed the Special Committee on Federal and State Affairs to study the public policy implications concerning the legalization and regulation of medical marijuana and to study the issues and possible options for a legislative response to the *Hodes & Nauser, MDs, PA v. Schmidt* Kansas Supreme Court decision concerning the legality of abortions.

The Committee was granted two meeting days and met at the Statehouse October 23 and 30, 2019.

Committee Activities

At the October 23 meeting, the Committee held a hearing concerning the medical marijuana topic. On October 30, the Committee held a hearing related to the *Hodes & Nauser* decision.

[*Staff note:* This report used the terms "marijuana" and "cannabis" interchangeably, as the descriptions of conferee testimony reference the terminology used by conferees.]

October 23

Staff from the Office of Revisor of Statutes provided an overview of medical marijuana laws in Missouri, Ohio, and Oklahoma. Staff indicated the particular states were selected because each state had recently adopted laws to legalize medical marijuana. The overview compared major aspects of the states' laws, including method of enactment; date of implementation; entities responsible for administering the laws; relevant definitions (*e.g.*, marijuana, medical use, and qualifying medical condition); legal restrictions on the use, possession, cultivation, and location; interaction with other state laws; licensing; fees; registration; requirements for prescribing physicians; processing; waste disposal; tracking systems; taxation; and revenue distribution.

Staff responded to Committee questions concerning the method of enactment of the states' medical marijuana laws, identification requirements, issues with implementation, regulation of pricing, taxation, fees, and licensing requirements.

Proponents

A representative of the Kansas Cannabis Industry Association presented recommendations for the implementation of any laws concerning medical marijuana in Kansas. Recommendations included using the current Kansas Liquor Control Act as a model of regulating for the production, distribution, and retail sale of medical marijuana; additional definitions specific to medical marijuana; taxation issues; restrictions on trade practices and vertical integration; public health and safety concerns (*e.g.*, times of sales, age restrictions, measuring impairment levels, public consumption, product safety and potency, and labeling and packaging); pricing and marketing; licensing requirements; and structure, jurisdiction, and enforcement by a regulatory agency.

In response to Committee questions, the representative of the Kansas Cannabis Industry Association stated there are currently no regulations that exist that apply to medical marijuana. He stated his belief that there are many policy decisions to be made by the Legislature before such regulations can be promulgated. He noted a carve-out for financial institutions transacting business with marijuana dispensaries passed the U.S. House of Representatives, but was not expected to move in the U.S. Senate. He also stated there were several bills that would declassify marijuana from being a Schedule I substance in the Kansas Controlled Substances Act. He also stated a legal level of intoxication had not been set for marijuana, but a device similar to a breathalyzer is being developed to detect marijuana metabolites on a person's breath.

Another conferee stated the American Cancer Society acknowledges medical marijuana has been useful in reducing chemotherapy-induced nausea and vomiting, as well as helping with neuropathic pain and a variety of other medical conditions. She stated there are other studies showing decreases in suicides and opioid-related deaths in states that allow the use of medical marijuana.

A representative of the American Cannabis Nurses Association and the Cannabis Nurses Network stated her support for the legalization of medical marijuana and her belief that cannabis should not be a Schedule I substance because it has an accepted medical use. She also stated because medical cannabis reacts differently with each individual's physiology and is not appropriate for use by everyone, trained cannabis nurses should be included in the formulation of any medical marijuana laws in Kansas. She further stated her belief that professionals working with patients who have been prescribed medical marijuana should be required to participate in yearly training.

A representative of Bleeding Kansas Advocates stated the organization has provided volumes of research about the medical safety and efficacy of cannabis to the Kansas Legislature. She stated her belief that a medical cannabis program could benefit Kansas citizens and the state in many ways, including new jobs, new industry, and new revenue streams. She testified it would be important to make sure waste disposal regulation be included in any proposed bill. The representative further stated she feels there is a need to track product “seed-to-sale” and stated a digital application is available to track plants in real-time.

A pediatrician testified in support of medical cannabis, stating his support for the legalization of medical marijuana as a way of allowing ailing residents the opportunity to potentially improve their lives. He noted medical marijuana had the potential to harm persons it was not prescribed to, specifically adolescents and children, and stated his opinion that all physicians authorized by law to prescribe cannabis should be required to obtain certification, which should include obtaining a certain number of continuing medical education credits each year, as part of the annual renewal of their medical licenses.

In response to Committee questions, the pediatrician discussed the importance of cannabis training for physicians prescribing cannabis. He also noted his belief there should be some way to track and audit the prescriptions an individual obtains for medical marijuana.

A private citizen testified concerning a car accident he was involved in and the multiple medical conditions and complications he has suffered as a result. He stated opioid medications caused issues with addiction and did not improve his conditions. He stated medical marijuana has helped him by allowing him to sleep. He believes the use of marijuana and the cultivation of plants should be legal for people with pain or other medical conditions.

A private citizen testified in support of medical cannabis, stating she and her husband own several cannabidiol (CBD) stores. She stated most of their customers are people over age 55 seeking CBD as an alternative to medications they are taking. She recommended law from states with medical marijuana programs be used as a guide for creating a Kansas law. She also stated her belief that the process of creating such laws and running of dispensaries should involve medical professionals with cannabis training.

A private citizen testified in favor of medical marijuana, stating her belief that citizens should be allowed to grow marijuana at home for personal use and should have access to doctors who are educated in the endocannabinoid system.

A representative of the Kansas Silver Haired Legislature stated more than 70 percent of senior citizens in Kansas support medical marijuana. He stated there is a great deal of research showing the benefits of medical cannabis and most of the European nations have legalized medical cannabis.

A private citizen testified concerning a medical condition he has that causes constant pain. He stated he owns a medical cannabis dispensary in Maryland, noting the licensing fee in Maryland is $125,000 per year for cultivation and $40,000 per year for a dispensary, and the average cost to the patient ranges from $1,200 to $3,600 for a 30-day supply. He stated one way to circumvent those costs is to allow home cultivation. In addition, he stated possible ways to prevent black market diversion are licensing home cultivators, mandating harvest reporting, and regulating home storage.

A representative of The Human Solution International and owner of a California hemp company stated he has been involved in creating policy on this issue in many jurisdictions for the last 20 years. He stated Kansas is in a better position to set policy because it can learn from other states that have already legalized medical marijuana. He stated credit unions have been a solution to some of the banking issues surrounding the sale of medical marijuana.

The representative of The Human Solution International discussed some specific actions that have been helpful in states that have implemented medical marijuana programs, as well as some complications he has noticed. He also stated credit unions have more latitude with their polices than traditional banks do, which allows them to offer services to dispensaries when traditional banks cannot because of Federal Deposit Insurance Corporation (FDIC) rules.

Opponents

A physician and representative of the Institute on Global Drug Policy stated his concern that state legalization of marijuana bypasses Food and Drug Administration (FDA) regulation. He stated the FDA provides governance and looks at efficacy and safety. He stated marijuana is not a pure medicine and can contain many different substances, including contaminants, and tetrahydrocannabinol (THC) concentration can also vary widely. He stated his belief that legalizing marijuana would not bring any benefits that are not already covered by medicine, noting medications with similar effects of marijuana, such as Marinol and Epidiolex, are already available separately. He stated his belief that scientific evaluations of marijuana only demonstrate a possible slight benefit of marijuana. He urged the Committee to consider the social and medical consequences of legalizing marijuana. He stated there has been a 23 percent increase in opiate deaths in the states that have started medical marijuana programs. He noted the possibility of abuse of the substance by young people and other drug abusers, potential workplace problems, and potential impacts on pregnancies.

The representative stated there have been increases in child in need of care cases in states after legalizing medical marijuana and again when marijuana was fully legalized by a state.

A representative of the Kansas Association of Addiction Professionals discussed his opinions on the impact of marijuana on young people and stated his belief that young people are being targeted by the marijuana industry and noted the average age of first-time marijuana use has lowered in recent years. He also stated vaping has become an epidemic among teenagers and there is evidence smoking cannabis is just as harmful to the respiratory system as smoking tobacco or vaping nicotine. He also discussed his belief that marijuana can be especially dangerous to young people with underlying conditions, such as depression or anxiety, if they use marijuana as a replacement for more conventional treatments. He stated if medical marijuana is legalized, it will injure the mental and physical health of these adolescents.

A representative of the Kansas Sheriffs' Association stated his concern that medical marijuana has not undergone FDA approval and referenced studies conducted by the FDA, which state there is more tar and more inhaled carbon monoxide in marijuana than in cigarette smoke. He stated most sales revenue is generated by the black market in states that have eventually legalized all marijuana, which presents substantial law enforcement issues. He further stated CBD is already legal and is helping people with their medical issues; the presence of THC is not necessary to impart medical benefits. He referenced a conversation with federal Drug Enforcement Administration officials in Oklahoma regarding the problems these officials have experienced since the State legalized medical marijuana.

The representative noted his main concern with legalizing marijuana was the absence of FDA testing and stated if there was a product without the THC intoxicating effect, the organization would have no problem with its usage. He stated the association is concerned about the high levels of THC they are seeing in marijuana.

A representative of the Kansas Association of Chiefs of Police stated the potency of marijuana today is much stronger than it was in the 1960s and 1970s and the output of plants is significantly higher today. He stated marijuana grown today is more like a new designer narcotic drug than natural marijuana. He stated every state that has legalized medical marijuana has seen some deleterious effects, including underage exposures, accidental ingestion, driving under the influence, job-related accidents, increases in the need for drug treatment, and emergency room admissions. He urged the Committee to listen to the concerns of law enforcement when examining the issue of medical marijuana.

A representative of the Kansas Narcotics Officers Association stated marijuana is a dangerous drug that brings violent crime to communities and is not easily regulated. He questioned how much the State would need to invest to create a regulating agency to oversee medical marijuana and stated his belief that the Board of Pharmacy would be unable to execute the additional duties. He stated his belief that due to the broad scope of conditions for which medical marijuana is prescribed in other states, there would be many unintended consequences if Kansas legalized medical marijuana. He urged the Committee to not move forward with this issue.

A representative of the Kansas Bureau of Investigation stated, based on his experience in law enforcement, conversations with others in law enforcement, and reviewing research, he is aware of many negative consequences in states that have legalized marijuana. He referenced examples of violent crimes in Kansas involving marijuana and stated, according to Kansas drug seizure data, marijuana seizures increase 28.5 percent between 2012 and 2018, increasing by 18 percent from 2017 to 2018 alone. He stated his belief that expanding public access to a drug that has a high potential for abuse can create severe psychological, physical, or both psychological and physical dependence, and lacks generally accepted scientific medical value, which is contradictory to public safety. He stated there have been increases in violent and property crimes in states that have legalized marijuana and discussed the potential for increases in illegal drug operations, diversion, extortion, black market activity, and other issues for Kansas law enforcement officers if marijuana is legalized.

A representative of the Midwest High Intensity Drug Trafficking Area stated legalization of any marijuana in Kansas will diminish citizens' public health and safety, particularly children; increase physical and mental health issues; further burden already struggling drug treatment resources; and result in an increase of drugged driving and the use of other drugs. He urged the Committee not to look at promises of additional tax revenue without considering the larger social, criminal, and medical costs.

Responding to questions from the Committee, the representative stated marijuana is a non-toxic substance, which will cause psychotic episodes and reactions, but will not result in deaths from overdoses. He also stated his belief there are no therapeutic properties to marijuana.

A representative of the Kansas Association of Chiefs of Police, Kansas Bureau of Investigation, Kansas Narcotics Officers Association, Kansas Peace Officers Association, and Kansas Sheriffs' Association stated his concerns about the public safety of legalizing marijuana: higher levels of THC in plants than ever before, lack of FDA approval and review of purity, lack of standard dosages across forms of marijuana, and workplace issues related to zero tolerance drug policies. He also suggested legalization would result in public policy issues with employees using marijuana as medicine and then being intoxicated while performing jobs, particularly law enforcement officers and complications in the purchasing of firearms, which is federally regulated. He stated his belief that marijuana was not an alternative to opioid use and referenced a Kansas Department for Aging and Disability Services report that stated 7.84 percent of people who sought substance abuse treatment received treatment for opioid abuse, while 19 percent received treatment for marijuana dependency and abuse.

Responding to Committee questions, the representative stated Kansas law enforcement agents enforce Kansas law without consideration of other states' laws regarding marijuana. He stated most officers use discretion if a person has a legal prescription and noted instances of prosecutorial discretion concerning simple marijuana possession cases. The representative also stated there was no research that established a baseline level of intoxication for marijuana like there is for alcohol, but reports have shown increases in the number of people involved in serious accidents who also had THC in their systems.

A representative of the Kansas Peace Officers Association stated the organization's support for research to validate the medical effectiveness of marijuana. He stated if a medical benefit was established, marijuana should undergo FDA approval and be sold through pharmacies like other medicine, not storefront dispensaries. He stated the organization supported the CBD bill allowing pharmaceutical CBD to be used in Kansas as soon as it is FDA approved. He referenced data from Colorado before recreational marijuana was legalized and stated there was a significant rise in the number of fatal and injury accidents involving people who had THC in their system. He also stated there were significant increases in youth usage of marijuana and in disciplinary actions in schools involving marijuana.

Neutrals

A representative of the League of Kansas Municipalities (League) stated the organization's concern about authorizing home-grown marijuana operations and his belief that the Legislature should carefully weigh the impact marijuana legalization will have on law enforcement and human resources, including funding for local governments; a city option whether to allow dispensaries in a city; regulations concerning the location of retail and production operations; and regulation of the time, manner, and place where consumption is allowed. He stated the League has also become increasingly concerned about the dangers of home-grown operations. The representative urged the Committee to include a delayed implementation timeline in any medical marijuana bill they considered to allow time to address unforeseen issues, zoning changes, and law enforcement training.

A private citizen stated his belief that if the use of cannabis helps individuals avoid the use of prescription drugs, particularly opioids, such use should be allowed by the State. He stated his belief that cannabis should be available to minors who have seizures and have not had success with other medications. He stated alcohol and tobacco are exempt from the Kansas Controlled Substances Act although they are toxic substances that can cause death. He stated there have been no citizens at any of the hearings held on the topic that have testified in opposition to the legalization of medical marijuana. He stated his support for allowing individual citizens to grow their own marijuana.

The citizen noted states legalizing marijuana have removed it from their controlled substances acts, though it remains a Schedule I substance in the federal Controlled Substances Act.

October 30

On October 30, 2019, the Committee met to discuss *Hodes & Nauser MDs, P.A. v. Schmidt* (*Hodes*), and whether a constitutional amendment should be proposed to address the decision. Testimony from those who supported a constitutional amendment to address the decision were listed as proponents, while those opposed to the possibility of a constitutional amendment were listed as opponents.

Staff from the Office of Revisor of Statutes provided an overview of the case history of *Hodes* and the Kansas Supreme Court's (Supreme Courts's) decision in the case, including the following information. The 2015 Legislature passed, and the Governor signed, SB 95, which prohibited dismemberment abortions (abortions performed using the dilation and evacuation [D&E] method). The legislation was immediately challenged by the plaintiffs, who are doctors who performed abortions using this method. The plaintiffs requested a temporary injunction to prevent enforcement of SB 95 pending the outcome of the lawsuit. The district court issued the requested injunction, and the State appealed to the Kansas Court of Appeals, which heard the case *en banc*. Due to a 7-7 split decision by the Court of Appeals, the injunction was upheld. The State then petitioned the Supreme Court for review, which granted the petition. In April 2019, the Supreme Court issued its 6-1 decision concluding that Section 1 of the *Kansas Bill of Rights* protects judicially enforceable rights, including a right to personal autonomy that includes the right to decide whether to continue a pregnancy. Turning to the question of the standard of review for the question of whether a statute infringes on a fundamental constitutional right, the Supreme Court concluded the undue burden standard used in federal cases is difficult to understand and apply, and therefore the strict scrutiny standard should be applied. Under this standard, the State must show the statute furthers a compelling government interest and is narrowly tailored to further that interest. The Supreme Court concluded the district court correctly ruled the plaintiffs were substantially likely to prevail on their claims and thus upheld the injunction. However, the Supreme Court instructed the district court on remand to conduct further proceedings in the case under the strict scrutiny standard. On remand, the State will now have the opportunity to present evidence of a compelling government interest and the provisions of SB 95 are narrowly tailored to further that interest.

Staff from the Office of Revisor of Statutes stated the burden of proof in determining the constitutionality of the law had changed from undue burden to strict scrutiny based on personal autonomy being characterized as a fundamental right, subject to the higher scrutiny. He stated this case was currently in the district court and will be scheduled for discovery and trial as it works back through the appellate process. Staff also stated the case dealt only with SB 95 and the Supreme Court had been careful not to rule on the constitutionality of the bill, focusing on the right of a woman to terminate a pregnancy as part of personal autonomy under the *Kansas Bill of Rights*, and remanding the case to the district court for the constitutionality determination. He stated while the decision could be used to create new rights under the umbrella of personal autonomy, whether other laws would be struck down using this case would depend on the circumstances of any future lawsuits.

Proponents

A representative of Kansans for Life stated her belief that through the *Hodes* decision, the Supreme Court interfered with Kansas citizens' right to self-governance through its elected representatives. She stated citizens deserve to have input on the laws concerning abortion and should be allowed to vote on a state constitutional amendment concerning the right to an abortion.

Responding to Committee questions, the representative stated a constitutional amendment would be intended to address the right of the people to be involved in the legislative process and have their will expressed in law by their elected representative. She stated her belief that people have the right to regulate abortion through the passage of legislation that puts reasonable restrictions on the practice.

A representative of Concerned Women for America of Kansas stated she does not agree with the Supreme Court's interpretation of the *Kansas Constitution*. She stated the organization's belief is that the state's citizens should be allowed to vote on an amendment to the *Kansas Constitution* to assure the unborn have the right to life and the pursuit of happiness.

A representative of the Kansas Catholic Conference stated Kansas voters should be allowed to reverse the *Hodes* ruling by voting on a state constitutional amendment during the 2020 election. She stated her concern that without a constitutional amendment, most abortion laws will be deemed unconstitutional and any protections in law will disappear, in particular the protections put in place requiring parental consent for abortions performed on minors. She stated it is reasonable to ask that parents be involved when something this serious is being done to their child.

A private citizen stated her belief that Section 1 of the *Kansas Bill of Rights* was intended to extend to the unborn and prohibit abortions. She stated her belief is supported by the fact that the framers of the *Kansas Constitution* also enacted a statute that made abortion equivalent to homicide. She stated her support for a personhood amendment to the *Kansas Constitution*, specifically 2019 HCR 5004.

A representative of Personhood Kansas stated his support for a personhood amendment to the *Kansas Constitution*. He referenced 2019 HCR 5004 and urged the Committee to allow Kansans to vote on the constitutional amendment it proposes, specifically providing due process of law for every human being from the time of fertilization.

A representative of Olathe Right to Life and the Olathe Pregnancy Clinic stated her belief that the *Hodes* decision is unjust and discriminatory. She stated she also opposes a constitutional amendment that would subject the decision of killing unborn children in Kansas to be put to a popular vote of the people. She stated her support for 2019 HCR 5004.

A private citizen stated the *Hodes* decision has created a significant policy shift, which could potentially deregulate abortions in Kansas and negatively impact the safety of women and children. She believes the people of Kansas should be allowed to vote on this issue and urged the Committee to support a state constitutional amendment.

Opponents

Representative Lusk discussed several different historical and religious approaches to determining personhood. She stated there is no certain way to determine exactly when the soul inhabits the body and it is impossible to know when a fetus qualifies as a full legal entity. She stated she favors leaving power with the individual instead of allowing government to impose its will. She disagrees with a complete prohibition of abortion and stated her main concern is that a fetus' rights might come before those of the mother. She stated her belief that there should be more dialogue before any action is taken by the Legislature.

Representative Lusk stated her belief that viability was the most logical stage to confer rights to a fetus. She also stated the Catholic Church has previously believed ensoulment occurred later in the pregnancy, but now believes it occurs at conception.

A representative of Planned Parenthood Great Plains Votes stated the organization is opposed to any attempt to amend the *Kansas Constitution* to take away women's reproductive rights. She stated her belief that the *Hodes* decision would not prohibit the Kansas Legislature from passing any regulations on the medical practice of abortion, but would subject laws regulating the practice of abortion to a strict scrutiny standard. She stated the majority opinion explained the right to personal autonomy is fundamental, but it is not absolute. She stated while Kansans have the right to amend the *Kansas Constitution*, she does not believe something as important as a determination of natural rights should be dependent on a popular vote. She stated banning all abortions would result in a lack of comprehensive medical care for, and result in harm to, pregnant women.

In response to Committee questions, the representative stated the U.S. Supreme Court has ruled that blanket prohibitions on abortion are unconstitutional at any stage of a pregnancy and all restrictions on abortion must contain exceptions for life and health of the mother. She stated fundamental rights should not be subject to a popular vote, and amending the *Kansas Bill of Rights* is different than amending other parts of the *Kansas Constitution*. She stated the issue of a constitutional amendment looks at the government's rights versus an individual's rights, not the rights of the mother versus the rights of a fetus.

A representative of the American Civil Liberties Union of Kansas stated the organization's opposition to any constitutional amendment restricting personal autonomy and infringing on reproductive rights. A constitutional amendment overturning the court's decision would ignore the natural rights of women. She stated denying natural rights to only pregnant women is discriminatory, since decisions about terminating pregnancies should be between a woman and her doctor, not voters and politicians. She also noted a constitutional amendment could be contradictory to the precedent established by the U.S. Supreme Court and would be detrimental to women's health.

In response to Committee questions, the representative again stated an amendment banning abortion would violate U.S. Supreme Court precedent.

A plaintiff's attorney, who was part of the *Hodes* litigation, stated the Kansas Supreme Court relied upon Kansas law and precedent and held Section 1 of the *Kansas Bill of Rights* includes protection of the natural and fundamental right of personal autonomy, including a woman's right to decide whether or not to terminate a pregnancy. She stated the State can still regulate abortions as long as laws enacted show a compelling interest of the State and are drafted as narrowly as possible to promote that interest. She stated several other states have used the same analysis as the Kansas Supreme Court and have found similar constitutional protections for abortion. She stated at this time there has been no final decision by any court as to the constitutionality of SB 95, so at this time a constitutional amendment banning abortion is not needed.

In response to questions, the attorney stated she was not sure what effect a proposed constitutional amendment might have on the practice of abortion in Kansas because bill language did not yet exist. She also stated the constitutionality of SB 95 was yet to be determined by the court of appeals.

Conclusions and Recommendations

The Committee adopted recommendations concerning the topic of medical marijuana at the beginning of the October 30 meeting. Recommendations concerning issues and possible options following the *Hodes* case were adopted at the end of the October 30 meeting.

Public Policy Implications, Legalization and Regulation of Medical Marijuana

It is the recommendation of the Special Committee on Federal and State Affairs that the standing Judiciary Committees of the House and Senate consider introducing legislation providing an affirmative defense to residents of other states who have legally obtained a medical prescription for cannabis, marijuana, or THC in some form, and are traveling through or visiting the state of Kansas.

In addition, it is the recommendation of the Special Committee on Federal and State Affairs that if the Legislature moves forward with legislation to legalize medical marijuana, the standing Federal and State Affairs Committees of both the House and Senate should consider introducing such legislation using Ohio's legislation as a guide (Sub. for HB 523, passed into law in 2016). Additionally, the Special Committee recommends the following be included in any bill considered by the Kansas Legislature:

- Smokeable forms of marijuana be prohibited;
- Vaping of marijuana be prohibited;
- Photo identification cards be required when purchasing medical marijuana; and
- Persons with prescriptions for medical marijuana would have an obligation to securely store marijuana if it could be accessed by minor children.

Issues and Options, Legality of Abortions after *Hodes* Decision

It is the recommendation of the Special Committee on Federal and State Affairs that a constitutional amendment be created by the appropriate standing committees of the Legislature and the people of Kansas be allowed to vote on clarification to the language of the *Kansas Constitution.*

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Report of the Special Committee on Health to the 2020 Kansas Legislature

CHAIRPERSON: Representative Brenda Landwehr

VICE-CHAIRPERSON: Senator Gene Suellentrop

OTHER MEMBERS: Senators Ed Berger, Barbara Bollier, Bud Estes, and Mary Jo Taylor; Representatives Tory Marie Arnberger, John Barker, Eileen Horn, Megan Lynn, and Jarrod Ousley

STUDY TOPIC

The Committee is directed to:

- Study the licensure of anesthesiologist assistants:
  - Review 2019 HB 2295;
  - Consider the economic impact of the proposed licensure;
  - Hold a roundtable discussion of issues surrounding licensure; and
  - Receive information on the results of licensure in other states.

January 2020

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Special Committee on Health

Report

Conclusions and Recommendations

The Special Committee on Health generally agreed the interested parties should attempt to resolve any issues or conflicts identified during its meeting and present an acceptable compromise during the 2020 Session.

Proposed Legislation: None

Background

The Legislative Coordinating Council (LCC) directed the Committee to study the licensure of anesthesiologist assistants (AAs). As part of this study, the Committee was directed to review 2019 HB 2295, consider the impact of the proposed licensure, hold a roundtable discussion of issues surrounding licensure, and receive information on the results of licensure in other states. The topic was requested by the Chairperson of the House Committee on Health and Human Services.

The Committee was granted one meeting day by the LCC and met October 21, 2019, at the Statehouse.

Committee Activities

The Committee held an all-day meeting October 21, 2019. During the meeting, the Committee participated in a roundtable discussion with interested parties representing anesthesiologists, AAs, certified registered nurse anesthetists (CRNAs), the Kansas Hospital Association, and the Kansas Medical Society (KMS) and asked questions of the roundtable participants concerning the licensure of AAs. The key issues and concerns presented by each of the participant groups are described as follows.

Review of 2019 HB 2295—Providing for the Licensure of AAs

Committee staff provided an overview of 2019 HB 2295, which would enact the Anesthesiologist Assistant Licensure Act.

Staff presented a background summary of HB 2295, which was introduced at the request of the Kansas Society of Anesthesiologists, and information presented in the bill's public hearing by the House Committee on Health and Human Services in February 2019. Additionally, background information was provided for 2019 SB 223 (similar legislation introduced on AA licensure) and AA licensure legislation introduced in 2017 HB 2046. During the Senate Committee on Public Health and Welfare hearing on SB 223 in March 2019, there was discussion of amendments to that bill, but no action was taken.

Roundtable Discussion on Issues Surrounding the Licensure of AAs

Educational Requirements

Anesthesiologist Assistants

A Professor and Chairperson of the Department of Graduate Health Professions in Medicine, University of Missouri—Kansas City (UMKC) provided information on the educational requirements for AAs. [*Note:* Missouri law permits the licensure of AAs. This experience in Missouri, with the anesthesia care team (ACT) model using certified anesthesiologist assistants (CAAs), was cited by proponents participating in the round table.] She noted the AA program in Missouri is a rigorous master's level program governed by an accreditation body. The program must be housed in a school of medicine that is approved by the accreditation committee for medical schools and has a graduate medical education residency program (physician resident training program) along with the AA program. The

AA program must have a medical director who is a licensed, certified, practicing anesthesiologist; a program director who is a licensed and certified AA; and sufficient physician anesthesiologists and AAs on the faculty. Requirements for applicants to the AA program include meeting prerequisite training similar to pre-health requirements for pre-medicine, pre-physician assistant, or like health professions and a minimum grade point average. The program is required to have 112 credit hours. Clinical experience is a part of the process, as is the demonstration of competency in all areas of administration and knowledge of the medications used. Additionally, the accreditation body requires a minimum of 2,000 clinical hands-on patient hours that meet specific parameters for graduation. AA programs are 24 to 28 months in duration. Upon graduation, the accreditation body also requires follow-up surveys be conducted with the anesthesiologists who hire the CAAs to determine whether the CAAs have the necessary education and training. A doctoral degree is not available for AAs.

Certified Registered Nurse Anesthetists

The Program Director of CRNA Education, University of Kansas School of Health Professions, provided an overview of CRNA educational requirements. Applicants for the CRNA Program must have a nursing background, be a registered nurse (RN), and have critical care experience. The Council on Accreditation of Nurse Anesthesia Education Programs (COA) has strict guidelines for certification. The nurse anesthetist education program is moving toward a clinical doctoral degree, with only one year remaining of admitting master's level RNs into the program. Most of the programs take place at a school of nursing, with some in schools of health professions and a couple in schools of medicine, depending on how the programs are organized. There are stringent clinical requirements at the University of Kansas requiring clinical rotations at multiple sites in a four-state area to accomplish all required clinical experience. Student registered nurse anesthetists (SRNAs) can be trained only in an operating room by a CRNA or an anesthesiologist. CRNAs can act independently of anesthesiologists but CAAs cannot. There is also an emphasis on enrolling Kansas residents into the CRNA education program. She stressed the importance of the minimum requirement of one year of critical care (intensive care unit) experience and the overall level of hands-on experience of the applicants enrolling in the CRNA program.

Information on the additional training required for the clinical doctoral degree for nurse anesthetists was provided.

Anesthesia Care Team and Role of the Anesthesiologist

An Assistant Professor of Anesthesiology at the UMKC School of Medicine and Children's Mercy Hospital provided the Committee with a description of the ACT model and the role of the anesthesiologist in overseeing the team. He stated the preference is an ACT model where the anesthesiologist is in supervisory mode and is required to be present for the beginning and end of all anesthesia cases. The anesthesiologist is medically and ethically responsible for all actions taken by the care team. Strict criteria require the anesthesiologist be available in a matter of seconds. At Children's Mercy Hospital (Missouri), the anesthesiologists try to limit supervision to two or three surgical rooms. The care teams may consist of CAAs, CRNAs, and anesthesia residents, with the supervising anesthesiologist rotating among the various surgical rooms as required to tend to the medical needs and to be ready to take on any emergency that arises. Benefits of an ACT include providing more eyes on a patient and being able to care for more patients. CAAs are not trained to act independently, which he commented is not a downside.

A hospital's physical layout may dictate whether CAAs are allowed to staff an ACT. For example, the obstetrics area at the Children's Research Institute at Children's Mercy Hospital in Missouri is considerably far from the surgical unit. When the anesthesiologist must be away from other surgical rooms staffed under an ACT model, as would be the case when an emergency surgery arises, a CRNA may be required to practice independently. It was noted, in these instances, this would allow the use of the QZ modifier. [*Note:* QZ is one of the modifiers used to report anesthesia services; this service is "CRNA without medical direction" and, under this modifier, the nurse anesthetist receives 100 percent of the allowed amount.]

Proponents of AA Licensure

Participants at the roundtable who spoke in support of AA licensure included an Assistant Professor of Anesthesiology at the UMKC School of Medicine and at the Children's Mercy Hospital; an Assistant Professor at the University of Kansas School of Medicine (KUMC); a private practice anesthesiologist and Associate Professor of Anesthesiology at KUMC-Wichita; a private practice anesthesiologist; a CAA; a Professor and Chair of the Department of Graduate Health Professions in Medicine and Assistant Dean of Graduate Studies, UMKC School of Medicine; the Director of State Affairs and General Counsel, American Academy of Anesthesiologist Assistants (AAAA); and the Director of Government Affairs, KMS.

The efforts undertaken to seek licensure of AAs through the legislative process and the health occupations credentialing process that resulted in a licensure recommendation by the Secretary of Health and Environment were described (who issued a final report to the Legislature in February 2019). The advantages of AA licensure observed in Missouri were presented. A proponent also noted efforts to reach a compromise with the CRNAs regarding the licensure of AAs had been "rebuffed."

The roundtable participants in favor of AA licensure generally stated AA licensure could eliminate hiring burdens, lower costs, and increase efficiencies. The proponents presented information and arguments outlined below to support their position.

Option for improved anesthesia care services. An increase in the number of anesthesia care providers through the licensure of AAs would be an important step to provide Kansans with the best anesthesia services. UMKC graduates 9 to 12 CAA students each year and hopes to expand to 16; some of these graduates are from Kansas and would like to practice in Kansas.

CAAs and CRNAs have different training backgrounds, but all work together as part of the ACT. The critically ill patients are typically treated at larger hospitals in large cities. These complex cases often need attention from multiple members of the ACT working together at one time, which is one reason the ACT concept works well in large hospital settings.

Addition of mid-level provider. Anesthesiologists are one of the few medical professions in Kansas without a mid-level practitioner equivalent to a physician assistant.

No outcome differences. A 2018 study by Stanford University researchers of 400,000 Medicare cases showed no outcome differences with regard to mortality, length of stay, and inpatient spending when comparing anesthesiologist led teams using CAAs versus CRNAs.

Direct CAA supervision. HB 2295 would add CAAs to the ACT, not replace CRNAs. CAAs seek to practice only under the direct supervision of an anesthesiologist as part of an ACT. The 4:1 CAA-to-anesthesiologist-supervision ratio can be difficult to manage at times, so anesthesiologists try to limit that ratio to less complicated cases and manage the timing of the anesthesia process to ensure sufficient oversight.

Rural hospital impact. Rural hospitals would not be required to implement an ACT model using CAAs. A federal rural pass-through law makes it almost impossible for an anesthesiologist to practice at a rural hospital because the anesthesiologist cannot receive full payment for services at critical access hospitals (CAHs), but CRNAs and CAAs can.

Raising salaries in Wichita to attract more CRNAs might pull those professionals out of CAHs, creating an even greater shortage in rural areas. Adding CAAs might curb the possible pull of CRNAs from rural areas.

CRNA shortage. A shortage of 15 to 20 CRNAs in Wichita has resulted in the shut down of operating rooms and a limitation in patient care. Facilities are managing using residents and *locum tenens* (temporary staff). Efficiencies have been created, but there are no reserves. *Locum tenens* are expensive, and the process of vetting and credentialing them makes it difficult to use this staff.

The numbers of CRNA graduates do not fill the staffing needs in Wichita because of the loss of

CRNAs to other locations after training, resulting in constant staff churning. One Wichita anesthesia provider group loses six to eight CRNAs per year.

The difficulty in hiring CRNAs at Children's Mercy Hospital in Missouri is likely a result of an anesthesia provider group's decision to hire CAAs, which was met with resistance from CRNAs. Additionally, the model used by some anesthesia provider groups' is very hands-on with regard to supervision, and some CRNAs may prefer a more independent role.

After Newman University graduates its last CRNA class and moves to a doctoral program in a year or two, there are concerns the CRNA shortage issue will become critical as fewer CRNAs enter the market.

Billing and supervision. The Social Security Act of 1986 allows both CRNAs and CAAs to bill independently. Changes in law made by the Tax Equity and Fiscal Responsibility Act of 1982 allow for billing when failed medical direction of CAAs occurs and is not billing fraud. Changes have also been made regarding reasonable charge versus reasonable cost. The Centers for Medicare and Medicaid Services (CMS) sets what will be paid for at a medical direction ratio of 1:4, and state statute sets a legal supervision ratio. Compliance with state statute does not necessarily mean compliance with CMS regulations. If state statute provides for a 1:4 supervision of CAAs but is silent on CRNA supervision, an anesthesiologist could supervise four CAAs and four CRNAs at the same time and be in compliance with state law, but not federal law. Kansas statute (KSA 65-1158c) allow CRNAs to work as part of a physician-directed team, but do not limit the number of CRNAs who can work on the team.

Training spots. No formal study documents a reduction in SRNA training spots with the introduction of student AAs. A possible compromise could be to find additional training centers for SRNAs. However, even if more training sites were possible, it is less likely anesthesiologists would be willing to increase training sites due to the animosity between CRNAs and anesthesiologists who support CAA licensure. Additionally, HB 2295 would allow CAAs to work in Kansas, but would not establish a CAA school in Kansas requiring training sites for its students. There could be an influx of CAAs from other states to work in Kansas.

Medical malpractice insurance. Under Kansas law, one factor in determining the providers required to participate in the Health Care Stabilization Fund (HCSF) for medical malpractice insurance coverage is whether the provider independently provides care for a patient. CAAs work under the direct, physical supervision of an anesthesiologist and would not be required to carry medical malpractice insurance.

AA Licensure in Other States

The proponents provided written testimony to address the Committee's charge regarding receipt of information on the results of AA licensure in other states. CAAs and CRNAs work side by side performing health care services as part of an ACT practice model in 16 states, including 3 of 4 states bordering Kansas. CAAs also may practice at any Veterans Affairs facilities in all 50 states.

AAs work by license, regulation, certification or a combination of those in the following states, territories, and districts: Alabama, Colorado, District of Columbia, Florida, Georgia, Guam, Indiana, Kentucky, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Vermont, and Wisconsin. AAs are granted practice privilege through physician delegation in Michigan and Texas.

CMS recognizes both CAAs and CRNAs as non-physician anesthesia providers. Additionally, commercial insurance payers do not distinguish between the two types of providers with regard to payments for services provided under medical direction by a physician anesthetist.

Opponents of AA Licensure

Participants at the roundtable who spoke in opposition to AA licensure included a CRNA and President of the Kansas Association of Nurse Anesthetists (KANA); a CRNA and Program Director of the CRNA Education Program at the University of Kansas School of Health Professions, representing her own views; the Chief Executive Officer of Newman Regional Health in Emporia; and four additional CRNAs. Additionally, the Director of Newman University's

CRNA Program was in attendance at the meeting and was allowed to address the Committee.

The roundtable participants opposed to AA licensure presented information and arguments to support their position as outlined below.

Supervision requirement. Concern was expressed regarding the ability of an anesthesiologist in a supervisory role in an ACT to manage a 3:1 or 4:1 CAA-to-anesthesiologist ratio, especially when CAAs would require direct supervision. In the case of multiple emergency situations at one time, a patient might be put at risk if an anesthesiologist cannot be immediately available to assist four CAAs under the anesthesiologist's supervision, as required by CMS. The failure to supervise could affect hospital certification and create professional liability issues.

Referencing the seven steps required by CMS for Medicare compliance with regard to medical direction of CAAs by anesthesiologists, it was stated noncompliance with the requirements is failed medical direction and billing fraud. A study shows states that have enacted CAA legislation have 85 percent noncompliance with the CMS requirement of a 1:4 medical direction ratio. There are also issues with Internal Revenue Service (IRS) compliance in almost every state allowing CAAs because CAAs are being hired as independent contractors in violation of the IRS definition for an independent contractor. Many compliance and regulatory issues exist in states that have enacted CAA legislation.

Unfair competitive advantage. The introduction of CAAs into an anesthesiologist practice in up to a 1:4 ratio, when a CRNA who is also allowed to practice independently in the state is not allowed to supervise a CAA in a CRNA business model, creates an unfair competitive advantage for anesthesiologists.

Lack of CRNA shortage. There is a healthy manpower demand for CRNAs in Kansas, not a critical shortage as has been stated by those in favor of AA licensure. When HB 2046 was first introduced in 2017, there was a shortage of CRNAs. With the expansion of SRNA enrollment, these shortages are being addressed.

The University of Kansas Health System hired only 1 graduate from the 2019 KUMC CRNA program and 5 or 6 total CRNAs in 2019 because KUMC hired 60 CRNAs over the 2 previous years. She observed there is no shortage of CRNAs at KUMC, and there is a current hiring freeze for CRNAs. The 23 remaining 2019 graduates of the CRNA Program at KUMC were not recruited by the Wichita anesthesiology providers and left the state.

A salary survey indicates pay is lower at the Wichita anesthesiology facilities. Wichita facilities should consider raising salaries to be more competitive. It was noted there is a demand on a limited number of anesthesia providers in Wichita due to an increase in heath care facilities.

Increase in CRNA graduates. KANA has proposed a 40 percent increase in CRNA graduates over the next three years to address the shortage expressed by anesthesiologists in favor of AA licensure. KUMC is going from 24 graduates to 30-36 per year by 2022 and plans to maintain the increased enrollment numbers as long as jobs are available for graduates. Newman University's plan to expand its program from 20 to 25 per year is dependent on the availability of training sites, which could decrease due to a reduction in available training on high-risk cases if CAA licensure occurs. Texas Wesleyan University also has five, six, or seven students studying in Wichita and Topeka.

CRNAs oppose the proposed amendment allowing CAAs to practice only in the four most populous Kansas counties because the CRNA proposal to expand the number of SRNAs would cover the demands for additional anesthesia care providers in Kansas.

SRNA training sites. An AA program would reduce the number of teaching sites needed to train SRNAs. When AA programs were brought into Springfield, Missouri, Missouri State University SRNAs lost training sites at the local hospitals, requiring SRNAs to travel 30 or more miles or into Kansas for clinical training. Children's Mercy Hospital in Missouri had to send SRNAs home for the day for a lack of a clinical instructor. Anesthesiologists need CRNAs practicing independently, with most moving to the QZ model.

Difficulty was expressed in locating clinical sites for those in the SRNA program at KUMC and Newman University. A strict minimum number of required specific categories of clinical experience is needed to graduate. It is difficult to find clinical sites for certain categories (*e.g.*, cardiac, obstetrics (OB), pediatrics, and neurology) due to the limitations placed by the various hospitals in the area as to the categories of clinical experience allowed. KUMC senior SRNAs are sent to Fort Riley or Oklahoma for OB clinical experience, creating financial and emotional hardship for the students. Introducing student AAs will increase the competition for clinical sites and negatively impact available sites for SRNAs. There are also limits due to anesthesiology residents being given priority for the same training sites needed by SRNAs. CRNA schools must contract with facilities that provide training sites, and the contract process can take 6 to 12 months.

CRNA independent practice and rural hospital impact. Many rural areas of the state rely on CRNAs in independent practice to meet anesthesia care needs. It was noted 75 percent of anesthesia billing was under the QZ modifier (CRNA in independent practice). The majority of rural areas would not be able to use CAAs due to a lack of anesthesiologists to supervise them and the cost of the ACT model. It was also noted 87 hospitals in Kansas do not provide enough surgeries to financially support the ACT model.

Medical malpractice insurance. CRNAs participate in the HCSF and have medical malpractice insurance. CAAs would likely be covered under the anesthesiologist's policy; even if a CAA would be named in a lawsuit, the anesthesiologist under whose supervision the CAA practiced would ultimately be liable.

Reduced scope of practice. The difficulty in hiring CRNAs at Children's Mercy Hospital in Missouri is due in part because some CRNAs believed they were unable to work to their authorized full scope of practice; rather, their scope of practice in an ACT was reduced from that of an independent provider to that of a dependent provider.

Compromise Discussion and Position Summary

Proponents. The proponents of AA licensure stated more providers of anesthesia services could only help all areas of the state. The purpose of the legislation is to put together the best care team possible. The advantage to having another care provider working alongside an anesthesiologist in critical situations was noted. The introduced legislation allows each location to determine the best model for the location. Rural hospitals and CAHs would not be forced to staff in a particular way.

The proponents stated CAAs cannot practice in Kansas without being licensed. The legislation would create a framework to allow CAAs to be licensed. If the legislation is enacted, the CAA scope of practice and all other issues associated with the new position would be addressed. The legislation would not impact the CRNA scope of practice or require any provider to use the CAA practice model.

With regard to the shortage of CRNAs, the proponents noted the University of Kansas CRNA program could not guarantee all SRNAs would stay in the state, regardless of a focus on enrolling Kansas residents. An anesthesia provider shortage will always exist and needs to be addressed to fully staff ACTs. The licensure of AAs would allow for a large pool of qualified applicants from which to select.

Proponents indicated CRNAs control the market because no other mid-level non-physician anesthesia providers are allowed to practice in the state. With regard to anesthesiologists having a monopoly through the use of an ACT with CAA staffing, each hospital determines its own bylaws, and a proponent stated he was not aware of any hospital that would not negotiate with any group of anesthesia providers to provide the best care for its patients. Most hospitals in the metropolitan areas require anesthesiologists to be in charge of the anesthesiology programs in the hospitals. It is the proponents' belief CMS rules require anesthesiologists to be in charge of anesthesiology services at hospitals, especially with regard to sedation, so hospitals' hands are tied. It is up to hospitals to determine how they contract. The true monopolies were in rural CAHs, where anesthesiologists cannot compete because they cannot receive funding from the federal government. As a result, anesthesiologists who want to move to rural areas would have to accept less pay than received by CRNAs.

Proponents stated they are willing to compromise on the counties where they can practice, the anesthesiologist-to-CAA ratio, and a prohibition on when a CAA school could be established in the state. Although proponents noted evidence does not suggest the introduction of CAAs has a negative influence on the number of CRNAs, a compromise to not establish a CAA school for five years was suggested to address the CRNAs' concern.

Opponents. The opponents of AA licensure expressed concern over the use of CAAs in an ACT who cannot practice independently. If multiple emergencies occur at one time and the provider available cannot practice independently, the results could be catastrophic for patients.

The opponents noted 2017 HB 2046 was proposed to eliminate critical shortages of anesthesia providers. The concern of CRNA shortages has been addressed with the increase in SRNAs being trained. With regard to training sites, the anesthesiologist-owned practices and the hospitals with whom they contract determine where training spots become available. Wichita anesthesiology practices have non-compete clauses that limit the transfer of staff to help other anesthesiology centers. A CRNA's communications with Wichita-based CRNAs do not validate a demand exists for 18-20 CRNAs in the area. The opponents indicated the counties listed in the proposed Senate Committee on Public Health and Welfare amendment to the AA licensure legislation are already completely controlled by anesthesiologist-owned groups that have contracts with the hospitals.

Further, the proposed legislation would allow anesthesiologists the use of CAAs as an additional provider to work four cases at one time. However, CRNAs who are also independent providers would not be allowed to employ CAAs and would be limited to working one case at a time. The difference creates an unfair advantage for anesthesiologists. No compromise exists on this issue because CAAs do not compete with anesthesiologists, only with CRNAs. With regard to whether it would be anti-competitive not to allow CAAs to work in the state, it was stated there would not be a fair playing field because anesthesiologists are not being replaced, only CRNAs. If CAAs could compete with anesthesiologists, creating a fair playing field and not furthering anesthesiologists' monopoly, there could be a compromise.

The opponents noted the addition of CAAs will hurt rural Kansas because 80 percent of Kansas facilities rely on CRNAs practicing independently. CAAs will also take jobs from CRNAs who want to stay in urban areas and force CRNAs to move to urban areas out of state.

The ACT model with CAAs would require additional anesthesiologists to ensure supervision requirements were met, making it more expensive than the CRNA model, which achieves the same outcome. A model with one anesthesiologist and three CRNAs would be less costly, and the providers would still be able to collaborate.

Committee Discussion

The Chairperson restated the Committee was looking for compromise agreeable to both sides to move forward with the legislation.

During Committee discussion, a Committee member proposed a compromise lowering the anesthesiologist-to-CAA ratio from 1:4 to 1:3 in the counties included in the amendment offered in the Senate Committee on Public Health and Welfare, with the possibility of lowering the ratio to 1:2 if the bill were expanded to include more counties. This proposal could also be expanded to the marketplace for CRNAs. The Committee member stated the intent is to move the legislation forward.

Conclusions and Recommendations

The Committee generally agreed the interested parties should attempt to resolve any issues or conflicts identified during the meeting and present an acceptable compromise during the 2020 Session.

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Report of the Special Committee on Medicaid Expansion to the 2020 Kansas Legislature

CHAIRPERSON: Representative Brenda Landwehr

VICE-CHAIRPERSON: Senator Gene Suellentrop

OTHER MEMBERS: Senators Molly Baumgardner, Ed Berger, Barbara Bollier, and Ty Masterson; Representatives Will Carpenter, Jim Kelly, Monica Murnan, Troy Waymaster, and Kathy Wolfe Moore

STUDY TOPIC

The Committee is directed to:

- Study the issues and options surrounding the subject of Medicaid expansion; and
- Receive a report from the Senate Select Committee on Healthcare Access regarding solutions to improve access to healthcare in Kansas.

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Special Committee on Medicaid Expansion

Report

Conclusions and Recommendations

Following discussion, the Special Committee on Medicaid Expansion makes the following recommendations and requests:

- The Committee makes no recommendations as to the Senate Select Committee on Healthcare Access (Senate Select Committee) bill draft 20rs1873, but requests it be included in the Committee report along with changing the final word of New Section 5(a)(1) to replace "or" with "and" between phrases describing requirements for eligibility, as was the stated intention of those requesting the bill draft. The final report of the Senate Select Committee is attached for reference;

- The Committee requests the Kansas Department of Commerce:

  1. Initiate a rural health care task force similar to the model established in Tennessee, in order to investigate health care issues in rural Kansas; and

  2. Provide data on the Reemployment Services and Eligibility Assessment program for the past five years and data on other programs offered by the agency under KANSASWORKS;

- The Committee requests the Kansas Hospital Association:

  1. Develop a transparency plan to analyze any current cost shifting to commercial insurance plans and to measure uncompensated care on an allowable, not a gross, charge perspective net of disproportionate share hospital (DSH) payments;

  2. Provide patient census information and services for those hospitals in Kansas that have a daily average of ten or fewer patients; and

  3. Provide information related to the hospital surcharge considered in the Senate Select Committee bill draft 20rs1873 and any considerations related to the timeline for collection of such surcharge;

- The Committee recommends the Kansas Department of Health and Environment (KDHE) correspond with the federal Centers for Medicare and Medicaid Services (CMS) to inquire whether CMS would consider a reinsurance program under a Section 1332 waiver in conjunction with a Section 1115 waiver to meet federal budget neutrality requirements;

- The Committee requests KDHE provide:

  1. Information on the DSH payments to each hospital for the previous three calendar years; and

  2. A separate fiscal note related to the number of children that would potentially join the Medicaid program if their parents become eligible;

- The Committee requests the Department for Children and Families provide information related to high school graduation rates of foster care children over the past ten years and the programs and partnerships, other than the Jobs for America's Graduates-Kansas program, currently used to provide services to foster care children;

- The Committee recommends any Medicaid expansion considered by the Legislature contain a provision to:

  1. Prohibit coverage or reimbursement for any abortion services beyond those currently provided in Medicaid and in the Children's Health Insurance Program (CHIP);

  2. Include religious and professional conscience protections for healthcare institutions and individuals;

  3. Require 20 hours of work per week or 12 college credit hours per semester;

  4. Waive premiums for persons with severe mental illness (SMI) or families with a child with a serious emotional disturbance (SED);

  5. Provide an exemption for lockout from the Medicaid program for persons with SMI or families with a child with SED;

  6. Waive premiums for persons with severe, chronic, life-limiting illnesses; and

  7. Provide an exemption from lockout from the Medicaid program for persons with severe, chronic, life-limiting illnesses; and

- The Committee requests the Legislative Coordinating Council approve one additional meeting day per quarter for the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight to monitor Medicaid expansion and review requested reports, including those on payments made to hospitals, pathways to work, budget projections, and health outcomes.

Proposed Legislation: None

Background

The Special Committee on Medicaid Expansion was created by the Legislative Coordinating Council (LCC) to study the issues and options surrounding the subject of Medicaid expansion. The Committee was authorized to meet for two days.

Committee Activities

The Committee met November 12 and 13, 2019. In accordance with its study topic, the Committee's work focused on the testimony and topics described in the following sections.

Access to Care Considerations

The Committee received presentations from stakeholders related to access to care. Topics included the coverage gap, the multiple waiver approach and timeliness of implementation, financially at-risk hospitals, alternative models of care, uncompensated care, premiums and co-pays for enrollees, the proposed provider tax, the Federal Medical Assistance Program (FMAP) and poison pill provisions, and mental health services.

Coverage gap. The Senior Vice President, Government Relations, Kansas Hospital Association (KHA), stated KHA is concerned some Kansans earn too much to qualify for KanCare, but too little to receive financial assistance to purchase private insurance on the individual Health Insurance Marketplace (commonly referred to as the "coverage gap").

Multiple waiver approach and timeliness of implementation. The KHA representative discussed alternatives beyond traditional Medicaid expansion under consideration, stating that including an implementation date of January 1, 2021, would maximize access to healthcare coverage and ensure the multiple waiver approach does not effect the timeliness of expansion.

The Executive Director, Association of Community Mental Health Centers of Kansas (ACMHCK), stated ACMHCK is concerned with the timeliness of the waiver submission processes that could obstruct the implementation of expansion by January 1, 2021. He stated timeliness of the waiver is a pressing concern because it could affect workforce provider recruitment and retention.

At-risk hospitals. The KHA representative noted 29 hospitals in Kansas were considered to be financially at-risk, and 85 percent of Kansas hospitals have negative operating budgets.

Alternative models of care. The KHA representative stated the Primary Health Center (PHC) model for rural hospitals is a proposed mechanism to adapt the service model, payment method, and focus of outpatient and emergency service needs. The model is intended to close gaps between a rural health clinic and a federally qualified health center, and is intended to assist rural communities that cannot sustain the current health care delivery model. He stated a demonstration proposal for a PHC model could be submitted and approved by the Centers for Medicare and Medicaid Services (CMS) by the end of 2019, and would assist KHA in developing strategies to address workforce issues and provider assessment resources in hospitals.

Uncompensated care. The KHA representative stated uncompensated care has been reduced by 35 percent to 45 percent in other states that have expanded Medicaid. Uncompensated care is a combination of services provided to uninsured patients and the shortcomings in the Medicare and Medicaid payment rates. Financially at-risk hospitals would have access to additional federal funds for the expansion population, he stated, and thus would have additional resources to improve responses to challenges. The estimated increase in expansion revenue would fund additional staff, local services, or equipment, and could reduce the local tax revenue provided to support operations of some hospitals.

Premiums and co-pays for enrollees. The KHA representative noted premiums and co-pays assessed to expansion enrollees could pose costly administrative challenges, as well as potential financial barriers for low-income individuals. He stated lockouts, premiums, and co-pays expend provider resources and cost more to administer than the value of their collection. He stated KHA would have concerns with a permanent lockout and would like to see a simplified version of the program that avoids barriers to individuals.

The ACMHCK representative noted the premium assistance program and lockout process is of concern. He noted the waxing and waning of an individual's mental health illness affects his or her ability to work and would be affected by a lockout. He noted the proposed Senate bill does not include the ability for clinical judgment in regard to a lockout. If included in legislation, ACMHCK would be willing to work with the Kansas Department of Health and Environment (KDHE) or the Kansas Department for Aging and Disability Services (KDADS) to facilitate a safety net assistance program for individuals who have a mental illness that could affect employment and payment of premiums.

According to the Deputy Medicaid Director, KDHE, lockouts currently apply only to the Children's Health Insurance Program (CHIP) because premium payments apply only to this population. KDHE contracts for the collection of CHIP payments, with an approximate 30 percent to 35 percent delinquency rate, meaning individuals move in and out of the program due to nonpayment of premiums.

Provider tax. The KHA representative stated the proposed provider tax provision, an additional potential revenue source for Medicaid expansion, would place an additional financial burden on medical providers and must be fair and equitable.

FMAP and poison pill provisions. The KHA representative expressed support for the bill draft's FMAP Stabilization Fund provision, as well as the "poison pill" to end the Medicaid expansion program if the federal share of payments drops below 90 percent.

The ACMHCK representative noted support for the FMAP Stabilization Fund concept.

Mental health. The ACMHCK representative provided an overview of current mental health center challenges and the potential effect of Medicaid expansion on mental healthcare. He noted a survey of the five community crisis centers in operation indicated an estimated 75 percent of patients lack any payer source. Medicaid expansion would provide individuals in the coverage gap access to additional health services, while decreasing providers' rates of uncompensated care. Additionally, Medicaid expansion would have a significant impact on the State's workforce provider recruitment and retention rates. The significant pay differential between Kansas and surrounding states that are receiving additional federal funds has created a workforce retention problem. Many mental health professionals are recruited away from Kansas to surrounding states, resulting in a workforce shortage of psychiatrists, nurse practitioners, and clinicians. Additional funds from expansion could be used by mental health centers to refocus efforts on retaining and recruiting a workforce to meet the 21 percent increase in crisis intervention services. Additional funding from Medicaid expansion could also be used for innovation training and research purposes. Compared to surrounding states, Kansas has some of the highest credentialing standards in the nation. Aligning Kansas' credentialing standards closer to the national average would promote a more robust workforce.

Overview of the Individual Health Insurance Market

The Director of the Health and Life Division, Kansas Insurance Department (KID), presented an overview of Kansas' Federally Facilitated Marketplace (FFM), noting since Kansas does not have a state-based exchange, KID sends a data call each year to insurance carriers in order to gather information about types of coverage offered by those carriers. She stated 82 types of individual policies were being offered for 2020 by 5 health insurance companies on the FFM in Kansas. She also noted Advance Premium Tax Credits are offered to individuals who do not exceed certain income thresholds shopping on the FFM.

The Director of Government Affairs and Communications, KID, provided information on Section 1332 and Section 1115 waivers, noting KID would have to ask the U.S. Department of Health and Human Services (HHS) whether the FFM is set up to function in a manner contemplated by the draft Senate bill. [*Note:* The language of the bill draft would direct KID to apply for the Section 1332 waiver to offset the cost of the Section 1115 waiver.] The KID representatives noted there is no process to address fiscal notes on a "revisor's draft," so fiscal information is not available. Upon a formal bill introduction, the Division of the Budget (DOB) would issue a cost request to KID in preparation for a fiscal note.

The Director of Government Affairs and Communications stated counsel for KID believes the agency cannot prepare a request for proposal (RFP) for a Section 1332 waiver because the agency does not have the statutory authority to do so. Assuming the Legislature authorizes and directs KID to apply for the Section 1332 waiver and after KID either amends an actuarial contract or submits a new RFP for the actuarial work, it would likely be six months before the waiver application could be submitted to CMS. The representatives also noted the cost to prepare a Section 1332 waiver could be a few million dollars, and requested the Legislature appropriate moneys for this process.

An invited member of the Senate Select Committee on Healthcare Access (Senate Select Committee) noted a fiscal note would be approximately $150,000 since KID does not have experience with Section 1332 waivers.

Overview of State Innovation

A senior analyst for the Kansas Health Institute (KHI) provided information on Section 1332 of the Patient Protection and Affordable Care Act, which provides the authority for Section 1332 waivers. A Section 1332 waiver allows a state to apply to HHS for a waiver to develop and implement state-specific approaches and strategies to health reform and coverage. Once approved, she stated, a Section 1332 waiver may remain in effect for five years and be extended. She noted a Section 1332 waiver is not related to Medicaid and is intended to implement programs that will impact the state's private health insurance market. She noted states have been encouraged by CMS to submit Section 1332 waivers to address the cost of individual health insurance markets and to consider implementing a high-risk pool or state-operated reinsurance program.

The KHI senior analyst provided additional information on reinsurance programs, noting these programs can help stabilize the market and reduce premiums by reimbursing insurers for some portion of their incurred claims for high-cost enrollees. She stated a waiver is considered budget neutral if the state's premiums offset the federal tax credits. The state can receive pass-through funding to help fund the cost of implementing the state waiver or reinsurance program if the state's approved waiver results in savings to the federal government. She noted a state may submit a single coordinated waiver application under Section 1332 and under other existing waiver processes (*e.g.,* Section 1115), which are evaluated independently according to applicable federal law.

Update on *Texas v. United States* Lawsuit

The Office of the Attorney General provided written-only testimony regarding the *State of Texas, et al. v. United States of America, et al.* in the U.S. Court of Appeals for the Fifth Circuit. The case involves the collection of health insurance provider (HIP) fees assessed against companies that manage state Medicaid or CHIP programs.

Presentation on Senate Select Committee on Healthcare Access Information

The Committee was provided with a draft report (Appendix A) and reviewed the recommendations of the Senate Select Committee, as well as Senate bill draft 20rs1873. [*Note:* The Senate Select Committee met October 22 and 23, 2019, and considered solutions to improve access to healthcare in Kansas.]

An Office of Revisor of Statutes staff member compared provisions in the Senate bill draft 20rs1873 to 2019 HB 2066 on an issue-by-issue basis. He specified no current provisions in Kansas statutes establish a health insurance premium assistance program similar to that considered by New Section 5 of proposed Senate bill draft 20rs1873 and, under LCC Policy 33, committees are prohibited from sending correspondence to the congressional delegation without prior authorization from the LCC.

The Committee members and the invited Senate Select Committee member discussed a change to Section 5 of bill draft 20rs1873, to replace "or" with "and" in subsection (a) between phrases describing requirements for eligibility, as was the stated intention of those requesting the bill draft; noted other states have used a similar approach to charging a co-pay in circumstances described as non-urgent emergency care, as found in New Section 4; and discussed the FMAP provisions of the Senate bill draft and 2019 HB 2066. The invited Senate Select Committee member clarified the intent of provisions of Section 12 of the bill draft.

A Committee member also drew the Committee's attention to the Minority Report of the Senate Select Committee.

FMAP Stabilization Fund

The Assistant Revisor provided information on the mechanics of the FMAP Stabilization Fund bill, 2019 SB 2, during his comparison of 2019 HB 2066 and the Senate bill draft. The FMAP determines the state and federal shares of funding for Medicaid, adoption assistance, foster care, and child care, and it is based on a three-year average of per capita personal income for state residents as compared to the national average. If a state experiences per capita personal income growth higher than the average rate for other states, the state's FMAP score could decrease; a state with a lower per capita personal income growth rate could see an increase in its FMAP score. An invited member from the Senate Select Committee stated he was not aware of other states that had established an FMAP Stabilization Fund, and he noted the significant impact a change in the FMAP can have on the state budget.

Comments on Medicaid Expansion

The Committee received comments from a representative of the Alliance for a Healthy Kansas (Alliance), and written-only comments from other stakeholders.

Coverage gap. The Alliance representative provided testimony to the Committee regarding individuals in the health insurance coverage gap. She noted the majority of individuals in the coverage gap (64 percent) are working, but they do not have insurance through their work due to the high cost of premiums, or because it is not available through the employer.

Premiums and lockouts. The Alliance representative stated administrative flexibility should be provided for in a bill in order to prevent loss of coverage for consumers facing catastrophic illnesses. She noted premiums and lockouts would create barriers to participation for low-wage earners. Although individuals at 100 to 138 percent of the federal poverty level (FPL) are eligible to purchase insurance on the exchange with subsidies, many are still unable to afford their premiums.

Work requirements. The Alliance representative stated work requirements are administratively costly and another barrier to participation. Persons working in low-wage jobs do not necessarily have control over the number of hours worked, and a reduction in work hours by the employer could result not only in a loss of income but also health insurance. She noted states have yet to find a work requirement formula that benefits the state. If the work referral provision is implemented, she stated, the process should be as seamless and streamlined as possible for beneficiaries to comply.

Economic benefits. The Alliance anticipates within the first full year of expansion, approximately 13,400 new jobs would be added, and between $31 million and $38 million in new sales and income tax revenue would be generated.

Timeliness of expansion. The Alliance representative stated, in order to expedite the Medicaid expansion process and extend coverage to low-income Kansans, Alliance prefers a straight expansion of Medicaid. The preparation and approval process of additional waivers can create significant delays. She stated a bifurcated process that allows for implementation of expansion through a State Plan Amendment at the same time the waiver process is under way would expedite expansion processes.

The Vice-chairperson noted the essential nature of having the Section 1332 waiver in place from the start, stating the value of the Section 1332 waiver is the potential 20 percent reduction in rates on the exchange, which would allow more individuals to buy insurance. Allowing individuals with incomes between 100 and 138 percent of FPL to remain on the exchange with private carrier coverage is a significant piece of bill draft 20rs1873.

The Secretary of Health and Environment stated the Section 1115 and Section 1332 waivers would have to achieve budget neutrality on their own without relying on each other.

Written-only testimony from individuals, providers, and organizations. A private citizen and representatives of the following organizations provided written-only testimony: AARP, American Academy of Pediatrics, American Cancer Society, American Heart Association, American Lung Association, Behavioral Health Association of Kansas, Children's Alliance of Kansas, Community Care Network of Kansas, Community Health Center of Southeast Kansas, GraceMed, Health Forward Foundation, Health Partnership Clinic, InterHab, KanCare Advocates Network, Kansas Action for Children, Kansas Advocates for Better Care, Kansas Association of Community Action Programs, Kansas Catholic Conference, Kansas Coalition Against Sexual and Domestic Violence, Kansas Farmers Union, Kansas Interfaith Action, Leukemia and Lymphoma Society, Midwest Cancer Alliance Partners Advisory Board, National Multiple Sclerosis Society, Oral Health Kansas, Overland Park Chamber of Commerce, Planned Parenthood, Salina Family Healthcare Center, Susan G. Komen Kansas and Western Missouri, REACH Healthcare Foundation, and The Whole Person.

Overview of KANSASWORKS, Workforce System, and Barriers to Work

The Legislative Director, Kansas Department of Commerce, provided an overview of the KANSASWORKS program. He noted KANSASWORKS links businesses, job candidates, and educational institutions to ensure employers find skilled workers. He stated employment services are offered at 27 workforce centers, online or virtually, and at mobile workforce centers. Intensive training, specialized placement, and job location assistance programs are available to potential workers of all ages and employment needs. He noted KANSASWORKS programs are federally funded with no state matching funds. To equip the agency to handle an influx of new participants, the Legislative Director advised an increase in funding to improve its website and hire additional staff. He stated salaries plus benefits would be approximately $50,000 per employee, and the cost for website improvements could range from $50,000 to $100,000, depending on restructuring needs.

Medicaid Expansion Outcomes

The Executive Director, Kansas Association of Medicaid Health Plans (KAMHP), provided written-only testimony. KAMHP is a non-profit organization composed of three managed care organizations (MCOs) with active contracts serving the KanCare Medicaid population. The MCOs serve 400,000 Medicaid enrollees and are prepared to serve the additional 150,000 should Kansas decide to expand Medicaid eligibility. The testimony noted the MCOs incentivize KanCare members to work by addressing health and social needs that often stand in the way of individuals actively participating in the workforce. To promote healthy behaviors, each MCO has value-added benefits that reward and incentivize healthy behaviors.

Medicaid Expansion in Other States

The Government Affairs Director, Foundation for Government Accountability (FGA), provided an overview of the benefits the State currently offers, as well as expansion experiences in other states. He stated Kansas' estimation of 130,000 new enrollees is dramatically underestimated because, nationally, more than twice as many adults signed up than originally anticipated, with per-person costs 76 percent higher than initially predicted by CMS. He stated, given enrollment trends from states that have expanded Medicaid coverage, a more accurate enrollee number could exceed 250,000. He expressed concerns Medicaid expansion would siphon resources from those already enrolled in the Medicaid program and CHIP; expansion could take away an individual's choice of insurance coverage provider and drive up hospital operating costs, as Medicaid consumers covered at lower reimbursement rates would increase; and the Committee should consider work requirements.

The Vice President for Financial Advocacy, KHA, stated there are twice as many people without coverage and for whom hospitals do not expect to recoup any payment for services rendered. Private coverage deductibles have become so high that individuals cannot afford to pay the deductibles, resulting in bad debt for hospitals.

Tobacco Tax Collections

The Director of Research and Analysis, Kansas Department of Revenue (KDOR), provided information regarding the three different excise taxes on tobacco or smoking products: cigarettes, other tobacco products, and consumable materials. A brief history of each tax was provided, with graphs and tables reflecting changes in the tax rates over time.

The Director noted in fiscal year (FY) 2021, KDOR estimated if the price for a 20-pack of cigarettes increased by $0.50, $1.00, or $1.50, the additional revenue would be $31.3 million, $53.14 million, or $66.66 million, respectively. For FY 2021, assuming the tax of cigarettes remained at $1.29 for a 20-pack of cigarettes and the consumable material tax increased to $0.43/ml, $0.65/ml, or $1.29/ml, the revenue increase is estimated to be $7.9 million, $12.42 million, or $25.34 million, respectively. If the tax for a 20-pack of cigarettes increased by $1.00 and the consumable material tax increased to $0.76/ml, $1.15/ml, or $2.29/ml, the estimated revenue for FY 2021 would be $14.67 million, $22.55 million, or $44.84 million, respectively.

Fiscal Implications of Medicaid Expansion Proposals

The Director of the Budget provided a briefing of the fiscal impact of Medicaid expansion. The fiscal numbers are calculated by the state agencies and analyzed by analysts at the Division of the Budget. Enactment of 2019 HB 2066 would result in additional expenditures of $33.9 million from the State General Fund (SGF), with a range of $34 million to $38 million for ongoing costs. The estimate included the federal match, prescription drug rebates, managed care privilege fees, and shifts within the Medicaid population that will generate cost savings. The estimate did not take into account the offsets generated by economic growth or the approximately $3 million in savings within the Kansas Department of Corrections (KDOC).

The Director noted Senate bill draft 20rs1873 was more difficult to assess given the complex nature of the proposal. He stated financial risk factors related to bill draft 20rs1873 include an unknown price tag, no definitive pay-for, and greater financial risk associated with complex policies. If Kansas were to expand to 100 percent FPL and not receive enhanced funding, this would cost the State $221 million more than full expansion while covering 50,000 fewer lives. KDHE has estimated administering premiums would require around 2,700 hours of system changes, costing about $325,000. The agency estimated ongoing administrative costs to be around $2 million. The Director noted administrative "add-ons" are not eligible for the enhanced federal match. Tiered benefit plans with enhanced benefits for individuals who demonstrate healthy behaviors would require around 1,300 hours of system changes and cost roughly $156,000 for the state system.

An independent analysis provided by KHA indicated a simple Medicaid expansion proposal could create more than 13,000 new jobs by 2021 and produce annual tax revenues of approximately $30 million beginning in FY 2023.

Overview of Current Medicaid Program and Expansion Proposals

The State Medicaid Director, KDHE, provided an overview of the current Medicaid program in Kansas, populations and services covered, and program expenditures. KDHE sets the guidelines and eligibility policies for Medicaid under the State's current Section 1115 waiver and is the primary contact with CMS. He noted a state's Medicaid expansion plan must provide coverage for ambulatory patient services, emergency services hospitalization, pregnancy, maternity and newborn care, mental health and substance abuse disorder services, prescription drugs, rehabilitative and habilitative services, and pediatric services.

The State Medicaid Director noted current eligibility guidelines state a Medicaid applicant must be at least 18 years old, or a guardian, conservator, or both, and a resident of Kansas. Income thresholds vary depending on classification category. Regardless of income, current Medicaid guidelines do not provide coverage options for childless adults. Parents, guardians, or both are eligible for Medicaid when income is at or below 38 percent FPL. Eligibility for the Medicaid program is reviewed annually.

The State Medicaid Director stated the federal financing component of Medicaid was based on the following key assumptions from 2019 HB 2066: 150,000 newly eligible adults, a $625 per member per month capitation payment, and offsets to reduce the total cost. He noted only KDHE's budget was considered, and other potential economic benefits realized across the state or savings realized by KDOC were not included. After all offsets, the net cost to KDHE is expected to be approximately $34 million to $35 million with a 90 percent federal match. The effect of expansion on MediKan and KDOC is expected to result in $2 million in state savings. Partial expansion without enhanced federal funding would cost the state $221 million more and cover 50,000 fewer lives.

The State Medicaid Director noted states are required to return 90 percent of premiums collected to the federal government. Accounting for the federal share of the premiums and the administrative cost to operate the program, the impact is expected to be between negative $900,000 and positive $900,000.

The State Medicaid Director provided information on the Health Care Access Improvement Program (HCAIP), noting certain hospitals pay a provider assessment tax equal to

1.83 percent of the 2010 net inpatient revenue. These funds bring in about $47 million per year in state funds, and are matched with federal dollars for a net of approximately $108.8 million per year. The revenue is dispersed back to hospitals and physicians through various avenues. Revenue from HCAIP is tracked by KDHE and reported to the HCAIP Panel. Pending changes to the HCAIP were provided to the Committee, which include an increase in the provider assessment from 1.83 percent of net inpatient revenues to 3.0 percent net inpatient and outpatient revenues, and a change in the base tax year to 2016. The pending change is estimated to bring in about $163.6 million from the providers for a total of approximately $381.5 million from all funding sources, including federal match. He stated increasing the HCAIP fund requires amending the Section 1115 waiver to account for the new moneys in the budget neutrality provision, and requires CMS approval. He stated CMS approval was then being negotiated, and the hospital surcharge proposed in Senate bill draft 20rs1873 would be on top of the current HCAIP.

Overview of Medicaid Demonstration Waivers

The State Medicaid Director reviewed Medicaid and other waivers relevant to Medicaid expansion. He noted the current KanCare program is operated under the authority of a Section 1115 waiver, and has been approved through December 31, 2023. Section 1115 waivers must demonstrate budget neutrality and govern the entire KanCare program. The Section 1915(c), or home- and community-based services, waivers are under the Section 1115 waiver umbrella, and are used to target services to specific populations. He stated states intending to amend provisions of a Section 1115 waiver must provide CMS with 120 days' notice. The anticipated timeline to complete a Section 1115 waiver could be as little as seven to nine months, but is dependent on CMS requirements.

The State Medicaid Director provided information on Section 1332 waivers. He stated the following four "guardrails" must be met in order for the waiver to be approved by CMS: coverage must be as comprehensive as coverage would be absent the waiver, coverage must be affordable, the scope of coverage must be provided to a comparable number of residents, and there cannot be an increase in the federal deficit. When calculating budget neutrality for either waiver, no potential impact can be assumed, and savings cannot accrue across waiver types; the waivers are standalone applications.

Conclusions and Recommendations

The Committee made the following requests and recommendations:

- The Committee makes no recommendations as to the Senate Select Committee bill draft 20rs1873, but requests it be included in the Committee report along with a change in New Section 5(a) to replace "or" with "and" between phrases describing requirements for eligibility, as was the stated intention of those requesting the bill draft. The final Senate Select Committee report is attached for reference;

- The Committee requests the Kansas Department of Commerce:

    1. Initiate a rural health care task force similar to the model established in Tennessee, in order to investigate health care issues in rural Kansas; and

    2. Provide data on the Reemployment Services and Eligibility Assessment program for the past five years and data on other programs offered by the agency under KANSASWORKS;

- The Committee requests the KHA:

    1. Develop a transparency plan to analyze any current cost shifting to commercial insurance plans and to measure uncompensated care on an allowable, not a gross, charge perspective net of disproportionate share hospital (DSH) payments;

    2. Provide patient census information and services for those hospitals in Kansas that have a daily average of ten or fewer patients; and

3. Provide information related to the hospital surcharge considered in the Senate Select Committee bill draft 20rs1873 and any considerations related to the timeline for collection of such surcharge;

- The Committee recommends KDHE correspond with the federal CMS to inquire whether CMS would consider a reinsurance program under a Section 1332 waiver in conjunction with a Section 1115 waiver to meet federal budget neutrality requirements;

- The Committee requests KDHE provide:

  1. Information on the DSH payments to each hospital for the previous three calendar years; and

  2. A separate fiscal note related to the number of children that would potentially join the Medicaid program if their parents become eligible;

- The Committee requests the Department for Children and Families provide information related to high school graduation rates of foster care children over the past ten years and programs and partnerships, other than the Jobs for America's Graduates-Kansas, currently used to provide services to foster care children;

- The Committee recommends any Medicaid expansion considered by the Legislature contain a provision to:

  1. Prohibit coverage or reimbursement for any abortion services beyond those currently provided in the Medicaid program and CHIP;

  2. Include religious and professional conscience protections for healthcare institutions and individuals;

  3. Require 20 hours of work per week or 12 college credit hours per semester;

  4. Waive premiums for persons with severe mental illness (SMI) or families with a child with a serious emotional disturbance (SED);

  5. Provide an exemption for lockout from the Medicaid program for persons with SMI or families with a child with SED;

  6. Waive premiums for persons with severe, chronic, life-limiting illnesses; and

  7. Provide an exemption for lockout from the Medicaid program for persons with severe, chronic, life-limiting illnesses; and

- The Committee requests the LCC approve one additional meeting day per quarter for the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight to monitor Medicaid expansion and review requested reports, including payments made to hospitals, pathways to work, budget projections, and health outcomes.

APPENDIX

Report of the Senate Select Committee on Healthcare Access to the 2019 Special Committee on Medicaid Expansion

Chairperson: Senator Gene Suellentrop

Vice-chairperson: Senator Ed Berger

Other Members: Senators Molly Baumgardner, Rick Billinger, Jim Denning, Bud Estes, Anthony Hensley, Dan Kerschen, Ty Masterson, Pat Pettey, Mary Pilcher-Cook, and Mary Jo Taylor

Study Topic

- Consider solutions to improve access to healthcare in Kansas and report the information to the Special Committee on Medicaid Expansion.

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Senate Select Committee on Healthcare Access

Summary of Conclusions:

The Senate Select Committee on Healthcare Access proposes bill draft 20rs1873 be revised to clarify the premium charged to covered individuals whose income is greater than 100 percent of the federal poverty level would be equal to 5.0 percent of modified adjusted gross income assessed on an individual basis, but the aggregate share cannot exceed 5.0 percent of the modified adjusted gross income of the household, and the revised bill be provided to the members of the Senate Select Committee on Healthcare Access and the Special Committee on Medicaid Expansion.

The Select Committee requests the Office of Revisor of Statutes prepare two memorandums to be delivered to the Special Committee on Medicaid Expansion that compare bill draft 20rs1873, as revised, to pending legislation specified in this report.

To the extent possible under the law, the Select Committee requests and encourages the Kansas Insurance Department to begin work on a Section 1332 waiver.

If the Select Committee is authorized to continue working on 20rs1873, as revised, it is recommended the bill be introduced on the first day possible and referred to the Senate Select Committee on Healthcare Access, and if the Select Committee is not authorized to continue, then the revised bill draft be introduced on the first day possible and referred to the Senate Committee on Public Health and Welfare.

The Select Committee requests the Kansas Department for Aging and Disability Services provide testimony to the committee that hears bill draft 20rs1873, as revised, and to apply for a waiver *via* statute on the Institutions for Mental Disease (IMD) exclusion recommended by the Task Force on Mental Health and also use the guidelines the Centers for Medicare and Medicaid Services (CMS) published in their November 1, 2017, letter to state Medicaid directors on that subject that integrated crisis stabilization centers into the IMD exclusion.

The Select Committee requests the Kansas Hospital Association (KHA) develop transparency plans as specified in this report.

The Select Committee requests the Kansas Department of Commerce to initiate a rural health care task force as outlined in this report.

The Select Committee requests KHA work with the University of Kansas Health System to evaluate applying to CMS for a demonstration project for a modified rural health delivery system.

The Select Committee recommends the Kansas Congressional delegation be asked to improve the fiscal health and modify the delivery system of rural hospitals and providers.

Proposed Legislation: Bill draft 20rs1873, as revised.

Background

On May 29, 2019, the Senate President announced the creation of the Senate Select Committee on Healthcare Access (Select Committee), charging it to consider solutions to improve access to healthcare in Kansas and report the information to the Special Committee on Medicaid Expansion. The Select Committee was authorized two meeting days.

Committee Activities

The Select Committee met on October 22 and 23, 2019.

Overview of Current Medicaid Program, Populations Covered, Numbers Served, and Expenditures, including Inmate Coverage Both during and after Incarceration

The State Medicaid Director, Kansas Department of Health and Environment (KDHE), provided an overview of the current Medicaid program, financial estimates on expansion, and waivers.

KDHE maintains the State Plan and has accountability for the Section 1115 waiver. Within federal guidelines and as authorized by state law, KDHE sets the guidelines and eligibility policy for people to apply for Medicaid. KDHE contracts for the Medicaid Management Information System and the Kansas Eligibility and Enforcement System. Three managed care organizations (MCOs) oversee the delivery and payment of healthcare services. KDHE is the primary contact with the federal Centers for Medicare and Medicaid Services (CMS).

Generally, a Medicaid application must be filed, an applicant must be able to act on his or her own behalf (at least 18 years old or a guardian and/or conservator has to apply), either a U.S. citizen or eligible non-citizen, and a resident of Kansas. The applicant must provide all needed information and cooperate with the application process. All persons residing in the household must be included on the application. Financial requirements may vary, depending on which population category one is classified. If the information has not been received within the statutory guideline of generally 45 days, the process starts over; however, the statutory guideline may be paused under specific circumstances. Requiring the application process to start over is the exception and not the rule because KDHE reaches out to applicants to complete the missing information.

A state's Medicaid expansion plan must include coverage for ambulatory patient services, emergency services, hospitalization, pregnancy, maternity and newborn care, mental health and substance abuse disorder services, prescription drugs, rehabilitative and habilitative services, laboratory services, preventive services, and pediatric services.

In Kansas, the applicant must be a resident of the state. Kansas does not provide a Medicaid option for childless adults, regardless of income. Non-pregnant parents and caretakers are eligible for KanCare (the Medicaid managed care program in Kansas) when their income is at or below 38 percent of the federal poverty level (FPL). Since the Federal Health Insurance Exchange does not provide subsidies until one is at 100 percent of FPL, there is a coverage gap in Kansas for those between 38 percent and 100 percent of FPL. Eligibility is granted on an annual basis.

The State Medicaid Director reviewed the process for covering inmates both during and after release. This included releases from prisons, state hospitals, and county jails and discharges from mental health institutions.

Fiscal assumptions. The fiscal impact of one Medicaid expansion bill (2019 HB 2066) assumes:

- 150,000 newly eligible members would equate to a 36 percent increase in the total population, which would be in line with the national average (35 percent) but more than states that have most recently expanded (22 percent). KDHE estimates approximately 80,000 potential members;
- $625 per member per month (PMPM) capitation payment;

- Offsets, including privilege fees and incremental drug rebates, to reduce the total cost. Also, the Department of Corrections (DOC) would be able to access additional federal funds for the expansion population, resulting in savings; and

- Straight Medicaid expansion, with no additional layers placed on top of the program.

The initial cost for expansion would be approximately $1.1 billion. After all offsets, the net cost to the State would be approximately $34.0 million to $35.0 million. The estimate does not account for savings that could be realized by DOC. Since July 1, 2012, KDHE and DOC have used Medicaid funding to pay for inpatient services when an inmate is in a hospital for more than 24 hours. The inmate must meet all required eligibility criteria and have a qualifying event. Many cases today require presumptive disability determination, but that need would diminish under expansion. Both agencies have dedicated staff to work on these cases.

There is no estimate for secondary economic benefits. If premiums are assessed to the expansion population, states are required to transfer 90 percent of the premiums to the federal government.

The State Medicaid Director also provided a list of guardrails from CMS on proposals that would not be approved based on policy or legal grounds. A financial estimate of "partial" Medicaid expansion was also provided.

Medicaid Waivers: Types, Populations and Services Covered, Submission and Approval Process, and Length of Time to Institute

The State Medicaid Director, KDHE, and a representative from the Kansas Health Institute reviewed Medicaid and other waivers:

- Section 1115 waivers must demonstrate budget neutrality—federal spending cannot exceed what would have been spent in the absence of the waiver. In KanCare, the waiver is used to mandate most populations enroll in a managed care plan;

- Section 1915(c) or HCBS (Home Community Based Services) waivers must be cost neutral—per capita costs do not exceed average cost of institutional settings. The waivers are used to target services to specific populations; and

- Section 1332 waivers are not considered Medicaid waivers, as they are in a different section of the Affordable Care Act, and have different approval/authority paths than Medicaid waivers. This section of the Affordable Care Act grants no authority to waive anything in Title XIX (Medicaid).

KanCare operates under a comprehensive Section 1115 waiver, which is approved through December 31, 2023. Each of the Section 1915(c) waivers is under the Section 1115 umbrella. These are the HCBS waivers administered by the Kansas Department for Aging and Disability Services (KDADS). Most beneficiaries are required under the waiver to receive all their services through managed care plans. MCOs manage HCBS waiver services along with physical and behavioral health services. More than 100 special terms and conditions (STCs) must be monitored, and quarterly reporting for financial performance and other measures is required.

Straight expansion could be implemented under an amendment to the State's current waiver, which would include the expansion population and updated calculations showing budget neutrality. Additional layers added to the expansion plan would be handled one of two ways, with the path to approval ultimately determined by CMS. Amendment to the current waiver, including updating budget neutrality, does not require the assistance of a consultant, other than KDHE's current actuarial vendor. If CMS deems changes to be substantial, they could deem this a new demonstration, which would require a new waiver application and the assistance of a consultant, as well as adding time to the process.

A Medicaid Section 1115 wavier application or amendment cannot assume any potential impact from a Section 1332 waiver submission.

Approval timeline for Section 1115 waivers. A State intending to amend the provisions of a current waiver must give 120 days' notice to CMS. If a waiver is amended, a State would likely not be required to hold multiple public meetings, though the waiver and corresponding State Plan Amendment would be posted for public comment. The current actuarial vendor for KDHE would recalculate budget neutrality, incorporating new eligibility groups.

New waiver applications have additional CMS requirements, which would likely involve hiring a consultant to assist with the process. For reference, the current KanCare waiver renewal application took approximately 22 months to complete.

State Innovation (Section 1332) Waivers

According to the State Medicaid Director, most states have used 1332 waivers for reinsurance on the insurance exchange. Nearly every state grants authority to a state insurance agency to file and administer the waiver. Generally when granted, this waiver leverages federal savings, which are then passed through to fund program. There are four guardrails to be met in order for the waiver to be deemed complete. Coverage must be as comprehensive as coverage would be absent the waiver. Coverage must be affordable. The scope of coverage must be provided to a comparable number of residents, and there cannot be an increase in the federal deficit.

When calculating budget neutrality for either waiver, the assumptions of the base and waiver must be separate and distinct.

A representative of the Kansas Health Institute provided an overview of State Innovation (Section 1332) waivers. Section 1332 of the Patient Protection and Affordable Care Act (ACA) allows states to apply to the Secretary of the U.S. Department of Health and Human Services (HHS) for a waiver to develop and implement state-specific approaches and strategies to health reform and coverage to provide citizens with access to affordable health care. States can either use existing statutory authority to enforce the ACA and issue a regulation or executive order or enact a new state law to apply for and implement a waiver. However, states can simultaneously pursue legislative authority to pursue a waiver while developing and drafting a waiver application and actuarial analysis. Section 1332 waivers, once approved, may remain in effect for five years and can be extended. States that receive waivers may become eligible for federal pass-through funding to help implement waiver plans.

A state's application must demonstrate its proposed waiver plan will:

- Provide comprehensive coverage that is comparable to the coverage offered through the ACA;
- Ensure affordability by providing coverage and cost-sharing protection against excessive out-of-pocket spending;
- Provide coverage to at least a comparable number of residents as the ACA; and
- Ensure the waiver plan will not increase the federal deficit.

Through a waiver, certain provisions of the ACA and the Internal Revenue Code can be waived, such as establishing qualified health plans (QHPs), consumer choices and insurance competition through health insurance, premium tax credits and cost-sharing reductions for QHPs offered within the marketplace, and employer shared responsibility. Other provisions such as pre-existing condition protections, allowable premium rating factors, including age bands; guaranteed availability and renewability of health coverage; risk adjustment; and eligibility determinations under certain premium tax credits, cost sharing reductions, Medicaid, and the Children's Health Insurance Plan (CHIP) cannot be waived.

Concerning federal guidance to states, in March 2017, HHS issued a letter to all governors encouraging them to submit Section 1332 waiver applications to address cost and coverage issues in their individual health insurance markets. HHS specifically encouraged states to consider implementing a high-risk pool or state-operated reinsurance program to lower marketplace premiums. In October and November 2018, HHS issued new guidance to states designed to give more flexibility in the design of Section 1332 waivers and now refers to them as State Relief and Empowerment waivers. States are encouraged to reach out to HHS for assistance in formulating an approach that meets the requirements of Section 1332. HHS also identified five principals for a high-performing health care system that will be considered when reviewing waiver applications and expressed that states should aim to provide increased access to affordable private market coverage, encourage sustainable spending growth, foster state innovation, support and empower those in need, and promote consumer-driven health care.

States can direct public subsidies into a defined-contribution, consumer-directed account that individuals may use to pay health insurance premiums or other health care expenses. States can create a new, state-administered subsidy program to meet the needs of its population. States could provide financial assistance for different types of health insurance plans, including non-QHPs, to potentially increase consumer choice of more affordable options. To give more flexibility to implement reinsurance or high-risk pool programs, states may waive the single-risk pool requirement.

If a state's waiver is approved and results in savings to the federal government for advance premium tax credits (APTCs) or small business tax credits, the state can receive those savings as pass-through funding and use them to help fund the cost of implementing the state waiver program.

APTCs are refundable tax credits designed to help eligible individuals and families with annual household incomes of at least 100 percent—but no more than 400 percent—of FPL ($25,100 to $100,400 for a family of four in 2019) to purchase insurance through health insurance marketplaces created under the ACA. When individuals and families enroll through the marketplace, they can choose to have the marketplace compute the estimated APTC that is paid to the insurance company to lower their monthly premiums. The amount of the APTC is generally equal to the premium for the second-lowest cost silver plan available through the marketplace that applies to individuals enrolled in the plan, minus a certain percentage of their household income.

Federal regulations also authorize states to submit a single "coordinated waiver application" to the Secretary of HHS for a waiver under Section 1332 and under other existing waiver processes (*e.g.*, Section 1115), which will be evaluated independently according to the applicable federal law.

To date, HHS has approved Section 1332 waivers for 13 states. Of the approved waivers, 12 were to establish state-based reinsurance programs. States that will be implementing reinsurance programs for plan year 2020 include Colorado, Delaware, Montana, North Dakota, and Rhode Island. States with approved waivers projected reductions in premiums ranging from 5.9 percent to 30.0 percent.

Individual Health Insurance Marketplace

The Director of the Health and Life Division (Director), Kansas Insurance Department (KID), provided an overview of the individual health insurance marketplace in Kansas, covering the demographics and statistics of the insured and uninsured. The Director described the several ways persons can apply through the federally facilitated marketplace (FFM). In 2020, consumers shopping on the FFM in Kansas will have the opportunity to choose from 82 individual policies offered by five health insurance companies depending upon where they live. This is an increase of 59 plans over the 2019 number. Concerning categories of insurance plans, catastrophic plans must have actuarial values below 60 percent, meaning the plans will cover less than 60 percent of the expected cost. Bronze plans and expanded bronze plans have actuarial values of at least 60 percent. Silver plans have an actuarial value of at least 70 percent. Gold plans have an actuarial value of at least 80 percent, and platinum plans have an actuarial value of at least 90 percent.

The Director explained the APTCs, which is the tax credit based on the household information and income estimate included in a FFM application. The premium tax credit is only available through the FFM. If income or household information changes, the premium tax credit will likely change as well. Of the 89,993 individuals who made plan selections as most recently reported, the average premium is $661, and the average premium after the APTC is $149. Of the 77,446 individuals receiving the APTC, the average credit received is $596, and the average premium among consumers after the APTC is $76.

The Cost Sharing Reduction (CSR), the Director explained, is a discount that lowers what an enrollee pays for their deductibles, coinsurance, and co-payments. The enrollee must purchase a Silver plan to receive the extra savings. Eligibility is determined during completion of a Marketplace application. If the enrollee qualifies for CSR, they also have a lower out-of-pocket maximum. People with incomes between 100 and 150 percent of FPL can enroll in a plan where the actuarial value is increased to 94 percent. People with incomes between 150 and 200 percent FPL can enroll in a plan where the actuarial value is increased to 87 percent. People with incomes between 200 and 250 percent FPL can enroll in a plan where the actuarial value is increased to 73 percent. A fourth variant is a zero cost-sharing plan that is available to certain Native Americans.

Open enrollment for plan year 2020 begins November 1, 2019, and ends December 15, 2019. Kansans may enroll in coverage, stay on their current policy (if available), or enroll in a different policy from the same company or a different company. Consumers currently enrolled in a QHP through the FFM may be eligible for automatic re-enrollment. Anyone wishing to have coverage effective January 1, 2020, must complete the application process by December 15, 2019. After December 15, 2019, the only way to obtain coverage is *via* a special enrollment period due to a qualifying event.

Medicaid Expansion Experience in Other States

A representative of AdventHealth Mid-America Region reviewed Medicaid expansion experience in other states. The conferee reviewed data from Colorado, Illinois, and Kentucky showing the number of people covered by Medicaid or CHIP as of July 2018, the increase in the number of people covered by Medicaid or CHIP from Fall 2013 to July 2018, and the reduction in the uninsured rate from 2013 to 2017. These three states have accepted federal Medicaid expansion.

Rural Hospitals

Representatives of the University of Kansas Health Systems (UKHS) Care Collaborative provided testimony concerning rural hospitals, which included data on rural quality performance measures, chronic care management, and the impact on total cost of care. Access to health care is defined as having timely use of personal health services to achieve the best possible health outcome. Measuring access is a complex task when trying to include dimensions besides availability of services, such as quality, effectiveness, and efficiency.

Persons in Kansas who need care generally have lower socioeconomic status, higher rates of health risk behaviors, limited access to health care specialists and sub-specialists, and limited job opportunities.

Rural health issues, which started in the 1990s, include an increase in age-adjusted mortality, disability, and chronic diseases. This is due to several causes, including obesity, cancer, heart disease, diabetes, injury-related deaths, and chronic conditions.

Studies demonstrate that insurance coverage impacts health and mortality outcomes, as well as reducing disparities. Providers need to consider “upstream” issues, such as reducing risk factors that lead to illness and chronic conditions and include social determinants of health. The “downstream” consequences of the lack of access can lead to more advanced stages of cancer, renal disease, or diabetes at the time of diagnosis, thus increasing costs and decreasing outcomes.

There are more than 170 rural health clinics, 100 safety net clinics, and 57 federally qualified health centers, that are required to provide care regardless of insurance coverage or ability to pay. Like critical access hospitals, the reimbursement models for some are cost-based. Additional payments are possible based on modeling that includes utilizing sliding-fee scales; certain services required, which are not likely to offset reduced payments from volume; and rural population characteristics.

A representative of HaysMed discussed how Medicaid expansion would impact rural Kansas. While not the single solution to all the challenges that health care faces today, the representative stated it is one of the short-term solutions to be implemented as longer-term options are developed. More than 130,000 Kansans would benefit.

A representative from the Neosho Memorial Regional Medical Center shared comments concerning what it is like to live in Southeast Kansas where many of the residents work multiple part-time jobs and do not have access to affordable health insurance. The financial margins in rural hospitals in Kansas are thin. Additional funding would allow the Neosho facility to increase staff wages, purchase needed equipment to improve services, and address public health issues.

A representative from the Kansas Hospital Association indicated Kansas has the highest number of at-risk hospitals in the country. There is discussion about the possible creation of another model that will allow some flexibility for these challenged facilities, requiring Congress to change Medicare law. From the Legislature, support would be needed with rules and regulations concerning the definition of what it means to be a hospital. The conferee stated a literature review conducted by the Kaiser Family Foundation indicated Medicaid expansions result in reductions in uncompensated care costs for hospitals and clinics. A growing number of studies show an association between expansion and gains in employment as well as growth in the labor market (with a minority of studies showing neutral effects in this area). Most analyses that looked at rural and urban coverage changes find that Medicaid expansion has had a particularly large impact in rural areas. Research shows that Medicaid expansions result in reductions in uninsured medical visits and uncompensated care costs. Studies demonstrate that Medicaid expansion has significantly improved hospital operating margins and financial performance.

A representative of Navigant, a healthcare consultant firm, suggested a multi-step approach to assess community health needs, strategic, and operational transformation opportunities in rural health. The factors that contribute to rural hospital success encompass more than just clinical services and reimbursement. Community-specific issues, such as out-migration, workforce availability, and employment, are critical to identifying effective approaches. The conferee shared information concerning the firm’s work in Tennessee to assist with its Rural Hospital Transformation Program.

Health Insurance Exchange Experience, Lock-out Period, Social Determinants of Health, and Medicaid Plan Tiers

A representative of Centene provided testimony on state innovation and Medicaid expansion as experienced by that company. Experience in other states suggests the expansion population may have different healthcare needs than traditional Medicaid population (*e.g.*, behavioral health needs) and unique opportunities for support through addressing social determinants of health (SDoH). Research shows enrollees may have complex needs, such as homelessness, mental illness, and substance abuse. Enrollees reported improved health, ability to work, and job seeking after receiving coverage. However, some enrollees faced persistent barriers to employment, such as poor health, disability, caregiving responsibilities, and older age. There is often “pent-up” demand in the first year of expansion with an increase in hospitalizations, which return to comparable rates of utilization as non-expanded states in the second year. There may be an opportunity to increase supply for primary care to improve access. Additionally, federally qualified health centers have greater financial stability in expansion states and could be used to promote access. The four areas of consideration with Medicaid expansion are eligibility, delivery system, program design, and implementation.

Workforce Development System

The Director of Workforce Development, Kansas Department of Commerce, provided an overview of 11 various workforce services available in the state. Under the KANSASWORKS umbrella, businesses, job candidates, and educational institutions are linked to ensure employers can find skilled workers.

Employment services are provided to employers and job candidates through the state's 27 workforce centers, online or virtual services, and the mobile workforce center. The federally funded workforce development programs are delivered, in part, through local workforce centers. These employer-driven services include recruiting skilled workers, screening and assessing job candidates, and identifying individuals needing skill enhancement.

Universal access is granted to all employers and Kansans for labor exchange, labor recruitment, assessment, testing, and screening services. Qualified access to intensive training and related services is provided to eligible Kansans under the guidance and direction of a Local Workforce Development Board (LWDB). Specialized placement and job location assistance is available to targeted populations, such as veterans, those displaced from work because of foreign competition, and migrant and seasonal farm workers.

Status and Stability of Tobacco Tax Collection, Impact of Increase in Tobacco Tax

The Director of Research and Analysis, Kansas Department of Revenue (KDOR), provided testimony concerning the status and stability of tobacco tax collection and the impact of an increase in the tobacco tax. Kansas has three different excise taxes on tobacco or smoking products: cigarettes, other tobacco products, and consumable materials. The tax on cigarettes was enacted in 1927 and was last increased in 2015. As of July 1, 2015, the tax on cigarettes is $1.29 for a pack of 20 cigarettes and $1.61 for a pack of 25 cigarettes. The tax on the privilege of selling tobacco products was enacted in 1972 and is 10 percent of the wholesale price of the product. Tobacco products are generally defined as a variety of smoking and chewing tobaccos but exclude cigarettes. The tax on the privilege of selling electronic cigarettes was enacted in 2015 with the tax of $0.05 per milliliter of consumable material imposed on July 1, 2017. Consumable material is defined to mean any liquid solution or other material that is depleted as an electronic cigarette is used.

KDOR estimated that if the price of a 20-pack of cigarettes increased by $0.50, $1.00, or $1.50, the additional revenue would be $31.3 million, $53.14 million, or $66.66 million, respectively, in FY 2021. Assuming the tax on a 20-pack of cigarettes stayed at the current $1.29, and the tax on milliliters (mls) increased to $0.43/ml, $0.65/ml, or $1.29/ml, then the additional revenue from e-cigarettes would be $7.9 million, $12.42 million, or $25.34 million, respectively, in FY 2021. Assuming the tax on a 20-pack of cigarettes increased by $1.00 to $2.29, and the ml tax increased to $0.76/ml, $1.15/ml, or $2.29/ml, then the additional revenue from e-cigarettes would be $14.67 million, $22.55 million, or $44.84 million, respectively, in FY 2021. The e-cigarette tax revenue would be estimated to increase in subsequent fiscal years while the revenues on cigarettes would be estimated to decrease.

Committee Recommendations

The Select Committee proposes bill draft 20rs1873 be revised to clarify the premium charged to covered individuals whose income is greater than 100 percent of the federal poverty level would be equal to 5 percent of modified adjusted gross income assessed on an individual basis, but the aggregate share cannot exceed 5 percent of the modified adjusted gross income of the household, and the revised bill draft reflecting the clarification be provided to the members of the Senate Select Committee on Healthcare Access.

The Select Committee recommends a copy of 20rs1873, as revised, be delivered to the Special Committee on Medicaid Expansion.

The Select Committee requests the Office of Revisor of Statutes to prepare two memorandums to be delivered to the Special Committee on Medicaid Expansion by comparing bill draft 20rs1873, as revised, to:

- 2019 HB 2066, as amended by the House Committee of the Whole, with clarification the 5.0 percent premium charge in the revised bill draft would not address the same group of persons as those who would be assessed the $25 monthly fee in 2019 HB 2066; and
- 2019 SB 54.

To the extent possible under the law, the Select Committee requests and encourages the Kansas Insurance Department to begin work on a Section 1332 waiver and contract with an actuarial expert on Section 1332 waivers, without requiring approval from the Kansas Department of Administration to enter into a contract for such actuarial services, as timing is of the essence.

If the Select Committee is authorized to continue working on 20rs1873, as revised, it is recommended the bill be introduced on the first day possible and referred to the Senate Select Committee on Healthcare Access, and if the Select Committee is not authorized to continue, then the revised bill draft be introduced on the first day possible and referred to the Senate Committee on Public Health and Welfare.

The Select Committee requests the Kansas Department for Aging and Disability Services provide testimony to the committee that hears 20rs1873, as revised, and apply for a waiver *via* statute on the Institutions for Mental Disease (IMD) exclusion recommended by the Task Force on Mental Health and also use the guidelines CMS published in their November 1, 2017, letter to state Medicaid directors on that subject that integrated crisis stabilization centers into the IMD exclusion.

The Select Committee requests the Kansas Hospital Association (KHA) develop a transparency plan to analyze any current cost shifting to commercial insurance plans and a transparency plan to measure in detail uncompensated care (*e.g.*, charity, bad debt, in-kind donations) on an allowable, not a gross charge, perspective net of disproportionate share hospital (DSH) payments.

The Select Committee requests the Kansas Department of Commerce initiate a rural health care task force, in the vein of the model established in Tennessee, to investigate the health care issues in rural Kansas.

The Select Committee requests KHA work with the University of Kansas Health System to evaluate applying to CMS for a demonstration project for a modified rural health delivery system.

Pending the appropriate approval as per Legislative Leadership Council policy, a letter be sent from the Senate Select Committee on Healthcare Access to the Kansas Congressional delegation asking for their support of the efforts and help in the passage of legislation to improve the fiscal health and modify the delivery system of rural hospitals and providers.

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Minority Report

As members of the Select Senate Committee on Healthcare Access, we are encouraged by the initial discussions about Medicaid expansion going into the 2020 session of the Kansas Legislature. However, we have concerns about many of the provisions in the *20rs1873* bill draft that was recommended by majority party members of the Committee.

We believe a Medicaid expansion bill must be simple and cost effective. The Committee bill is anything but that. It is significantly more complicated, more expensive, and needlessly adds more bureaucratic red tape than the plans offered by Governor Kelly or approved with bipartisan support in the Kansas House of Representatives.

The bill sets up a three-step process for submitting 1115 and 1332 waivers to the Centers for Medicare and Medicaid Services (CMS) for approval. The first two steps have been denied in other states by CMS this year. Specifically, after spending significant time and taxpayer money, both the Utah and Idaho waivers were rejected by CMS. After that rejection, those two states proceeded with full, straightforward Medicaid expansion. Kansas should follow their example.

Submitting waivers that we know CMS will deny creates a delay of implementation of the third step in the Committee bill – allowing for straightforward Medicaid expansion which we know CMS will approve. In addition, we are concerned that the Committee bill does not establish "a time certain" for the submission of a 1115 waiver to CMS.

The Committee bill provides, *"The insurance commissioner shall design the reinsurance program in coordination with the secretary of health and environment to offset any cost of the 1115 waiver…"* (New Sec. 2 (B), page 2). Both the 1115 waiver and 1332 waiver are required to be cost neutral on their own under federal law. We believe CMS will not permit us to co-mingle these waivers.

Reinsurance has nothing to do with Medicaid expansion and should not be included in any bill to expand Medicaid. This idea has never been considered previously by the Legislature in the six years Medicaid expansion has been discussed.

Establishing a reinsurance program is a costly, multi-year process.

In Colorado, for example, a reinsurance program *via* a 1332 waiver was discussed for three years after stakeholder meetings, actuarial analyses and certifications, economic analyses through the Insurance Department, time to draft a waiver and engage with CMS, a public comment period, time to engage their federal delegation, in addition to the 180-day application process itself. It is unrealistic to assume a reinsurance program can be successfully implemented in Kansas in less than a year.

https://www.colorado.gov/pacific/dora/cms-approves-colorados-1332-waiver-reinsurance-program http://leg.colorado.gov/bills/sb17-300

The first step for implementing a reinsurance program should be separate legislation to instruct the Kansas Insurance Department to conduct a feasibility study to determine if reinsurance would be cost effective for the Kansas insurance marketplace.

Establishing a reinsurance program will require a tax increase, which will be very controversial in an election year. We oppose including a tax increase in a Medicaid expansion bill when both the Governor and Kansas House of Representatives have offered proposals to expand Medicaid to 150,000 Kansans **without** a tax increase.

The Committee bill provides, *"The secretary of commerce shall coordinate with secretary of health and environment to certify to the secretary of health and environment each covered individual's compliance with this section."* (New Sec. 3a, page 4) Also: *"Such evaluation shall be a prerequisite for coverage under the act."* (New Sec. 3b, page 5)

While we were led to believe the Committee bill has no work requirement, we believe this provision will create harmful barriers to healthcare access, similarly to an actual work requirement. Instead of simply utilizing the current KANSASWORKS program, it requires a verification process as a condition of eligibility. So, while the beneficiary may not be denied coverage if they cannot find work, the reporting/verification is what created problems in states like Kentucky and Arkansas. The Department of Commerce is very worried about the vague language and what will be required to "track" outcomes.

Another concern we have is the bill adds co-pays for non-urgent care*. "The secretary of health and environment shall submit…waiver or other approval request to assess each covered individual a copayment for each instance of non-urgent emergency care in an amount determined by the secretary of health and environment."* (New Sec. 4b, page 6)

The burden for collecting copayments falls onto providers. Also, KDHE does not have a definition for "non-urgent emergency care."

We believe the penalties for nonpayment of premiums are extremely punitive. They are among the highest and harshest in the nation (New Sec. 4c, page 6). Individuals become ineligible when: First coverage premium payment is not made; Delinquent in making payment by 60 days or more; Delinquent by more than 60 days triggers a 6-month lockout. The KDHE Secretary is given no discretion, so this may put sick people in jeopardy of losing their insurance when they need it the most.

Lockouts result in Kansans "flip-flopping" between being insured and not being insured. This has a negative impact on continuity of care and is detrimental to improving access to healthcare and health insurance. This makes it harder for managed care organizations (MCOs) to effectively manage and coordinate care and harder to measure the quality of care beneficiaries receive.

Multiple studies have found that regular and ongoing access to healthcare reduced preventable hospitalizations for individuals with chronic diseases. In addition, lockouts interfere with treatment for people with mental health and substance use disorders, where continuity of care is extremely important.

The Committee bill provides, *"In awarding any contract for an entity to administer state Medicaid services using a managed care delivery system, the secretary of health and environment shall: require that any entity administering state Medicaid services provide tiered benefit plans with enhanced benefits for individuals who demonstrate healthy behaviors as determined by the secretary of health and environment ."* (New Sec. 6b,3, pages 7-8)

Only Indiana and Nebraska have pursued tiered plans. This will be an expensive, complicated undertaking for the agency and especially for providers. It introduces implementation and on-going operational complexity, which results in additional administrative costs. The implementation costs related to system changes would require around 1,300 hours and cost about $156,000 for the state system. Similar costs will also be incurred by each MCO. This is estimated to be around $468,000. The ongoing administrative costs for this are unknown.

Tiered benefit plans could also be detrimental to the Medicaid network, as providers would likely begin denying Medicaid patients. There is no way for a provider to track a beneficiary's plan.

The Committee bill includes a severability clause should the federal match fall below 90%. (New Sec. 7, page 8) It requires that coverage terminates beginning the first day that the FMAP falls below 90%, resulting in immediate loss of coverage. This is more punitive than the House legislation.

Our last concern is that the Committee bill provides, *"The secretary of corrections shall coordinate with county sheriffs to facilitate Medicaid coverage for any inmate incarcerated in a Kansas jail during any time period that the inmate is eligible for coverage." (New Sec. 12, page 11)* It is unclear whether the Secretary even has jurisdiction to do this.

As evidenced by the experiences of those states who have already expanded Medicaid in a straightforward manner, we conclude that the Legislature, working together with Governor Kelly, should keep the Kansas plan to expand Medicaid simple and cost effective. That means removing the complicated, unnecessary, and proven unsuccessful provisions from the bill draft recommended by the Select Senate Committee on Healthcare Access. We believe doing so is the best way to ensure fiscal responsibility while also providing thousands of Kansans much needed access to affordable healthcare in a timely manner.

Senator Barbara Bollier
Senator Anthony Hensley
Senator Pat Pettey

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Report of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight to the 2020 Kansas Legislature

CHAIRPERSON: Senator Gene Suellentrop

VICE-CHAIRPERSON: Representative Brenda Landwehr

RANKING MINORITY MEMBER: Senator Barbara Bollier

OTHER MEMBERS: Senators Ed Berger, Bud Estes, and Mary Pilcher-Cook; and Representatives Barbara Ballard, John Barker, Will Carpenter, Susan Concannon, and Monica Murnan

CHARGE

KSA 2019 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 any proceeds resulting from the successful transfer be applied to the system for the provision of services for long-term care. 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 (KanCare), and monitor and study the implementation and operations of these programs including, but not limited to, access to and quality of services provided and any financial information and budgetary issues.

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

Annual Report

Conclusions and Recommendations

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services (HCBS) and KanCare Oversight adopts the following recommendations:

- The managed care organizations (MCOs) develop and define a more comprehensive pediatric case management infrastructure;

- The Legislature allocate funding to the Kansas Department for Aging and Disability Services (KDADS) to address the current crisis in accessing psychiatric residential treatment facility services by providing a tiered approach to psychiatric services for children in all Kansas counties;

- A stakeholder group be formed to review alternative or creative ways for applied behavior analysis licensure to address the state's lack of capacity or lack of network adequacy for applied behavioral supports for children currently qualifying under KanCare;

- A KanCare outreach worker be located at each Kansas Department for Children and Families site to assist with the completion of KanCare applications and answering questions regarding KanCare eligibility and the eligibility process;

- KDADS report back to the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight how the state administers its Olmstead plan;

- The Kansas Department of Health and Environment (KDHE) continue to monitor the MCOs and verify claims are paid in a timely manner;

- KDHE and KDADS continue to address reducing the use of anti-psychotic drugs on older adults in long-term care settings;

- KDADS work to provide more surveyors and ensure effective training of survey staff to identify and cite potential abuse and neglect in long-term care settings;

- KDADS continue to develop a multi-year plan to eliminate the Intellectual/Developmental Disability HCBS waiver waiting list;

- The Protected Income Limit be permanently changed in statute at 150 percent of Supplemental Security Income;

- KDHE and KDADS research innovative ways to address the issue of the temporary staffing agencies and their negative impact on rural long-term facilities;

- The Legislature consider an increase in nursing reimbursements for the Technology Assisted HCBS waiver to a level closer to the national average; and

- KDHE, KDADS, and the MCOs look at how to streamline the credentialing process for KanCare providers.

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 2019 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 composed of 11 members: 6 from the House of Representatives and 5 from the Senate. Members are appointed for terms that coincide with their elected or appointed legislative terms. The Committee is statutorily required to meet at least once in January and once in April when the Legislature is in regular session and at least once for two consecutive days during both the third and fourth calendar quarters, at the call of the chairperson. The Committee is not to exceed six total meetings in a calendar year; however, additional meetings may be held at the call of the chairperson when urgent circumstances require such meetings. In its oversight role, the 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 2019 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 through 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 2019 Session (February 15 and April 29) and twice for two days each during the 2019 Interim (August 26 and 27 and November 18 and 19). In accordance with its statutory charge, the Committee's work focused on the specific topics described in the following sections.

KDHE KanCare Overview and Update

KDHE staff provided information on the following topics at the Committee meetings: KanCare program updates, including the continuity of care policy, a corrective action plan (CAP) update; the MCOs' financial status, the status of the State's Section 1115 waiver application, KanCare utilization and cost comparison data, provider panels, OneCare Kansas, and KanCare data and analytics; updates on the Medicaid eligibility application backlog, the status of the KanCare Clearinghouse contract, and the KDHE Clearinghouse staffing; stakeholder and legislative engagement efforts; and a KanCare Executive Summary containing data on eligibility and expenditures, financial summaries, the provider network, medical loss ratio, claims, value-added and in-lieu-of services, and grievances, appeals, and fair hearings received and resolved.

At the February 15 meeting, the then-Acting Secretary of Health and Environment outlined his priorities for KDHE as follows: improve Medicaid eligibility processes, provide focused care for individuals who are elderly and disabled, provide extensive training for staff to mitigate turnover, address key vacancies in leadership, and reduce HCBS waiting lists.

At the April 29 meeting, the Secretary of Health and Environment stated recommendations had been made to the Governor to fill key leadership vacancies in the Health Care Finance Division, specifically the Deputy Secretary of Health Care Finance and the Medicaid Director, and the appointments would be announced soon. The position of Medicaid Medical Director, then held by the Secretary, would be filled in the near future. The Secretary noted areas of accountability to be addressed. He stated, where practical, KDHE would consider the decentralization of services to bring more personalized attention to clients. He added KDHE would pursue innovation to achieve access to primary health care services in all communities. The Secretary stated KDHE would continue to work with the Kansas Health Institute on improving available data, with the goal of turning data into programs and solutions for improved health care services.

The KDHE leadership team was introduced at the August 27 meeting, noting the agency has a 10.0 percent staff vacancy rate within the Division of Health Care Finance. Efforts being made to improve KanCare customer services and reduce response times to fewer than 45 days per application were discussed. A KDHE representative discussed how helpful the protected income level (PIL) increase had been to KanCare members. An explanation was provided of the process used to monitor the MCOs to ensure quality performance through a third-party contract and a variety of other quality review measures. MCOs are rewarded for plan performance, and 3 percent is withheld from capitation payment if the Pay for Performance quality measures are not met at the end of the year. With regard to the increase in PIL being authorized only for one year through a legislative proviso, a KDHE representative noted the PIL change could be made in administrative rules and regulations, which would require less legislative intervention.

At the November 18-19 meeting, the Secretary of Health and Environment outlined the agency's efforts to respond to provider complaints and improve the claims management process. The Secretary stated the Centers for Medicare and Medicaid Services (CMS) had approved raising the PIL from $747 per month to $1,177 per month. The change would exclude 92 percent of those formerly required to pay the client obligation.

KanCare Contracts with MCOs

At the February 15 meeting, a KDHE representative stated KDHE implemented the new KanCare contracts with Aetna Better Health of Kansas (Aetna), Sunflower Health Plan (Sunflower), and UnitedHealthcare Community Plan (United) on January 1, 2019. KDHE conducted extensive readiness reviews of the MCOs to ensure the organizations were prepared to begin the new contracts. KDHE also provided educational sessions in six locations across the state for providers and beneficiaries to explain changes in the new contracts.

A KDHE representative reported KDHE was working with the MCOs to transition from Amerigroup to Aetna in order to facilitate beneficiary changes.

Continuity of care policy; contracting providers. At the February 15 meeting, a KDHE representative stated KDHE implemented its Continuity of Care Policy to ensure a smooth transition as members move between MCOs and to ensure a smooth transition for on-boarding Aetna and off-boarding Amerigroup. A KDHE representative stated, per the policy, any beneficiary who moved to a different MCO was guaranteed no changes to the beneficiary's plan-of-care or prior authorizations for 90 days. Additionally, the policy provided that a contracting Medicaid provider with an existing MCO be treated as a contracting provider by a new MCO for the first 90 days of the plan year to allow additional time for a new MCO to enter into contracts with such provider. This allowed the provider to receive 100.0 percent of the Medicaid fee-for-service (FFS) rate or the contracted rate for the 90 days and not be treated as an out-of-network provider eligible for only 90.0 percent of the Medicaid FFS rate. The 90-day timeline was the minimum time frame and could be extended as needed should, for example, the MCO need additional time to review and assess the plans-of-care and prior authorizations or to finalize contracts with providers.

A KDHE representative stated at the April 29 meeting that Aetna extended the Continuity of Care Policy timeline beyond the required 90 days.

Aetna Corrective Action Plan

A KDHE representative reviewed the notification on July 24, 2019, of Aetna's non-compliance with the terms and conditions of the KanCare request for proposal (RFP). Aetna's CAP submitted on August 6, 2019, was rejected; KDHE had anticipated a more detailed CAP. A request was made for a review of the MCO contract with Aetna regarding the steps KDHE could take regarding assignment of new members during a period of noncompliance and a date certain on when KDHE would take such action.

At the November 18-19 meeting, a KDHE representative noted the updated CAP from Aetna had been accepted and stated KDHE continued to enforce high standards while Aetna worked to achieve full compliance.

MCO Financial Update

A KDHE representative reviewed MCO financial data (profit and loss) for calendar year (CY) 2018 at the April 29 meeting. The KDHE representative commented the MCOs' total gross profits of 1.2 percent based on the CY 2018 National Association of Insurance Commissioners filings were in line with program targets, and plans showed an increase in net profit of $1.9 million when comparing the fourth quarter of 2017 to the fourth quarter of 2018, an increase that was driven by a $500.0 million increase in revenues. The process used to determine MCO profit using medical loss ratio was explained.

At the August 27 meeting, Committee members discussed the profit/loss ratio of the MCOs. A KDHE representative noted, system-wide, the capitation-rate profit stays about 1.0 percent. Typically, a first-year MCO receives a profit of approximately negative 4.0 percent, as was the case with Aetna. A review of the MCOs' profit/loss ratio was provided at the November 18-19 meeting.

Section 1115 Waiver Extension

At the February 15 meeting, a KDHE representative stated the Section 1115 Waiver was approved in December 2018, and the extension is valid until December 31, 2023. KDHE is required to provide quarterly and annual reports to CMS. A KDHE representative updated the Committee on the Section 1115 Waiver at the April 29 meeting, noting the MCOs had completed the first quarter of operations. The KDHE representative stated KDHE conducted training for all staff on the standard terms and conditions (STCs), the rules under which the Medicaid program operated. Responsibilities for each STC were assigned to a staff member to maintain compliance with STC requirements and to avoid financial penalties of up to $5.0 million in lost Federal Financial Participation funding that may be imposed on new waivers for non-compliance with STCs. The first quarterly report to CMS was due within 60 days after the end of the first quarter.

Health Care Access Improvement Panel Provider Assessment

As directed by the 2019 Legislature, KDHE reported it was increasing the Health Care Access Improvement Panel provider assessment from 1.83 percent of net inpatient revenues to 3.0 percent of net inpatient and outpatient revenues and changing the base year to 2016. A KDHE representative noted this increase in program funds will require amending the Section 1115 waiver to account for new moneys in the waiver's budget neutrality. CMS approval of the Section 1115 waiver amendment is required to implement the Health Care Access Improvement Program (HCAIP) provider assessment changes. Target implementation is July 1, 2020, pending CMS approval. The KDHE representative indicated the HCAIP increase to 3.0 percent was modest and only half of the 6.0 percent cap.

OneCare Kansas

A KDHE representative described the OneCare Kansas program at the February 15 meeting. OneCare Kansas is a wrap-around "whole-person" approach based on a medical home. The program is a redesigned health homes program for a limited population to stay within the eligible funding and with the only changes to the previous program being an opt-in provision and a limit on the MCOs administrative cost of 10.0 percent. It includes six core services, in addition to the standard Medicaid services. A funding cap of

$2.5 million from the State General Fund (SGF) was established.

A KDHE representative noted OneCare Kansas was scheduled to begin in state fiscal year (FY) 2019; however, KDHE may request an extension to a start date of January 1, 2020, because additional time may be needed to finalize the program design in order to submit a Medicaid state plan amendment specific to the program design. When the program design is finalized, a Medicaid state plan amendment was to be submitted to CMS.

A KDHE representative provided an update of OneCare Kansas at the April 29 meeting, stating the program would coordinate physical and behavioral health care with long-term services and supports (LTSS) for persons with chronic conditions. [*Note:* The scheduled implementation date remained as January 1, 2020.] The KDHE representative stated KDHE has a contract with the University of Kansas to assist in defining the population and narrowing the criteria for those eligible to participate in OneCare Kansas. The reimbursement rate, scope, or identification of the target populations had not been established but would be provided to the Committee when available. A newsletter was created to keep interested groups apprised of the program's progress.

At the August 27 meeting, a representative of KDHE stated the new OneCare Kansas initiative was completing data analysis to identify the target population, after which capitation rates would be developed for the MCOs; the target implementation date was set for January 1, 2020.

At the November 18-19 meeting, a KDHE representative noted the target population had been determined for the OneCare Kansas: children and adults with asthma who are at risk for a variety of other chronic conditions, including diabetes, chronic obstructive pulmonary disease, mental illness, and substance use disorder; and those with severe bipolar disorder or paranoid schizophrenia. It was determined this combination offers the highest savings and the best health outcome improvements. By setting the implementation date as April 1, 2020, to coincide with the beginning of a quarter, KDHE would receive enhanced federal match funds for the entire quarter. The enhanced federal match will continue for eight quarters, after which cost savings should fill the federal funding gap. Outcomes data should be available in three quarters, when additional data would be available.

KanCare Utilization and Data Analytics

A KDHE representative outlined the three pillars of KDHE's strategic vision related to data: analytical, which was reviewed during the February 15 Committee meeting; operational; and public health, to be reviewed at a future meeting. The operational pillar focuses on measuring effectiveness and impacts of policy changes. KDHE is working to improve standardized reporting on Medicaid data. It was reported the MCOs submit reports to KDHE, and KDHE wanted to receive the raw data behind the reports from the MCOs so KDHE can make better comparisons across MCOs.

An update on the timeline for the Kansas Eligibility and Enforcement System (KEES) upgrade, for which approval for state funding was received earlier in 2019, was provided at the April 29 meeting. The Finance and Analytics Director stated the upgrade is a joint venture by KDHE and the Department for Children and Families (DCF). CMS approved the advance planning document on April 1, 2019, to use the funds for the KEES upgrade at an enhanced federal match rate. The anticipated launch date for the ten-month upgrade process would be mid to late March 2020.

A variety of performance metrics were provided at the November 18-19 meeting. The data indicated approximately 13 million claims had been processed during the first three quarters of CY 2019.

KanCare Meaningful Measures Collaborative (KMMC). At the February 15 meeting, a representative of the Kansas Pharmacists Association reported on the progress of the KMMC, which is an initiative to increase the validity and usefulness of data broadly available about KanCare, as well as to establish a transparent process that "transcends administrations and individuals." The representative reported the 75 KMMC members had been divided into 3 groups: the Executive Committee, the Stakeholder Working Group, and the Data Resources Working Group. He identified the function of each group, stating their work would result in precise, clear decisions. A representative of the Kansas Association of Centers for Independent Living and chairperson of the Stakeholders Working Group outlined the work of the group: determine the data measures, establish criteria, and provide a consumer engagement pilot. A KDADS representative reported data mapping and a methodology template would enable the Data Resources Working Group to finalize analytics and develop a work plan for the remaining measures.

A first report from the KMMC was provided at the August 26 Committee meeting. KMMC members were building consensus through stakeholder and consumer engagement and initiating a pilot to establish priorities. In addition to reports to the Committee with supporting data, KMMC reports were also to be provided to the Senate Committee on Ways and Means, House Committee on Appropriations, House and Senate budget committees, House Committee on Health and Human Services, and Senate Committee on Public Health and Welfare. A representative of the KMMC Stakeholder Working Group discussed the stakeholder engagement and consumer engagement pilot projects and the process undertaken to identify areas of interest and key themes. The priorities measures pilot group reviewed the state-reported measures and selected three pilot measures for which additional clarity was needed: health care utilization, eligibility determination, and network adequacy. Those were being winnowed into groups or themes in order to establish priorities. The next steps would involve identifying and assessing potential meaningful measures from the Stakeholders Working Group priority areas, developing a data map, and prioritizing the selected meaningful measures. The KMMC Data Resource Working Group was compiling the stakeholder information and developing measurable data. The Secretary of Health and Environment noted quality information is needed to design the KanCare plan properly. A written-only update on the KMMC's progress was provided at the November 18-19 meeting.

KanCare Clearinghouse

Medicaid Eligibility Backlog

A KDHE representative provided specific details at the February 15 meeting on KDHE's efforts to reduce the backlog on the applications for family medical assistance (Family Medical), elderly and disabled medical programs (Elderly and Disabled), and long-term care (LTC Medical) medical services. She stated the application backlog at that time was 235, broken down as follows: 78 applications for Elderly and Disabled , 115 applications for LTC Medical, and 42 applications for Family Medical.

At the April 29 meeting, a KDHE representative reviewed the status of Medicaid eligibility applications. She identified applications over the 45-day limit for processing applications (Family Medical, 36 applications, or less than 1.0 percent; Elderly and Disabled, 86 applications, or 3.0 percent; and LTC Medical, 93 applications, or 9.0 percent) and pending applications waiting for additional information (Family Medical, 150 applications, or 3.0 percent; Elderly and Disabled, 314 applications, or 12.0 percent; and LTC Medical, 153 applications, or 14.0 percent). The KDHE representative noted a downward trend on the number of applications exceeding 45 days and explained staff are receiving more extensive training.

With regard to the number of Elderly and Disabled applications not processed within 45 days, a KDHE representative indicated a notice of non-compliance was sent to Maximus, the eligibility processing contractor, on January 30, 2018, requiring improvement in the numbers by June or July 2018. The KDHE representative noted improvement as a result of measures undertaken by Maximus. She stated, although the number of Elderly and Disabled applications not processed within 45 days was down, the goal of bringing the LTC Medical applications in-house to KDHE was to enhance customer service. The enhanced customer service would include calling individuals to obtain outstanding information rather than denying applications for failure to provide the requested information.

A KDHE representative indicated the base contract with Maximus was amended to address the cost of additional staff to handle applications not processed within 45 days. In addressing the possibility of additional cost to the State if Maximus were again to fall behind in processing applications and need additional staffing, the KDHE representative stated Maximus could always request additional staff, but KDHE would determine whether the staffing increase was necessary to keep the application and review process moving appropriately.

At the November 18-19 meeting, a KDHE representative reviewed the Medicaid eligibility processing status for applications over 45 days for applications in active and pending status and for the following eligibility categories: Family Medical, Elderly and Disabled, and LTC Medical. She noted during the open enrollment period for the Patient Protection and Affordable Care Act Health Insurance Marketplace (Marketplace) (November 1 through December 14), the agency would receive between 10,000 and 15,000 applications for individuals potentially eligible for Medicaid or CHIP. The KDHE representative provided a staffing and workload update for the transition of KanCare Clearinghouse services to KDHE staff and noted KDHE's efforts to communicate with stakeholders and providers through the KanCare newsletters, rapid response calls, monthly meetings with nursing facility associations, and surveys of providers and eligibility staff. The KDHE representative noted the positive feedback from stakeholders and the improvement in customer service. With the exception of a few nursing facilities that were to transition in December 2019, Frail Elderly (FE) and LTC Medical applications were being processed by KDHE staff. The KDHE representative stated the Upload Document Portal, used by all nursing facilities to submit information that automatically links to an applicant's case, had been helpful in reducing the backlog in application processing. Maximus still answers calls at the call center, but any questions regarding eligibility, including spend downs, are routed to KDHE staff.

With regard to the eligibility process for restrictive settings, the interface with Appriss provides daily information on who enters and exits county jails. All eligibility processes for restrictive settings are handled by a dedicated unit of State staff who work to reinstate KanCare benefits for individuals upon release from these settings. The state prison information is provided by the Kansas Department of Corrections, not Appriss.

Oversight of Maximus

Employee training. A KDHE representative addressed issues with Maximus at the February 15 meeting. Complaints about the timeliness of eligibility determinations had been received by KDHE from providers and beneficiaries over the past several years. KDHE moved responsibility for employee training and quality of work from Maximus to KDHE, effective January 1, 2019. The new approach provides training to certify the qualification of each employee. A review coach is also available to employees.

Maximus contract and RFP. At the February 15 meeting, a KDHE representative stated Maximus' contract had been temporarily extended so KDHE could incrementally bring the application process for Elderly and Disabled and LTC Medical services in house. She stated KDHE would issue a RFP for processing the Family Medical applications.

KDHE's plan, pending negotiations on the contract extension options with Maximus, was to transition away from contractor Maximus for the processing of applications for Elderly and Disabled and LTC Medical services by January 1, 2020, with Maximus continuing to process Family Medical applications through June 30, 2020.

A Committee member requested KDHE provide information about how the move of application processing for LTC Medical and Elderly and Disabled services to KDHE would affect any existing KDHE contracts and the number of employees and the space needed to accomplish the change.

In compliance with a budget bill proviso requiring an update on the KanCare Clearinghouse contract be provided to the Committee should an agreement be reached with Maximus, a KDHE representative reported at the April 29 meeting that an agreement was reached with Maximus to extend the contract for 18 months, through the end of CY 2020. The contract terms would allow KDHE to assume the processing of the more complex applications for Elderly and Disabled and LTC Medical services by January 1, 2020. In CY 2020, KDHE would also continue the training and quality responsibilities assumed in CY 2019. Maximus would continue processing all applications through CY 2019, with one caveat, and continue processing applications for Family Medical services for CY 2020. In preparation for the assumption of responsibilities on January 1, 2020, KDHE would process applications that come through the Marketplace and some cost-of-living adjustments for Elderly and Disabled and LTC Medical services during the last half of CY 2019. Later in CY 2019, KDHE would issue a RFP for a new contract to begin January 1, 2021, to process only the Family Medical applications; KDHE would continue to process the Elderly and Disabled and LTC Medical applications. The KDHE representative noted KDHE would expect bids from three, four, or five Maximus-type providers for the new KanCare Clearinghouse contract to begin in CY 2021. The bidding process would be open to all entities, including Maximus.

A KDHE representative stated at the April 29 meeting KDHE would request Committee support for the restoration of the $5.0 million funding removed from the KDHE budget, pending review following release of revised human services caseload estimates, in order to assist in the negotiating of the Maximus contract. The representative noted restoration of the funding would allow the contract to be funded in full and enable a smooth transition in KDHE application processing responsibilities beginning January 1, 2020. Without the $5.0 million, KDHE would have to find a way to self-fund the Maximus operation or the in-house operation.

At the April 29 meeting, a KDHE representative stated a contract was signed to lease a building at Forbes Field in Topeka near the KanCare Clearinghouse location to house the KDHE staff who will be processing the Elderly and Disabled and LTC Medical applications. KDHE reviewed available state offices, but none were found to meet the program's needs. The proximity of the contracted building to the KanCare Clearinghouse location would facilitate on-site training, quality operations, and face-to-face interactions between KanCare Clearinghouse and KDHE staff.

A KDHE representative stated at the August 27 meeting that Maximus would continue processing Family Medical applications through all of CY 2020, but KDHE released a RFP for a new contract to handle the Family Medical portion to begin at the end of the Maximus contract. The RFP was sent to six prospective contractors.

An update was provided at the November 18-19 meeting regarding the Maximus contract, the transition to KDHE, and the RFP for Family Medical applications processing. Maximus will continue processing Family Medical applications through the end of the contract period, December 31, 2020. The transition of responsibility for Elderly and Disabled and LTC Medical application processing to KDHE staff will be completed one month ahead of schedule (December 1, 2019). KDHE was reviewing the bids received on a RFP for a new contract for processing of Family Medical effective January 1, 2021. The Medicare Savings Program (MSP) is completely handled by KDHE staff, and pending MSP applications that Maximus began are all in-house and caught up. Some Maximus staff were hired by KDHE.

Medicaid Expansion

The Secretary of Health and Environment stated at the April 29 meeting KDHE would be prepared to meet the required timeline for implementation should the Legislature approve Medicaid expansion. In considering the State's move toward Medicaid expansion, the Secretary addressed the cost of "churning"—members moving back and forth between eligibility and non-eligibility—at the November 18-19 meeting. If there are work requirements, drug testing, premiums, or lockouts connected with Medicaid expansion, the Secretary stated, churning will be much more prevalent. If that happens, KDHE will need more staff to deal with it.

A KDHE representative provided a cost estimate for 2019 HB 2066 (Medicaid expansion) based on certain assumptions, including a straight Medicaid expansion. With offsets, the effective match rate for Kansas would be approximately 97 percent federal/3 percent state. Requests were made for multiple follow-up information to be provided at the next meeting.

Asset Recoupment

The State can use a complex process to attach assets, such as a house, after a Medicaid recipient (and, if applicable, the spouse) dies. These assets produce $10 million to $12 million annually, according to the KDHE General Counsel at the February 15 meeting.

Telemedicine

At the February 15 meeting, a KDHE representative addressed the Kansas Telemedicine Act enacted in 2018 (Senate Sub. for HB 2028). He stated the bill purported to allow coverage for thousands more types of telemedicine services than are allowed by CMS. Effective January 1, 2019, KDHE implemented a policy to cover the specific services allowed by CMS. KDHE was working with advocate groups to identify additional services that may be covered if the State were to contribute a portion of the funding. A Committee member requested KDHE contact Kansas' federal delegation for help at the federal level to expand the scope of Medicaid coverage of telemedicine. The Committee member mentioned other states were also having this issue.

KDADS Overview and Update

At the February 15 meeting, the then-Acting Secretary for Aging and Disability Services noted her previous experience with the forerunner to KanCare and the Kansas Department of Social and Rehabilitation Services. The Secretary stated she planned to enhance collaboration across agencies as Secretary for Aging and Disability Services.

A KDADS representative stated KDADS was hopeful a HCBS provider rate increase scheduled to go into effect April 1, 2019, and increased training would help address the provider shortage. The KDADS representative noted the CAP initiated by CMS and explained both KDADS and KDHE had completed the operational items of the CAP. After eight quarters of monitoring for compliance, the plan will be considered successful.

At the August 27 meeting, the Secretary for Aging and Disability Services highlighted several changes being made: slowing down the HCBS waiver renewals to allow for additional input from stakeholders, placing eligibility workers at local DCF offices to assist with eligibility applications, and creating a State Hospital Commission. The Secretary introduced a KanCare Strategic Planning Document to illustrate the agency's long-term goals (2020-2024) to modernize the continuum of care through technology, collaboration, and innovation; revitalize self-direction offerings and support self-direction and self-determination through programming and policies; improve consumer-driven decision making and program design; improve workforce development across the state; increase meaningful and community-integrated employment opportunities for populations served by KDADS; implement comprehensive approaches to link target populations to accessible community-based housing; adopt a strategic prevention framework; and have movement toward data-informed continuous quality improvement. A request was made for KDADS agency staffing plans and the required funding for staffing the agency.

At the November 18-19 meeting, the Secretary for Aging and Disability Services provided the KDADS Strategic Planning Document and provided an update on multiple topics within the agency's purview. The Secretary reported work with the Kansas Department of Labor to identify direct care workers and provisional licensed staff workforce issues and determine the possible use of individuals outside the health care labor market who might be able to fill openings if additional pay and training was provided. The Secretary referenced two workforce programs in place to fill critical health positions: the Kansas Health Professions Opportunity Project and the State Board of Nursing-approved licensed mental health technician training program in place at Osawatomie State Hospital (OSH), which received approval in September 2019 to expand to Larned State Hospital (LSH) as a pilot project.

The Secretary noted no systemic issue was found on the issue of individuals with disabilities losing access or receiving a reduction in food assistance benefits, and the issue has been resolved. The Secretary also provided an update on the Family First Prevention Services Act and the process for the accreditation of beds in a qualified residential treatment program. The Secretary noted the KDADS budget needs to address staffing and program services within the agency.

Meetings Facilitated by Wichita State University

At the April 29 meeting, a KDADS representative highlighted a plan to change the focus of monthly meetings facilitated by Wichita State University to begin brainstorming ways to address social determinants, such as housing, transportation, caregiver support, and nutrition. The goal will be to discuss with MCOs how quality of life, medical, and behavioral health needs can best be met for the HCBS waiver population and to provide this information to the Legislature.

Cost of Specialized Medical Care Rate Increase

A KDADS representative stated the estimated cost of increasing the specialized medical care (SMC) rate for Intellectual and Developmental Disability (I/DD) and Technology Assisted (TA) HCBS waivers to $47 per hour would be $9.6 million from the SGF ($2.3 million for the I/DD waiver and $7.3 million for the TA waiver) based on current utilization and potential increases in utilization at current caseload.

PACE

A KDADS representative commented at the February 15 meeting on the PACE initiative designed for comprehensive care for elderly people. The KDADS representative stated the PACE program serves about 555 individuals in 23 counties per year. Because of legislation enacted in 2018, funds were available for administrative case management to expand PACE and improve other HCBS waiver programs. KDADS issued a RFP for a contract that would expand these services by Spring 2019. The RFP bids were submitted in January 2019, and KDADS was in the process of reviewing the technical proposals. Administrative case management would be providing assistance with completing Medicaid applications to individuals who were functionally eligible for PACE or for Traumatic Brain Injury (TBI), FE, or Physical Disability (PD) waivers. The KDADS representative noted PACE operates separately and apart from the MCOs.

When a Medicaid-eligible person comes to an Aging and Disability Resource Center (ADRC), the individual is given the option of PACE if all the criteria are met. PACE participants are subject to a PIL. A KDADS representative stated there are plans to expand PACE into additional rural areas as interest increases. KDADS also planned to issue a RFP for ADRC contracts. The then-existing ADRC contract ended in March 2019.

At the April 29 meeting, the Midland Care Connection Chief Executive Officer provided detailed information regarding PACE services and noted the program is more individualized and less expensive than Medicaid and Medicare.

Quarterly HCBS Report

Written testimony was regularly provided by KDADS on the average monthly caseloads for HCBS waivers, Money Follows the Person, LTC facilities, and state institutions; average census for state institutions and LTC facilities; and average length of stay for psychiatric residential treatment facilities (PRTFs). A KDADS representative provided information on savings on transfers to HCBS waivers and the HCBS Savings Fund balance. (See Appendix A for the 2019 report.)

At the April 29 meeting, a KDADS representative provided the I/DD waiver participation by MCOs.

HCBS Waiver Renewals

At the February 15 meeting, a KDADS representative listed four HCBS waivers—I/DD, TBI, FE, and PD—scheduled to be renewed in 2019. The KDADS representative provided an update at the April 29 meeting, stating I/DD and TBI draft waiver renewals had been submitted to CMS for review. Initial submissions for the FE and PD waiver renewals would be due to CMS by July 1, 2019. Information was provided on the public comment period and stakeholder engagement for the FE and PD waiver renewals and efforts made to improve public access and involvement in the stakeholder engagement process, including live streaming, recording, and captioning of the sessions.

At the November 18-19 Committee meeting, a KDADS representative provided information on the 13 waiver renewal listening sessions KDADS initiated over the prior three months for stakeholder input on the FE, I/DD, and PD waivers that were up for renewal. A list of common themes from the listening sessions was included in the testimony; services, transportation, employment, and workforce issues were the top themes. She noted the stakeholder concerns expressed indicated the agency had more work to do on the renewals. With regard to the 12-hour limit for specialized medical care for individuals on the TA and I/DD waivers, amending the waivers to make the 12-hour cap a soft cap or eliminating the cap altogether was at the top of the KDADS list.

KDADS initiated TA, Brain Injury (BI), and Autism work groups to identify barriers and services that need enhancing. A Serious Emotional Disturbance (SED) waiver work group was also being initiated.

BI Waiver Delays

A KDADS representative updated Committee members at the August 26-27 meeting regarding the BI waiver implementation. Prompted by a 2018 legislative proviso, the TBI waiver was transitioned into the BI waiver. The steps necessary to accomplish the transition and the plans for including children in the BI waiver were explained. New functional assessment tools for adults with TBI and acquired BI had to be created and tested, with approval by CMS for the BI waiver for the adult population occurring August 5, 2019. KDHE could not apply for the inclusion of children on the BI waiver until a functional assessment tool for BI youth was developed and tested, and training on the tool was provided. These requirements had an October 28, 2019, target completion date, at which time KDHE would be able to apply to CMS for a waiver amendment to add the youth population to the BI waiver. The completed BI waiver would add individuals from birth to age 16.

An amendment to expand the BI waiver to include youth ages birth through 15 years was submitted by KDHE to CMS for review and approval on November 6, 2019. A KDADS representative noted development of the functional assessment tool for youth ages 4 through 15 years was completed and trainings for assessors continue. For children from birth through three years of age, the waiver would be accessed through a physician order.

Assessment and Person-Centered Service Plan Development for HCBS Waiver Services and CMS Conflict of Interest Ruling

At the August 26-27 meeting, a KDADS representative explained the CMS Conflict of Interest Final Rule (42 CFR 441.301(c)(1)(vi)): an individual may not receive both direct waiver services and case management from the same organization. KDADS was implementing a Statewide Transition Plan to comply with the Final Rule by making adjustments to the delivery system.

Final Settings Rule

At the August 26-27 meeting, a KDADS representative briefly discussed the status of the Statewide Transition Plan for the final HCBS Settings Rule (42 CFR 441.301(c)(4)-(5)), which received initial approval from CMS on May 21, 2019. KDADS launched Community Connections as it began the process of coming into compliance with the rule. Site-specific assessments were expected to begin in September 2019 with providers. The representative stated a Community Connections website would be launched containing tools and resources for use by providers and interested parties to obtain information and guidance through the process.

HCBS Waiting Lists Update

HCBS waiting list updates were provided at each Committee meeting. At the February 15 meeting, a KDADS representative stated there was an eight-year waiting list for services on the I/DD waiver and a high response rate when services were presented to an individual on the list. The KDADS representative reported at the February 15 meeting the HCBS I/DD waiting list had 3,911 individuals and 9,076 individuals were receiving services, and 1,527 individuals were on the HCBS PD waiting list and 5,800 individuals were receiving services.

At the April 29 meeting, a KDADS representative stated the maximum number of individuals that could be served through available appropriations were being served. She noted, without additional appropriations, individuals would come off the waiting list only if someone else no longer received services or if a crisis or exception request was made for services. Due to CMS regulations, the waiting list could not be reduced by offering limited services to more individuals. The KDADS representative confirmed KDADS could evaluate a crisis exception request made by a community developmental disability organization (CDDO) and make a determination to prioritize the individual for services regardless of where the individual is on the waiting list.

At the August 26-27 meeting, a KDADS representative explained the federal parameters of the HCBS waiver programs to allow each state flexibility to tailor services to the needs of the individuals, so long as the costs of the services are less than the costs for parallel services in an institution. The KDADS representative provided updated waiting list numbers. At the November 18-19 meeting, a KDADS representative reported as of November 7, 2019, the HCBS I/DD waiting list had 4,021 individuals and 9,019 individuals were receiving services, and 1,576 individuals were on the HCBS PD waiting list and 5,872 individuals were receiving services. As of the November meeting date, in CY 2019, 257 offers for HCBS services were made to individuals on the I/DD waiting list and 1,394 offers were made to individuals on the PD waiting list.

A KDADS representative provided an estimate of the cost to eliminate the I/DD and PD waiting lists at the November 18-19 meeting. Based on current costs and utilization, it would cost $78,585,260 from the SGF to eliminate the I/DD waiting list and $414,046,420 from the SGF to eliminate the PD waiting list. The estimates do not include potential costs to increase the network of available providers. Being on the waiting list does not mean the individual is not receiving services and stated some CDDOs and I/DD systems provide some services that are not dependent on HCBS waivers. To obtain a breakdown of the needs of the waiting list population, KDADS would have to engage all partners at the CDDOs to obtain the information. Although not impossible, the process would be difficult and take some time and would require additional funding for the CDDOs to accomplish.

It was reported at the November 18-19 meeting that KDADS and KDHE were collaborating on a Disability and Behavioral Health Employment Support pilot program to address the waiting lists by helping 500 members obtain and maintain employment. The pilot would be voluntary for eligible KanCare members.

Louisiana system to eliminate I/DD waiting list. In response to a request made at the August 26-27 meeting, a KDADS representative described how Louisiana eliminated its I/DD waiting list as of April 2018. She noted Louisiana has five I/DD waiver programs (three for children, one for adults, and one for adults and children) with a different menu of services for each program; Kansas has one program and one menu of services. The Louisiana system allows a member to receive only the services needed, but Kansas is required to provide all individuals on the I/DD waiting list the full menu of services, if needed. Kansas would need to apply to CMS to establish a tiered waiver program. Potential concerns were expressed about making the tiered model fit Kansas because Kansas has more progressive services and stakeholders would have reservations with Louisiana's approach.

Oversight of LTC Facilities

Use of Anti-psychotic Drugs in Nursing Facilities

At the February 15 meeting, a KDADS representative reported the agency is making progress in reducing the use of anti-psychotic drugs in nursing facilities. Kansas ranks 42nd in the nation in the use of anti-psychotic drugs in nursing facilities, and KDADS expects to continue to show improvement. At the April 29, August 26-27, and November 18-19 meetings, a KDADS representative announced progress in reducing the use of anti-psychotic drugs in nursing homes.

Nursing Facility Surveys

A KDADS representative stated at the February 15 meeting that the salary increase for LTC certified surveyors has increased the number of staff; therefore, the time gap between surveys has been reduced. It has also increased the number of complaints investigated, lowered the vacancy rate, and increased the total number of criminal record background checks. A minor complaint follow-up is conducted with a phone call; more serious issues always result in an on-site visit. Additional outside contractors conducted nursing facility surveys only temporarily, and none would be used going forward.

At the April 29 meeting, a KDADS representative stated, as of the meeting date, no nursing facility surveys were more than 12 months past due, and surveys were occurring every 11 to 11.5 months in compliance with the CMS requirements. The salary increase for certified registered nurse surveyors made possible through budget enhancements in FY 2018 had improved retention and recruitment. Changes in CMS and state processes and available online training had allowed the certification of surveyors to often take 6 months instead of 12 months. The number of vacant health facility surveyor positions as of the meeting date was 10 full-time equivalent (FTE). The KDADS representative noted changes in CMS interpretations had significantly reduced immediate jeopardy citations.

A KDADS representative stated nursing facility survey data did not include data on assisted living facilities. A different survey process based only on state regulations and not federal regulation was required for assisted living facilities. At the time of the April 29 meeting, 10 assisted living facilities had surveys completed more than 16 months previously and the surveys of 50 facilities had been completed between 12 to 15 months previously. There were 7 surveyors to complete surveys in 450 assisted living facilities across the state, 7 being the total number of surveyors for assisted living facilities funded, and additional funding would be required to improve the frequency of the assisted living surveys.

At the August 26-27 meeting, a KDADS representative noted the LTC facility survey backlog had been reduced, and all state-only surveyor positions had been filled, but 17 certified health facilities surveyor positions remained open, most of which were in the northeast region of the state where the wages paid are not competitive with those paid by hospitals and other providers.

Adult Care Home Receiverships

A KDADS representative provided an update at the February 15 meeting on the receivership actions taken to address Skyline, Pinnacle, Fort Scott, Great Bend, Franklin Peabody, and Westview of Derby nursing facility bankruptcies. She explained KSA 2019 Supp. 39-954 allows the Secretary for Aging and Disability Services to file an application for an order appointing the Secretary as the receiver to operate an adult care home when certain conditions occur. The Secretary for Aging and Disability Services, using resources from the Civil Monetary Penalty (CMP) Fund, had stabilized the operation of each home; none had closed. She reported the Secretary for Aging and Disability Services was working to find new operators and to date had returned $2.8 million to the CMP Fund.

At the April 29 meeting, a KDADS representative reviewed the status of LTC facilities' receiverships. From March 2018 until that meeting, KDADS was involved in 22 receivership actions and two of those receiverships had been transferred to private receivership. Of the $4.6 million borrowed from the CMP Fund for the Skyline receivership, $4.0 million had been returned to the State. The Secretary for Aging and Disability Services continued to meet with landlords and prospective buyers to discuss efforts to locate new operators for the 15 Skyline facilities. The remainder of the receiverships were being marketed for sale or efforts are being made to locate new operators. The KDADS representative expressed gratitude for 2019 SB 15 that amended receivership statutes, including increasing the financial scrutiny of new applicants and, in the case of change of ownership, defining "insolvent," and allowing a receiver immediate access to accounts receivable instead of state CMP funds. These changes would obviate facility mismanagement, provide more oversight, and ensure similar receivership situations do not recur. The KDADS representative noted only one facility under receivership was closed; due to the low number of residents, it made more sense to move the individuals. The process of choosing a new operator was explained.

At the August 26-27 meeting, a KDADS representative reported a potential operator had been identified for the 15 Skyline facilities and $4.6 million had been returned to the CMP Fund. The KDADS representative noted the Pinnacle facilities were being marketed for sale.

At the November 18-19 meeting, a KDADS representative noted the 15 Skyline facilities were sold October 1, 2019; the two Pinnacle facilities were being marketed and one sold November 1, 2019; and the Secretary for Aging and Disability Services been appointed receiver for the Great Bend and Peabody facilities. The CMP Fund balance as of October 31, 2019, was $5,039,123. No facilities were closed in the most recent year, avoiding transfer trauma for residents.

Behavioral Health

Psychiatric Residential Treatment Facilities

A KDADS representative, commenting on behavioral health, reported at the February 15 meeting on the requirement of "medical necessity" before admitting youth to a PRTF. The agency employed the Kansas Foundation for Medical Care

(KFMC) to audit the finding of medical necessity; KFMC determined 100 percent of the medical necessity placements were appropriate.

At the April 29 meeting, a KDADS representative stated the number of children on the PRTF waiting list remained steady, with a total of 150 children on the MCOs' waiting lists. He also noted an interagency collaboration among DCF, KDHE, and the Kansas Department of Corrections about the Children's System of Care for Behavioral Health Services based on 2018 House Sub. for SB 179 to seek proposals through a competitive process for juvenile crisis intervention centers.

A KDADS representative reported at the August 26-27 meeting on the recommendations in a study by the National Association of State Mental Health Program Directors Research Institute regarding the use of PRTFs in Kansas to evaluate wrap-around services for those on the PRTF waiting list and to identify barriers to reimbursement for services. The KDADS representative reported 155 individuals on the PRTF waiting list, 49 of whom were in foster care. Additional relief for the waiting list was anticipated with the launch of qualified residential treatment facilities by DCF in October 2019. There are 318 beds statewide for PRTF individuals. The study was initiated to determine how to better address the waiting list. A workforce shortage also affects the waiting list. Each MCO determines PRTF medical necessity. At the November 18-19 meeting, a KDADS representative reported a PRTF waiting list of 159 individuals as of November 4, 2019, 35 of whom were in foster care. Information was provided regarding the redesignation of a hospital in Hays that provided PRTF services. The children's acute care services were moved to Wichita, which resulted in no children's psychiatric hospital in the western side of the state. The hospital in Hays was expected to open 38 new PRTF beds by the end of CY 2019. An update is to be provided at the next meeting on what is being done to address PRTF capacity and the need for children's psychiatric hospitals in western Kansas.

State Hospitals

At the February 15 meeting, a KDADS representative briefed the Committee on the state hospitals. At each meeting, KDADS staff referenced data regarding weekly vacancy rates and overtime trends at OSH and LSH.

At the April 29 meeting, a KDADS representative announced the Commissions on Aging and Community Based Services would combine into one, and a new State Hospitals Commission would be established. The new initiative would allow the four state hospital superintendents to begin collaborating regularly to develop a more coordinated plan for the state hospitals and to allow input from the Behavioral Health Commission.

At the August 26-27 meeting, a KDADS representative highlighted three notable services at the state hospitals: the mobile on-site forensic evaluations at LSH, the exceptional adaptive and assistive technology offered at Kansas Neurological Institute (KNI), and the outreach services provided at Parsons State Hospital and Training Center (PSHTC).

At the November 18-19 meeting, comprehensive statistics regarding the state hospitals' vacancy rates and overtime trends were provided.

Osawatomie State Hospital

A KDADS representative stated at the April 29 meeting that the waiting list at OSH had no more than one or two individuals in the previous several weeks and had consistently been below the 20 or so individuals at the first of the year. The KDADS representative credited new triage efforts to ensure care was provided with the reduction in the waiting list and expressed hope the efforts would lead to eventually lifting the OSH moratorium. The KDADS representative stated no plan for OSH had been formulated to rebuild or remodel; a plan would be proposed for the 2020 Legislative Session. At the August 26-27 meeting, a KDADS representative discussed a proposed plan to be completed and presented to the Legislature by January 2020 to lift the moratorium of admissions at OSH. At the November 18-19 meeting, a KDADS representative stated eight step-down beds, used as a last step before transitioning into the community, would be added at OSH between November 1, 2019, and December 31, 2019, increasing total bed capacity from 166 to 174 using existing funding; the additional eight beds are not Medicaid beds. Additionally, OSH has been chosen as a Trauma-Informed Care Pilot site.

Larned State Hospital

At the November 18-19 meeting, a KDADS representative noted LSH was continuing to reach out to Kansas counties, courts, and licensed clinical staff to complete forensic evaluations in secured confinement settings where the individual is located.

Parsons State Hospital and Treatment Center

A KDADS representative reported at the November 18-19 meeting PSHTC was moving forward with an equine support program to promote emotional well-being and recreational benefits for residents.

Kansas Neurological Institute

At the November 18-19 Committee meeting, a KDADS representative stated KNI is finding creative solutions to its nursing shortage by using special training for certified medication aides to qualify for licensed practical nurse duties.

Kansas Personal Care Directory

A Committee member introduced the rollout of the Kansas Personal Care Directory, which is an online matching service registry to enable providers and families to more easily obtain direct care services. Appreciation was expressed for the investment by community partners in a solution to the direct care workforce shortage. Plans for expansion of the program include collaboration with multiple entities to provide training and college credit to expand the direct care workforce. The three MCOs provided funding to keep the website going and to kick start the project.

Medicaid Inspector General

At the February 15 meeting, the Medicaid Inspector General provided a history of the function of an inspector general and explained the nonpartisan office would evaluate the efficiency and transparency of the KanCare MCOs. Two or three staff would serve with her.

The Medicaid Inspector General reported at the April 29 meeting the office receives an average of one or two fraud reports each day, primarily alleging eligibility fraud. She noted her office was not assigned prosecutorial duties; evidence of fraud is turned over to the pertinent agencies that can prosecute. A review of reports of suspected fraud sent to the KDHE Medicaid Inspector General e-mail address after the Medicaid Inspector General function was transferred from KDHE to the Office of the Attorney General and, pending her confirmation, was under way to determine whether any substantiated reports of fraud were inadvertently missed during the transition between agencies. An eligibility fraud investigation related to misreporting income, marriage, and dependents that was referred by DCF was near completion. Two audits were being prepared by the Office of Medicaid Inspector General (OMIG) to examine provider credentialing processes and pharmacy contract requirements.

The new Assistant Medicaid Inspector General was introduced at the August 26 meeting and the first OIMG report was presented. The unmonitored KDHE e-mail address contained 42 complaints alleging eligibility fraud, which were transferred to the OMIG and investigated. All such e-mails are now automatically transferred to the OMIG.

The Medicaid Inspector General noted, as of the November 18-19 meeting date, the OMIG had received about 100 complaints regarding fraud, waste, abuse, and illegal acts. Each complaint is screened for jurisdiction; those outside the authority of the Medicaid Inspector General are forwarded to the appropriate agencies.

The Medicaid Inspector General provided an update on OMIG Report No. 19-01. The OMIG forwarded 26 complaints alleging a beneficiary was or beneficiaries were not eligible for Medicaid benefits to the KanCare Clearinghouse for follow-up. As of the November 18-19 meeting date, 25 of the complaints had been resolved, and one remained pending.

The Medicaid Inspector General presented two recent OMIG reports at the November 18-19 meeting. The first, Report No. 20-01, was a performance audit of KDHE examining whether the agency has efficient systems in place to timely and appropriately discontinue Medicaid eligibility when a Medicaid beneficiary enters a state prison, and whether the State made capitation payments on behalf of inmates during FY 2019 and, if made, whether the payments were recouped upon termination of eligibility. The scope of the audit included all admissions to the Topeka Correctional Facility in FY 2019. The Medicaid Inspector General reported 77 percent of the cases were handled appropriately; 23 percent were not and resulted in $184,997.43 in monthly KanCare capitation payments. She noted, in August 2019, KDHE implemented a new data exchange with Appriss to provide real-time notification when an adult Medicaid beneficiary enters a jail or detention center, a service that should help obviate most overpayments. She presented four findings, which included the previous Kansas Department of Corrections-Medicaid data-matching process resulted in errors, and KDHE's policy of requiring at least ten days' written notice prior to terminating eligibility for inmates is inconsistent with federal and state regulations and results in extra months of eligibility for incarcerated beneficiaries who are categorically ineligible for Medicaid. KDHE agreed with five recommendations and was taking an additional recommendation under consideration. The state contract with the MCOs allow the State to recover monthly capitation payments if a beneficiary is subsequently determined to be ineligible. A review of CMS reports for other states from past years indicates such overpayments are not unique to Kansas. The OMIG has not tracked the money recouped or saved through its investigate efforts. To the Medicaid Inspector General's knowledge, the approximately $185,000 in capitation payments made by the State for inmates had not been collected.

The Medicaid Inspector General stated an exception to the ten-day notice requirement prior to termination of Medicaid eligibility in state and federal law applies when a beneficiary is incarcerated; the exception requires notice be given no later than the effective date of termination. KDHE Division of Health Care Finance Policy No. 2019-08-01 requires more notice to inmates before terminating eligibility than required under state and federal regulations, resulting in extra months of eligibility for incarcerated beneficiaries.

The second recent OMIG report presented, Report No. 20-02, addressed cases of Medicaid fraud. The report provided Kansas' current options for dealing with suspected eligibility fraud. The Medicaid Inspector General, while acknowledging there is no uniform standard by which to determine fraud, said the primary determinant is that the act is intentional. She commented on applicable criminal statutes and administrative options and offered some practical considerations that could impact how a Medicaid eligibility fraud case is handled. Among the considerations noted were KDHE's limited investigative resources. KDHE does not have a Fraud Investigations Unit and does not have authority to prosecute cases of eligibility fraud. KDHE would be required to refer a potential fraud case to local prosecutors, who have discretion on whether to pursue a criminal case for eligibility fraud. The Medicaid Inspector General commented, in terms of time and cost, the most efficient means for terminating Medicaid eligibility is through the redetermination process. With regard to collecting from individuals for eligibility fraud, in most cases it is counterproductive to try to recoup payments because Medicaid participants lack liquid assets.

KanCare Ombudsman

The KanCare Ombudsman provided updates at each of the Committee meetings on the services provided by the Office of the KanCare Ombudsman.

At the February 15 meeting, the KanCare Ombudsman highlighted portions of the 2018 KanCare Ombudsman's annual report. She noted the KanCare Ombudsman's Office (three full-time employees, one part-time employee, and volunteers) received an average of 1,000 calls per quarter. Adding a toll-free number increased capacity without increasing the budget, and staff resolve nearly all calls within two days. She identified trends over the previous four years: transition to another MCO spiked concerns, grievances and appeals remained steady, and spend-down issues significantly increased. She added an appendix to the annual report.

The KanCare Ombudsman reported the number of contacts with the KanCare Ombudsman's Office for the fourth quarter of 2018 was 1,124. The number of 2019 first-quarter contacts was 1,060 and the number during the second quarter was 1,097. In the third quarter of

2019, there were 1,071 contacts. New data were available in the third quarter of 2019 in the form of the tracking of five new program types, seven new Medicaid Issues, and six new "Other Issues"; the division of the "Issues Category" into three sections (Medicaid Issues, HCBS/Long Term Services, and Other Issues); and the tracking of cases by priority codes (HCBS, LTC, urgent medical needs, urgent, and life threatening).

At the August 26 meeting, the KanCare Ombudsman noted two satellite offices were staffed by volunteers Monday through Friday. At the November 18-19 meeting, the KanCare Ombudsman noted the KanCare Ombudsman Office had mailed 24,000 brochures advertising its services and had contracted with Language Lines through KDADS to accommodate the multiple language needs of individuals who contact the office.

Presentations on KanCare from Individuals, Providers, and Organizations

Written and oral testimony was presented at each quarterly Committee meeting. Some individuals and organizations stated appreciation for the increased dental benefits offered by the three MCOs and the addition of $3.0 million, including $1.3 million from the SGF, reflected in the proposed FY 2020 budget to increase the Medicaid dental reimbursement rate; the Governor's $8.1 million allocation to bring KanCare eligibility processing back under KDHE; the additional funds to reduce the gap in nursing facility inspections; the enacted PIL increase; the HCBS provider rate increase; the change in definition for the TBI waiver (now the BI waiver) to include children and adults with acquired brain injury; United's and Sunflower's cooperation in accepting single-case agreements for potential assisted living residents; the innovative Employment First legislation; the State's leadership in dealing with LTC facilities that are emerging from bankruptcy; and KDADS support for state institutions.

Concerns and suggested solutions presented by conferees are summarized in the following paragraphs.

Concerns

Adult Disabled Child Criteria. The Adult Disabled Child Criteria form discriminates against adoptive children, making it difficult to qualify for adult Medicaid services.

KanCare Clearinghouse. Failure of the KanCare Clearinghouse to provide an effective Medicaid eligibility process; costs to nursing facility providers caused by delays in determining Medicaid eligibility; eligibility processing delays have caused senior citizens to be denied access to services and even lose services they have; and given problems experienced by individuals with I/DD with the KanCare Clearinghouse, the Clearinghouse may not be the best model to handle Medicaid applications.

Eligibility application process and backlog. The eligibility application process is more complex and creates untenable delays, financially crippling many service providers; there are long delays in LTC application approvals.

Supplemental Nutrition Assistance Program benefits. Individuals with I/DD continue to lose food assistance.

Targeted case management (TCM). There is difficulty in receiving TCM prior authorization for additional TCM units.

Claims. Coding mistakes at the KanCare Clearinghouse continue to cause unnecessary delays in claims payments. Delays in reimbursements and low rates limit providers in offering high-quality health care.

Amerigroup. Concerns were expressed about the nonpayment of claims by former MCO Amerigroup, with outstanding Amerigroup claims totaling $14.3 million in charges reported by one organization.

Aetna. Problems with this MCO include unpaid claims and delays in receipt of signed provider contracts, billing and credentialing problems for providers, financial hardships and lack of consumer choice created when Aetna refused to accept single-case agreements for potential assisted living facility residents, incorrectly processed claims erratic overpayments and underpayments, and continued uncertainty regarding provider contracting status.

Client obligation errors. Coding errors in the client obligation process cause significant financial problems for clients.

Assisted living and nursing facility surveys. Deficiencies in some of the surveys do not show up on reports. Surveys for assisted living facilities are not completed as timely as those for nursing facilities.

Elder care reimbursement rates. Reimbursement rates for elder care are inadequate.

Nursing facility staffing. Nursing facilities cannot compete with local providers, resulting in staff leaving for higher paying jobs in the community; funding barriers and workforce shortages make staffing a constant struggle, which is further compounded by temporary staffing agencies recruiting staff away from one provider and selling them back to the provider at inflated fees; and the increased use of staffing agencies is a trend that not only increases staffing costs, but requires facility staff to spend additional time training the temporary staff to reduce liability risk because the staffing agencies do not provide properly trained individuals.

Medicaid institutional bias. Medicaid is biased toward institutional care; barriers that increase the bias against community supports and services include care coordinators failing to offer community services as an option, long waiting lists for community-based services, and failing to address direct-care staff recruitment; and the current attitudes toward the I/DD population seems to be biased against institutional care, although CMS requirements, Medicaid law, and *Olmstead* state both community and institutional services must be offered. [*Note:* The U.S. Supreme Court ruling in *Olmstead v. L.C.* (*Olmstead)* requires states to eliminate unnecessary segregation of persons with disabilities and ensure persons with disabilities receive services in the most integrated setting appropriate to their needs.]

Receiverships. Having 22 nursing homes in receivership does not bode well for the future of LTC.

Anti-psychotic drugs. Kansas continues to rank among the worst of states for inappropriate use of anti-psychotic drugs to control dementia patients.

HCBS. Concerns about HCBS include the growing length of the waiting list for I/DD individuals; individuals in crisis are often ignored while on the I/DD waiver; the HCBS workforce crisis of low wages has resulted in a shortage of caregivers and the need for training for caregivers, which have limited individuals with disabilities from obtaining in-home personal care services; and chronic underfunding has not kept the pace with the rising costs for serving individuals with I/DD, with underfunding resulting in an increase in the HCBS waiting lists and a decrease in workforce capacity that has exacerbated this population's diverse and complex service needs.

Direct care workforce. The challenge in employing personal care attendants has been augmented by the background check requirements; the shortage in the direct care workforce has reached crisis levels; and diminished workforce capacity creates systemic barriers and gaps for providing effective services for diagnosis, behavioral health treatment, medication management, and crisis support.

Specialized medical care. Concerns related to specialized medical care include SMC T1000 rates are inadequate; providers struggle to hire nursing staff to cover the authorized hours of SMC for the TA and I/DD waiver participants, especially in rural Kansas areas; there is a shortage of highly skilled private duty nurses to help support families of children who are tracheostomy dependent in the home and increased reimbursement rates for specialized staff caring for these medically complex children are needed; increased training and pay for SMC professionals are needed; the cost of hospital care for these individuals far exceeds the cost for comparable care in the home; and the SMC services limit of 12 hours per day needs to be increased to 24 hours per day.

PIL. The $747 per month PIL places burdens on Medicaid recipients and discourages seeking gainful employment; and the $747 PIL does not offer sufficient income for living expenses for those under the HCBS waivers. [*Note:* CMS had approved raising the PIL from $747 per month to $1,177 per month.]

TBI waiver. "Critical need" language in a recent rule change denies those on the TBI waiver access to assistive technology, and there is a need for increased Medicaid reimbursement rates for TBI services.

Waiver transition delays. Individuals dropped from the SED waiver will not receive services through the I/DD waiver for years, unless it is through a crisis process that is difficult to obtain.

Financial management services. Financial management services providers are receiving monthly fees when no billing services are provided.

Fingerprint-based background check. The requirement for fingerprint-based background checks for personal care attendants adds a complexity to self-directed care because the State determines whether an applicant can be hired, increasing the difficulty in finding care attendants given the workforce shortage.

MCOs. Work with the MCOs is complex and often counterproductive; MCO care coordinators often tell a client who is self-directing who the healthcare provider must be, rather than providing the client a list of providers from which to choose; there is a conflict of interest when care coordinators, who work for an MCO, determine medically necessary services; and there is increased denial of necessary services and the increased number of appeals needed to acquire medical supplies and services for medically fragile children and individuals with I/DD and mental health needs.

"Just cause" for changing MCOs. The rights of individuals sometimes take second place to the interests of the MCOs with regard to what constitutes "just cause" for individuals to change their choice of MCOs.

CDDOs. CDDOs need oversight.

Pregnancy and birth service delivery. KanCare needs an effective pregnancy and birth service delivery, with provider payments connected to value-based outcomes, rather than FFS.

Recommended Solutions

Conferees offered comments on potential solutions in the categories below.

Eligibility. Change in vendor to give providers better tools by restructuring the eligibility process; move LTC application processing back to KDHE; continued reporting by KDHE to the Committee on progress and performance as elderly and disabled eligibility processing transitions back to KDHE.

Funding. Continue financing the Kansas Personal Care Directory and launch a coordinated effort to recruit direct care professionals; appropriate funds in the KDADS budget to eliminate the client obligation for persons on the HCBS waivers and within PACE; ensure an appropriate level of funding that supports capacity in response to demand for services; and funds allocated to the Promoting Excellent Alternatives in Kansas program be redirected to quality measures and rate increases.

I/DD. Need for system-wide competency-based training that would result in the ability to implement cross-system crisis prevention and intervention plans for the individuals served and wider access to emergency services for behavioral health for those under the I/DD waiver; the need to develop models for intensive community support as an alternative to incarceration for Kansans with I/DD accused of a crime or discharged from a state psychiatric hospital following a civil commitment; re-prioritize funding to change the current disincentives for employing I/DD individuals so service providers are empowered to enable disabled citizens' access to competitive, integrated employment; rebalance the day services rate provided in a congregate setting and the supported-employment rate for I/DD individuals to incentivize competitive, integrated employment; increase funding for benefit planners who help individuals with disabilities understand the impact of working on their benefits; prioritize a pilot program to offer comprehensive services to enable I/DD individuals to gain and maintain employment; a multi-year plan be created to address the lack of I/DD provider capacity and eliminate the I/DD waiting list; and build increased capacity for behavioral health services in the I/DD waiver system.

MCOs. Pay claims in a timely manner; credential providers in a timely manner.

PIL. Enactment of one of the bills considered by the Kansas Legislature (2019 SB 10 and HB 2205) to address the burden created by the PIL; approval of pending legislation raising the PIL to $1,177; continuation of the one-time increase in the PIL enacted during the 2019 Legislative Session, with an increase to 300 percent of Supplemental Security Income (SSI); and make the PIL increase permanent.

Service delivery. Reinstating local case management; separate case management from care coordination; use of telehealth and remote monitoring can lower costs and improve outcomes across the healthcare system and lower percentages of those needing to move to nursing facilities; the State develop specialized service-delivery programs modeled after evidence-based practices in other states; Medicaid savings would be realized by using midwives for most births; increased reimbursement rates for dental providers; and reintroduction of legislation to create dental therapists in Kansas.

Service settings. Community service care coordination; re-commitment to the Money Follows the Person program; create a special Money Follows the Person program targeted to nursing facilities for mental health; creating an Olmstead plan to help reduce the I/DD waiting list; develop a comprehensive Olmstead plan; focus on community services rather than institutional solutions; ensure an individual's personal choices are integrated with LTSS; use value-added or in-lieu-of services or benefits to improve beneficiaries' lives relevant to their needs; need to increase funding and capacity for community-based services to address the increased desire of individuals over age 65 to remain in their homes; and address the decline in self-direction.

Workforce. Increase the wages and benefits for the HCBS workforce; a 15 percent to 20 percent reimbursement rate increase would assist in resolving the nursing facility staffing problem; request a line-item budget increase to raise SMC T1000 provider reimbursement rates for in-home care for TA and I/DD waiver individuals to $47 per hour (another suggested $48 per hour); allocate funding for additional KDADS in-house staff to coordinate, facilitate, and oversee stakeholder engagement; move the KanCare Ombudsman program outside state government; need oversight of temporary staffing agencies to hold them accountable; and need additional funding to increase the number of surveyors providing oversight for LTC facilities and the number of Adult Protective Services (APS) workers to timely address complaints of abuse, neglect, and exploitation made to the APS.

Other solutions. Expand Medicaid, which would benefit most personal care attendants and other direct service and support workers; enactment of 2019 HB 2404 to create the Kansas Senior Services Task Force; changes in the Adult Disabled Child Criteria rule and form; use of a screening tool implemented in Louisiana to eliminate the HCBS waiting lists; eliminate waiting lists for individuals needing LTSS to fully participate in their communities; use a single form of utilization review to identify service or payment outliers; pursue active engagement with older adults and members of the Area Agencies on Aging for a broad perspective on LTSS; increase the SMC services limit of 12 hours per day to 24 hours; and the need to implement a policy to address chemical restraint of and misuse of anti-psychotic drugs on older adults in all LTC settings.

Conferees

Private citizens and representatives of the following organizations and providers testified or provided written-only testimony before the Committee: Advocacy Services of Western Kansas; Anthony Community Care Center; Ascension Via Christi Health; Association of Community Mental Health Centers of Kansas; Attica Long Term Care; Case Management Services, Inc.; Children's Alliance of Kansas; Children's Mercy Hospital; Community HealthCare System; Cornerstone Clinic; Country Club Estates; Craig HomeCare; Disability Rights Center of Kansas; InterHab; KanCare Advocates Network; Kansas Adult Care Executives Association; Kansas Advocates for Better Care; Kansas Association of Area Agencies on Aging and Disabilities; Kansas Association of Centers for

Independent Living; Kansas Council on Developmental Disabilities; Kansas Health Care Association and Kansas Center for Assisted Living; Kansas Home Care and Hospice Association; Kansas Hospital Association; Kansas Lifespan Respite Coalition; Kansas Pharmacists Association; LeadingAge Kansas; Lakeview Village; Locust Grove Village; Memorial Health System; Midland Care Connection; Minds Matter, LLC; New Birth Company; Oak Creek Senior Living; Options Services; Oral Health Kansas; Solomon Valley Manor; Southeast Kansas Independent Living Resource Center; Thrive Skilled Pediatric Care; TILRC; Villa St. Francis; and Windsor Place.

Responses from Agencies and MCOs

Representatives of KDHE, KDADS, and the MCOs provided responses to concerns expressed by individuals, stakeholders, and organizations at each Committee meeting. At the April 29 meeting, Committee staff were asked to prepare a form to follow up on issues presented to the Committee and the resolution of those concerns. The spreadsheet created to track outstanding issues was used by the state agencies and MCOs to address the concerns. At the August 26 meeting, KDHE, KDADS, and the MCOs addressed 58 unresolved issues from previous meetings that were included in the tracking spreadsheet. The list included recurring themes: the PIL, the HCBS waiting list, eligibility issues, self-direction, and mental-health questions. KDADS was asked to look into how Louisiana was able to reduce its I/DD waiting list and report back to the Committee. The Committee members also requested additional details on the cost of increasing the reimbursement rates for the SMC T1000 service code and the cost to Medicaid and HCBS if the State chooses to expand Medicaid. Representatives of KDHE addressed questions regarding unpaid claims from Amerigroup, stating providers need to go through the appeals process before KDHE can intervene.

At the November 18-19 meeting, a KDHE representative traced the responses of the agency regarding unresolved Medicaid issues (both general issues and specific issues) identified by conferees at the August 26-27 meeting. With regard to the PIL, KDHE understood the Legislature's intent was to make the increase in the PIL permanent and included the increase in the base budget for KDHE for FY 2021. KDHE is proceeding through the rules and regulations process to revise the PIL to $1,177 because the PIL is addressed in current rules and regulations and not in statute. Due to the fiscal implication of an increase in the PIL, KDHE would not make another change in the PIL without appropriation from the Legislature. KDHE agreed to recalculate and provide the Committee with the cost of increasing the PIL to 300 percent of the federal poverty level. KDHE also agreed to provide a broad-brush fiscal note on the cost of raising the SMC T1000 rates that would include the potential cost savings of the rate increase as compared to the cost of hospitalization.

A KDHE representative addressed questions regarding the differences between provider enrollment and credentialing. The Medicaid Program is responsible for the enrollment process, which requires a core set of information to be provided to each MCO. Credentialing looks at additional information, including the provider's professional history and malpractice history, to enroll with an MCO.

At the November 18-19 meeting, a KDADS representative provided responses to unresolved issues within KDADS's authority. The KDADS representative provided her recollection of the programs Kansas put in place instead of an Olmstead plan. She recalled state agency efforts to identify individuals in nursing facilities who would be good candidates for transferring to a community setting, including the Resident Status Review. KDADS planned to contract with an individual to document the history since 1999 of efforts instituted by the State, in lieu of an Olmstead plan, to provide services to assist with transitions into the community; however, the document might not be available until late January 2020.

In a similar manner, representatives of each of the MCOs provided responses to unresolved issues. All three MCOs addressed the approval of additional TCM units of I/DD services and noted each negotiates single case agreements at higher rates that depend on varying factors. With regard to the lack of a stable workforce and the inability to achieve a full care plan for individuals on the TA waiver, the Sunflower representative noted providers have indicated the State's low reimbursement rate for SMC is a factor in maintaining a stable workforce. The rate increase being requested is in line with what neighboring states are paying.

Managed Care Organization Testimony

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

UnitedHealthcare Community Plan of Kansas

At the February 15 meeting, a United representative noted it was operating under KanCare 2.0. A United representative commented on the 360 readiness documents reviewed by the State; noted the agency's 6.0 percent increase in membership, which included 6,648 new members transitioned from Amerigroup; and cited 27 issues that had been addressed and resolved. The value-added benefits included in the 2019 contract, such as dental benefits, assistance with transportation, and vision coverage, were identified.

At the April 29 meeting, a United representative explained United had created a team of 27 staff to assist all providers in navigating the healthcare system, including a team of business analysts who study claims data looking for trends in claim denials to determine whether an internal problem exists or whether additional provider training is needed to address the issue. The new system also included an Associate Director of KanCare Networks and Contracts responsible for looking at network adequacy, especially with regard to the needs of HCBS waiver individuals, and to identify critical areas and gaps in services. The Associate Director had been meeting with non-participating HCBS providers to identify and remove barriers and open the door for possible recruitment. Barriers to participation as a Medicaid provider were identified and solutions to address identified problems were presented.

At the August 26-27 meeting, a United representative noted United's value-added services to veterans. Some benefits were for a selected population and other benefits were provided for all members. The enhanced dental care included restorative services. New benefits for CY 2020 included a $1,000 debit card to assist an individual transitioning from an institution to a community setting.

At the November 18-19 meeting, a United representative noted an infant's placement in a neonatal intensive care unit (NICU) automatically triggers case management. United is working on a predictive model to prevent the need for NICU care. Information was provided on the MCO's services with focus on three initiatives to support employment and education for Kansans. The United representative noted broadening the capacity for applied behavior analysis (ABA) service is challenging because private insurance pays more for those services than KanCare. An explanation of the provider credentialing process was provided.

Sunflower Health Plan

A Sunflower representative reviewed the agency's core beliefs at the February 15 meeting: focus on individuals, address whole-person health issues, and be actively involved in the communities. The representative described ways in which Sunflower has provided in-lieu-of services, value-added benefits, and sponsorship and grants beyond Medicaid, and he commented on a dual-special-needs Medicare Advantage plan recently initiated in selected counties. The Sunflower representative discussed mental health services and telemedicine that have involved 1,000 individuals not previously participating in health care. He also referenced a project to improve health in rural counties.

At the April 29 meeting, a Sunflower representative indicated the improvement in the satisfaction score on the third-party LTSS member satisfaction survey was linked to transition coordination and the creation of a LTSS Advisory Committee and a LTSS Quality Assurance Subcommittee to address the unique nature of the services needed by the population group. The Start Smart for Your Baby initiative that incorporates care management, care coordination, and disease management to improve the health of mothers and their newborns was explained. A Medicare Advantage Dual Special Needs Plan (overseen by CMS, KDHE, and the Kansas Insurance Department) to provide comprehensive benefits for a targeted population eligible for both Medicare and Medicaid was outlined. An intensive parent-training pilot program focused on foster care children that uses the Parent Management Training Oregon Model was implemented to address the needs of foster care children and avoid

PRTFs where possible. Four foster care children have been part of the pilot. The Provider Accessibility Initiative grant program was explained.

A Sunflower representative provided information on value-added benefits at the August 26-27 meeting. A leadership update was also provided for the positions of Chief Medical Director and Behavioral Health Medical Director. A new initiative, Project ECHO, was introduced as a means to offer increased effectiveness for providers through additional best-practices training and additional programs to treat opioid use. A partnership with the National Council for Independent Living to offer grants to improve accessibility and quality of life for disabled individuals was outlined. The Sunflower representative provided an update on members' experiences with PRTFs and noted reasons for denial of service.

Regarding value-added benefits, the Sunflower representative presented a tally to show how individual members were provided extra services and the total dollar value year-to-date of each. New benefits for 2019 were identified, such as the Parent Management Training–Oregon Model for foster parents (a $24,000 value per child) and transportation services for employment, the frail elderly, and those who are physically disabled.

At the November 18-19 meeting, a Sunflower representative outlined the MCO's quarterly activities, provided an update on various educational services, provided information on nursing facility initiatives to reduce the use of anti-psychotic drugs, and noted the agency's use of a dedicated team focused on transitioning members from a nursing facility to the community. A total of 58 members have been approved and were on the PRTF waiting list as of November 15, 2019. Information was also provided on the conditions that automatically trigger the use of case management. Sunflower is working on ABA workforce capacity using a subject-matter expert to assist with contracting ABA providers.

Aetna Better Health of Kansas

At the February 15 meeting, an Aetna representative reviewed the history of Aetna services and experience in 16 states with varied populations. The implementation review process, the network being built in the state, and the clinical and care coordination efforts were outlined. Committee members were assured Aetna would honor prior authorizations and had almost 14,000 contract providers in its managed care system. Details were provided on the agency's integrated system of care. The agency's approach is a non-medical model that partners with stakeholders to reach a spectrum of populations, including care for the elderly and individuals with disability. Value-added benefits for each of these disparate populations were identified and advantages associated with Aetna, such as budget stability, state investment, and resolving health disparities, were listed.

At the April 29 meeting, an Aetna representative reviewed Aetna's activities during the previous quarter to build its network of providers, including 173 of 193 hospitals in Kansas, federally qualified health centers, and community mental health centers, with the gap being specialty hospitals, and 15,580 contracted providers. Aetna was also paying claims from non-contracted providers at Medicaid rates through May 31, as provided by the Transition of Care policy. It was noted 96.7 percent of claims were paid within 30 days during the first quarter. The clinical and outreach metrics were outlined and Aetna's system of care was described. With regard to children on the PRTF waiting list, the following was noted: each of the 55 children on the PRTF waiting list is assigned a case manager to find needed services pending PRTF admission; the shortest wait for PRTF admission was 2 days and the longest was 51 days; members were waiting 21 days on average before placement in a PRTF and spend an average of 49 days in a PRTF; and 12 applicants were denied PRTF admission. Approximately 13,000 pending claims were noted. The issue with providers not receiving information on their credentialing because some welcome packets were sent to provider groups without a roster of those credentialed was being addressed. Aetna anticipated one-third of the member volume when the KanCare contract was bid, but its member makeup had not reached that level.

At the August 26-27 meeting, a representative of Aetna Medicaid noted Aetna's 430 employees in Kansas; by the end of 2019, Aetna would have invested $200,000 in Kansas community organizations. Two examples of Aetna's commitment to Kansas were noted: expanding a Dual-Eligible Special Needs Medicare Plan into 15 counties for 2020 and implementing a value-based contract with Children's Mercy Primary Care Network in 6 counties. The Aetna Medicaid representative sought to assure members Aetna would fulfill its responsibilities. A new Aetna leadership team was introduced. The team worked closely with KDHE to complete and execute the revised CAP that was submitted. The Aetna Medicaid representative referenced clinical and outreach metrics and service enhancements to illustrate Aetna's commitment to Kansas.

An Aetna representative outlined Aetna's actions in addressing deficiencies: rewriting management plans, streamlining the applications process and claims resolution, and contributing to critical state projects such as OneCare Kansas. Details regarding Aetna members' experiences with the PRTF waiting list and length of treatment were provided. Two innovations were presented: an intervention initiative called the Guardian Angel Program and an opioid prescriber education program. Aetna's value-added services were discussed, including vision and dental care, GED assistance, pre- and post-natal visits for pregnancies, and gift cards for children who complete healthy activities.

At the November 18-19 meeting, an Aetna Medicaid representative reported Aetna's top priority is to execute the CAP approved by KDHE; a list of the meetings was provided to illustrate the responsiveness of the MCO toward issue resolution. An Aetna representative further addressed the CAP remediation indicating the intent was to close out all areas of the CAP by the end of CY 2019. A Provider Advisory Council had been created to offer continuing accountability. Information was provided regarding Aetna's investment in community organizations and support for members moving into the community. Several person-centered programs were illustrated. The Aetna representative noted 50 members were on the PRTF waiting list as of October 31, 2019, and the average wait time on the list was 64 days. Information was provided on Aetna's value-added services. The Aetna representative noted a case manager is automatically assigned to a member being released from a hospital, and 120 hours of respite care per year is provided for family caregivers. Aetna has the same issues with ABA services experienced by the other MCOs.

Human Services Consensus Caseload

Staff from the Division of the Budget, DCF, KDHE, KDADS, and KLRD met April 12, 2019, to revise the estimates on human services caseload expenditures for FY 2019 and FY 2020, and on October 24, 2019, to revise estimates on caseload expenditures for FY 2020 and to develop estimates for FY 2021. The estimates include expenditures for Temporary Assistance for Needy Families, the Reintegration/Foster Care contracts, and KanCare Regular Medical Assistance and KDADS Non-KanCare.

Spring Estimate

The combined estimate for FY 2019 and FY 2020 was an all funds decrease of $10.4 million and a SGF decrease of $8.0 million below the Governor's recommended budget. The FY 2019 revised estimate for all human service caseloads was $3.5 billion from all funding sources, including $1.3 billion from the SGF. The FY 2020 revised estimate was $4.1 billion from all funding sources, including $1.3 billion from the SGF.

Fall Estimate

The estimate for FY 2020 was a decrease of $24.7 million from all funding sources and $15.3 from the SGF when compared with the budget approved by the 2019 Legislature. The estimate for FY 2021 was an increase of $482.7 million from all funds, and a SGF increase of $80.5 million, from the FY 2020 revised estimate. For FY 2021, the estimate for all human service caseloads is $4.2 billion from all funding sources, including $1.4 billion from the SGF. The combined estimate for FY 2020 and FY 2021 was an all funds increase of $458.0 million and a SGF increase of $65.2 million.

Conclusions and Recommendations

The Committee adopted the following recommendations:

- The MCOs develop and define a more comprehensive pediatric case management infrastructure;

- The Legislature allocate funding to KDADS to address the current crisis in accessing PRTF services by providing a tiered approach to psychiatric services for children in all Kansas counties;

- A stakeholder group be formed to review alternative or creative ways for ABA licensure to address the state's lack of capacity or lack of network adequacy for applied behavioral supports for children currently qualifying under KanCare;

- A KanCare outreach worker be located at each DCF site to assist with the completion of KanCare applications and answering questions regarding KanCare eligibility and the eligibility process;

- KDADS report back to the Committee on how the state administers its Olmstead plan;

- KDHE continue to monitor the MCOs and verify claims are paid in a timely manner;

- KDHE and KDADS continue to address reducing the use of anti-psychotic drugs on older adults in LTC settings;

- KDADS work to provide more surveyors and ensure effective training of survey staff to identify and cite potential abuse and neglect in long-term care settings;

- KDADS continue to develop a multi-year plan to eliminate the I/DD HCBS waiver waiting list;

- The PIL be permanently changed in statute at 150 percent of SSI;

- KDHE and KDADS research innovative ways to address the issue of the temporary staffing agencies and their negative impact on rural long-term facilities;

- The Legislature consider an increase in nursing reimbursements for the TA HCBS waiver to a level closer to the national average; and

- KDHE, KDADS, and the MCOs look at how to streamline the credentialing process for KanCare providers.

APPENDIX A

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

ANNUAL REPORT FOR THE 2019 LEGISLATIVE SESSION

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight is charged by statute to submit an annual written report on the statewide system for long-term care services to the President of the Senate and the Speaker of the House of Representatives at the start of each regular legislative session. The authorizing statute (KSA 2018 Supp. 39-7,159) creating a comprehensive and coordinated statewide system for long-term care services became effective July 1, 2008.

The 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 provides a summary of the number of individuals transferred from intellectual/developmental disability (I/DD) institutional settings into HCBS during state fiscal year (SFY) 2019, together with the number of individuals added to HCBS due to crisis or other eligible program movement during SFY 2019. The following abbreviations are used in the table:

- ICF/IDD — Intermediate Care Facility for Individuals with Developmental Disabilities
- MFP — Money Follows the Person program
- SFY — State Fiscal Year

FE / PD / TBI INSTITUTIONAL SETTINGS AND WAIVER SERVICES*	
Nursing Homes-Average Monthly Caseload SFY 2019	10,226
MFP FE: Number discharged into MFP program receiving FE Services: SFY 2019 Q1 and Q2	5
MFP PD: Number discharged into MFP program receiving PD Services: SFY 2019 Q1 and Q2	9
MFP TBI: Number discharged into MFP program receiving TBI Services: SFY 2019 Q1 and Q2	0
Head Injury Rehabilitation Facility	33
FE Waiver: Average Monthly Caseload SFY 2019	4,545
PD Waiver: Average Monthly Caseload SFY 2019	5,790
TBI Waiver: Average Monthly Caseload SFY 2019	390
*Monthly averages are based upon program eligibility.	
Sources: SFY 2019—Medicaid eligibility data as of January 15, 2020. The data include people coded as eligible for services or temporarily eligible.	

The following provides a summary of the number of individuals transferred from nursing facility institutional settings into HCBS during SFY 2019. The caseload has been decreasing in SFY 2019 as the MFP federal grant wound down. Kansas stopped MFP transitions in July 2017; individuals transitioning by that time had 365 days of MFP, after which they were transitioned to the appropriate HCBS program. 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 2019	10,226
MFP FE: Number discharged into MFP program receiving FE Services: SFY 2019 Q1 and Q2	5
MFP PD: Number discharged into MFP program receiving PD Services: SFY 2019 Q1 and Q2	9
MFP TBI: Number discharged into MFP program receiving TBI Services: SFY 2019 Q1 and Q2	0
Head Injury Rehabilitation Facility	33
FE Waiver: Average Monthly Caseload SFY 2019	4,545
PD Waiver: Average Monthly Caseload SFY 2019	5,790
TBI Waiver: Average Monthly Caseload SFY 2019	390
*Monthly averages are based upon program eligibility.	
Sources: SFY 2019—Medicaid eligibility data as of January 15, 2020. 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 2012 – 152

FY 2014 – 143
FY 2015 – 144
FY 2016 – 141
FY 2017 – 142
FY 2018 – 140
FY 2019 – 138

PARSONS STATE HOSPITAL AND TRAINING CENTER: AVERAGE DAILY CENSUS

FY 2013 – 176
FY 2014 – 174
FY 2015 – 173
FY 2016 – 163
FY 2017 – 160
FY 2018 – 160
FY 2019 – 162

PRIVATE ICFS/MR: MONTHLY AVERAGE*

FY 2013 – 155
FY 2014 – 143
FY 2015 – 140
FY 2016 – 137
FY 2017 – 133
FY 2018 – 137
FY 2019 – 119

NURSING FACILITIES: MONTHLY AVERAGE*

FY 2013 – 10,788
FY 2014 – 10,783
FY 2015 – 10,491
FY 2016 – 10,235
FY 2017 – 10,047
FY 2018 – 10,049
FY 2019 – 10,226

*Monthly averages are based upon Medicaid eligibility data.

Savings Resulting from the Transfer of Individuals to HCBS

The “savings” 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/IDD and an increase in the I/DD (HCBS I/DD) Waiver budget as a result of the transfers.

For nursing facilities and state ICFs/IDD, 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/IDD, 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, 2019, 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, 2019, was $0.

Report of the Joint Committee on Information Technology to the 2020 Kansas Legislature

CHAIRPERSON: Representative Kyle Hoffman

VICE-CHAIRPERSON: Senator Mike Petersen

RANKING MINORITY MEMBER: Representative Brandon Whipple

OTHER MEMBERS: Senators Kevin Braun, Tom Holland, Dinah Sykes, and Caryn Tyson; Representatives Kenneth Collins, Steve Huebert, and Jeff Pittman

CHARGE

The Committee is directed to:

- Study computers, telecommunications, and other information technologies used by state agencies and institutions;
- Review proposed new acquisitions, including implementation plans, project budget estimates, and three-year strategic information technology plans of state agencies and institutions. All state governmental entities are required to comply with provisions of KSA 75-7209 *et seq.* by submitting such information for review by the Joint Committee;
- Monitor newly implemented technologies of state agencies and institutions;
- Study the long-term information technology strategic plan for the State;
- Review possible solutions and funding requirements for enhanced cybersecurity and computer modernization for state agencies;
- Make recommendations to the Senate Committee on Ways and Means and 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 and make special reports to other legislative committees as deemed appropriate.

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Joint Committee on Information Technology

Annual Report

Conclusions and Recommendations

The Joint Committee on Information Technology makes the following recommendations to the 2020 Legislature:

- Continue seeking input from agencies on any proposed cybersecurity legislation and give Committee members an opportunity to add items before drafting the report to the Legislature;
- Explore the establishment of an information technology (IT) capital investment fund, as suggested by the Secretary of Administration;
- Execute a written agreement between Legislative Administrative Services and the Office of Information Technology Services (OITS) establishing clear rates for OITS services throughout the year;
- Determine how much the State is spending on IT, including the cost of personnel, through performance-based budgeting; and
- Direct the Department of Administration and OITS to modify 2019 SB 57 and introduce a new bill in the House during the 2020 Session.

Proposed Legislation: None

Background

The Joint Committee on Information Technology 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 46-2101 and KSA 2018 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 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 75-7209 *et seq*. by 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 75-7210 requires the Executive, Judicial, and Legislative Chief Information Technology Officers (CITOs) to submit to the Committee annually 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, the three-year plans, and the deviations, and 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 2019 Session on April 2 and May 29, 2019. In addition to these days, the Committee met during the 2019 Interim, as authorized by the LCC, on August 19, October 21 and 22, and December 16, 2019.

April 2

Election of Chairperson, Vice-chairperson, and Ranking Minority Member

The Committee elected a new chairperson, vice-chairperson, and ranking minority member for the 2019 calendar year.

Executive Branch Quarterly IT Project Report

The Executive CITO reviewed the executive branch agency reports for the October-December 2018 quarter. The Executive CITO reported four projects on "alert" status:

- Fort Hays State University's (FHSU) Enterprise Resource Planning implementation is behind schedule and will likely be recast;
- The Kansas Bureau of Investigation's (KBI) feasibility study for biometric identification will transition from a vendor to in-house resources;
- The Kansas Criminal Justice Information System's Oracle eCitation Project III is currently behind schedule; and
- The Pittsburg State University (PSU) Oracle Cloud Implementation requires more testing and will be recast.

The Executive CITO cited two projects on "caution" status:

- Kansas Department of Health and Environment's (KDHE) Medicaid Management Information System (MMIS) requires further attention; and
- The Kansas Department of Transportation's (KDOT) K-Hub needs further technical work.

The Executive CITO noted one new approved project:

- The Department for Children and Families' (DCF) Supplemental Nutrition Assistance Program Work Program Communications Application; a grant will cover the $1.3 million estimated cost.

Executive Branch IT Leadership Changes

The Executive CITO reported changes to IT leadership within the Kansas Information Technology Office (KITO) and the Office of Information Technology Services (OITS). Sara Spinks, the former Interim Director of KITO, has become KITO Director, and Dan Klucas has been named Chief Operating Officer of OITS. The position of Chief Information Technology Architect, which has been been open for several years, has been filled by Eric Davis, who also acts as Chief Technology Officer for OITS and Secretary of the Information Technology

Executive Council. Mr. Davis briefly presented his resume of his professional background and outlined his short-term and long-term objectives. Short-term, under the statutory umbrella, he stated he plans to update statutory responsibilities related to Information Technology Executive Council (ITEC) policies, state IT architecture, and the State Strategic Information Management Plan, as well as revitalize the three-year planning process applicable to agencies. Long-term, he intends to focus on support for agency plans and promote a three-year actionable strategy. He stated his goal is to emphasize forward-looking advances in IT that will better serve agencies and citizens.

May 29

Briefing on Canceled CGI Contracts

The Secretary of Revenue briefed the Committee on the canceled contracts for vendor CGI. He noted there were two CGI contracts: the first allowed the vendor to implement the software; the second was a ten-year maintenance agreement that included a $453,000 monthly payment. He explained when he stepped into his position with the agency, he reviewed all contracts and, after consulting with all stakeholders, determined the CGI contracts were not in the best interest of the agency or the State, especially because the maintenance contract required the agency to outsource the program and give up control of the operating system. The Secretary stated the agency was transitioning out of the software contract, with 30 days' notice. Regarding the maintenance contract, he noted the CGI software updates did not meet expectations and would create chaos during the 2020 tax season. Members expressed concern regarding the ripple effects of the canceled contracts. The Secretary stated 56 staff members were affected, many of whom were returning to agency employment. Responding to another member's concern, the Chief Information Officer, Kansas Department of Revenue (KDOR), replied KDOR data is stored in the Landon State Office Building with backup at the Kansas Museum of History.

Limited-scope Performance Audit Report: OITS

Legislative Division of Post Audit (LPA) staff reviewed a limited-scope performance audit on the services and rate structures of OITS. He offered background information regarding the audit: OITS provides centralized information processing services to all state agencies and has 75 staff with expenses of $41.0 million funded almost entirely by billing state agencies for services; rates are based on estimates. LPA staff reported two findings from the audit: OITS' fiscal year (FY) 2019 rates did not accurately reflect prior year expenses and OITS' FY 2019 service rates did not accurately reflect forecast expenses. He acknowledged the complexity of the rate-setting process and offered two recommendations: regularly review the accuracy and completeness of the rate models, and develop a plan for improving the rate-setting process by balancing agency needs for budget stability with a plan to cover services that consistently operate at a loss. Responding to a question, LPA staff replied the auditors did not consult the agencies receiving the services.

The Executive CITO also stated OITS continues to evaluate its rate structure, is considering requesting agencies to fund less expensive costs from their budgets, and is discussing alternatives with the Governor. He explained smaller agencies have a node rate and larger agencies, which have in-house IT staff, have a router rate. He also stated OITS is considering a vendor-supported network.

Recent IT Security Audits

LPA staff presented the most recent IT security audits: Osawatomie State Hospital and Kansas State Library. Each audit was presented in executive session pursuant to KSA 75-4319(b)(12)(C).

Executive Branch Quarterly Report and Updates

The Executive CITO presented the executive branch agency reports for the January-March 2019 quarter. The Executive CITO reminded members KITO provides only project oversight, not project management; the quarterly reports are self-reported by the agencies. The total reported projects include 12 active projects, 12 approved projects, 14 planned projects, and three completed projects. Of the active projects, four are on "alert" status, one is on "caution," and one has been canceled. He explained the project on "caution" status—the KDHE's MMIS—has shown improved metrics and will be recast. He commented briefly on the four projects on Alert status:

- The FHSU Enterprise Implementation Project is incomplete and will be recast;

- The K-Hub Project deliverables of the Kansas Department of Transportation are incomplete;

- The closing of the OITS data centers and moving to hybrid cloud data storage has encountered delays and will be recast; and

- The PSU Oracle Cloud Implementation has fallen behind schedule because of personnel issues.

After noting the approved and planned projects, the Executive CITO responded stated the hybrid cloud storage will not be shared with third-party entities and plans for child-support tracking services will include more than one IT system.

The Executive CITO provided policy updates on the ITEC and KITO. He reported on two approved ITEC policy updates: Policy 1210, Web Accessibility Requirements, and Policy 7230A, Default Security Requirements. He reported on three KITO Process Policy changes: changing the definition and limitations of an IT project, expanding risk discovery, and assigning risk levels for projects. He also commented OITS has been nominated for national awards and KITO services and staff have gained recognition in various IT areas.

The Executive CITO provided further updates. He presented a Three-Year Integrated Plan to be developed from agency data and architecture information to be developed through ITEC. A member requested KITO provide subsequent quarterly reports, separate agency IT costs from KITO, costs in order to provide more pricing transparency, and OITS develop a scalable and predictable cost structure.

August 19

Executive Branch Quarterly Report and Updates

The Executive CITO presented the report of agency IT projects for the April-June 2019 quarter. He provided an index of all active projects during this period highlighted those on “alert,” “caution,” or “recast” status. He stated, of the 44 active projects totaling $200.0 million, 10.0 percent were on “caution” status and 20.0 percent were on “alert” status. He noted the DCF project, Structured Decision-Making, under the Division of Prevention and Protection Services will be recast because of new leadership, and the KDHE MMIS project is behind schedule, but will be completed.

The projects on “alert” status include DCF’s Placement Management System, KDHE’s Public Health Informatics EpiTrax, OITS’ Data Center as a Service IT Hybrid Cloud Project, and KDOT’s K-Hub.

The Executive CITO continued by reporting on four new approved projects:

- A new document management system for the Kansas Corporation Commission;

- A budget system and a disaster recovery project for Emporia State University;

- KBI’s databank software replacement; and

- Wichita State University’s high-performance computing system.

The Executive CITO commented only one new planned project has surfaced: a Kansas Highway Patrol (KHP) in-car camera project. There is one new completed project: PSU’s Oracle Cloud Implementation III.

Members extensively discussed the different OITS charges to agencies under the node rate (service provided to smaller agencies where OITS owns and maintains all IT equipment) and the router rate (services provided to larger agencies that own their own equipment). The Executive CITO explained the two rates have historical precedence, but the node rate is the more efficient basis for charges.

Judicial IT Projects Update

The Judicial CITO updated members on the multi-year electronic court system project, specifically the progress on the eCourt Case Management System, which will centralize all court system documents. He noted the old system provided unified, but not uniform, documents; the new system will standardize all forms and documents. He reported the pilot implementation went well, and all documents were migrated into standardized documents in six counties: Clay, Dickinson, Geary, Marion, Morris, and Riley. Working with vendor Tyler Technologies, the Office of Judicial Administration accomplished the complex migration through extensive training, thorough preparation, and refinement through testing. The next two tracks, which are scheduled for May and August 2020, include Sedgwick and Shawnee counties. The Judicial CITO responded to members' questions with the following information:

- No work was outsourced; all was completed by staff;
- All communication among counties is encrypted and secure;
- The $15.9 million project costs include licenses, professional services, and follow-up support and maintenance;
- The contract with Tyler Technologies is a fixed-price contract; and
- It is too soon to ascertain if the the work-share feature of the new system will create a morale or retention issue.

Legislative IT Projects Update

The Acting Legislative CITO, who is also the Director of Legislative Administrative Services, announced all House and Senate committee rooms are wired for streaming audio, and both the House and Senate chambers are wired for streaming video and audio. He noted a recent court case requiring a legislature to provide services for a deaf legislator has not affected Kansas and, to date, has impacted no other states. The Acting Legislative CITO introduced the Director of Technical Services, Kansas Legislative Office of Information Services (KLOIS). The Director of Technical Services outlined recently implemented services:

- The converged HyperFlex and Rubrik initiatives have eliminated data communication bottlenecks;
- The House of Representatives voting system software has been upgraded;
- Individual printers will be phased into workgroup printers after KLOIS selects a new vendor.

Regarding security, the Director of Technical Services recommended the National Conference of State Legislatures' Cybersecurity Task Force publications as resources. She stated the new printer initiative will reduce the number of printers needed by about 75 and will enable KLOIS to eliminate one staff technical support person. She replied enabling legislator smartphones to print on legislative printers is being considered.

The Director of Application Services, KLOIS, reported no major issues were encountered during the 2019 Legislative Session. He noted 660 legislative bills and 96 resolutions were published through Kansas Legislative Information System and Services (KLISS). He reviewed past service and commented on new projects. He stated his team is updating the entire system to implement the updated Python programming language. He stated Application Services is working with the Kansas Legislative Research Department and Office of Revisor of Statutes to refine service delivery. Several members expressed a desire to improve the bill tracking system so the process of transferring the content of a bill into another bill can be more easily identified.

Briefing on KBI's Automated Fingerprint Identification System (AFIS)

The Chief Information Officer (CIO) for KBI briefed the Committee on the need to replace AFIS, the State's only identification system upon which criminal history records are created and maintained. He stated the aging system is approaching obsolescence; vendor support will end in June of FY 2022, after which time the State will be exposed to a significant public safety risk, especially for local law enforcement. A new system will offer improvements that will keep Kansas abreast of current technologies. He noted a planned project for replacing AFIS was submitted to KITO in 2017, but has repeatedly been passed over for funding. The CIO also noted approximately 60 statutes now require fingerprint records.

Recent IT Security Audits

LPA staff presented the most recent IT security audits: Pooled Money Investment Board, Office of the State Treasurer, and Board of Indigents' Defense Services. Each audit was presented in executive session pursuant to KSA 75-4319(b)(12)(C).

October 21 and 22

State of Kansas IT Strategic Plan

The Chairperson announced the LCC has tasked the Committee not only to monitor state agencies' IT projects, but also to update members regarding state agency cybersecurity and three-year IT strategic plans.

The Chairperson welcomed the newly appointed Secretary of Administration and Executive CITO. The Secretary provided a brief background of her previous responsibilities with the U.S. State Department and with the University of Kansas. Stating she has been assessing past and present IT statuses, she announced she intends to marshal funding, infrastructure, and IT staff resources to provide positive outcomes for state agencies. She referenced the Executive Branch Three-Year IT Plan Summary, which she said will provide a benchmark to develop synergies that increase the effectiveness of the 54 state agencies and seven state universities.

The Secretary discussed the common goals shared by all agencies—the 42 agencies that do not have a dedicated IT department, as well as the 21 that do. She listed the top five challenges facing agencies seeking to serve all 2.9 million Kansas residents: technology obsolescence, recruiting and retaining talent, budget constraints, process immaturity, and resource constraints. Regarding OITS, she outlined four enterprise initiatives to facilitate effective service delivery: modernizing infrastructure, improving service quality and delivery, developing collaborative solutions, and expanding project management and reporting processes. The Secretary identified specific areas of concern: network and data center remediation, developing a risk assessment policy that is broader than a simple cost assessment, using an open position to create a human resources director, conducting a thorough analysis of the rate structure, and instituting strategic financial management through the tool Apptio and the guidelines of the federal Statewide Cost Allocation Plan.

The Secretary cited two financial issues to be addressed. She noted OITS' services to LAS has annual costs, but LAS pays for services only during the time the Legislature is in session, creating a $3.8 million deficit for OITS across the last five years. Another deficit was created when $10.4 million in new but unused hardware was donated to Kansas State University. OITS paid the $6.0 million owed on the hardware, but received no reimbursement and has subsequently tried to make up the deficit through its rate structure. The Secretary explained she will be proposing a budget enhancement of $14.9 million to address the deficits; the enhancement will also include proposing an IT capital investment fund to level the funding swings connected with IT purchases. The Secretary responded to members' questions with the following information:

- The new human resources director will assist in ensuring agencies match employee skill sets with their jobs;
- Regarding the OITS deficit incurred through LAS, there are actual costs involved even when the Legislature is not in session;
- More information about the rate structure will be provided at the December 19 meeting. Current rates do not reflect the actual cost of service to agencies; and
- The proposed $14.9 million budget enhancement covers the deficit, but may not cover an excessive federal penalty. The possible federal penalty is being estimated.

IT Consolidation Audit

LPA staff reviewed a recent audit responding to the question of consolidating Executive Branch

IT services. He noted OITS began consolidating IT services in 2011, a process that does not include non-cabinet agencies or Board of Regents institutions. He also noted, in 2015, it was determined 70.0 percent of the State's IT infrastructure was beyond its useful life and millions of dollars in maintenance costs had been deferred. According to the audit, OITS' consolidation plan will increase cabinet-agency costs by between $2.6 million and $38.4 million annually. A solid cost estimate could not be determined because no total state IT expenditures currently are being tracked. He reviewed details of the audit and listed the benefits and challenges of OITS' current consolidation plan: the plan will modernize the State's outdated IT infrastructure and may provide better monitoring of IT costs, but based on OITS' past performance, some agencies expressed concern about the quality and cost of services and oversight capability. LPA staff indicated OITS' consolidation of IT services follows a national trend, and he noted no recommendations were included in the audit.

Proposed Cybersecurity Legislation

Staff from the Office of the Revisor of Statutes distributed a preliminary draft of proposed legislation to amend the current statute requiring IT security training for state agency staff. He outlined the recommended changes to the statute:

- Send the risk-assessment report to the JCIT and the Joint Committee on Kansas Security, rather than to the Chief Information Security Officer (CISO) and the House Committee on Government Technology and Security;

- All heads of agencies shall receive annual training in IT security;

- Ensure an employee's IT login credentials are terminated the same day the employee ends employment with the State; and

- Require all employees with access to IT receive at least one hour of security training annually.

Cybersecurity Update

The CISO reviewed the Kansas Cybersecurity Act (Act) and outlined the work of the Kansas Information Security Office (KISO). The CISO stated the Act enables agencies to maintain successful information security programs. It also established the CISO and the KISO as the focal points of a collaborative effort to implement the provisions of the Act. KISO provides three primary services using a charge-back fee structure under a service level agreement with each agency. KISO uses periodic "phishing" campaigns to refresh employee security awareness. The CISO noted the challenge not only of enrolling agency employees in awareness campaigns, but also ensuring employees are actively participating in cybersecurity measures. He also noted the challenge of timely patching of vulnerabilities and the active participation of agency executives in training and reporting. These challenges are especially crucial for those agencies that do not subscribe to KISO services.

The CISO presented the KISO's strategic plan, which identified gaps, laid-out goals, and assigned priorities based on aggregate findings to ensure areas of most concern are addressed first. He responded to members' questions with the following information:

- KISO deals with ransomware attacks every day;

- KISO receives no federal funds;

- KISO performance metrics are based on performance-based budgeting and increasingly sophisticated education campaigns; and

- KISO is authorized to establish certain general security requirements for each agency; however, any agency may also establish more stringent parameters.

For the last portion of the CISO's presentation, the Committee entered executive session pursuant to KSA 75-4319(b((12)(C) to discuss matters of security of state information systems.

IT Budgets and Strategic Plans

Board of Regents

The CIO of Emporia State University and Chairperson of the Board of Regents' IT Committee presented the Board of Regents' IT Three-Year Strategic Plans. He commented each of the Regents institutions is working to "right-size" its complex IT systems and minimize risks through continuity of operations planning, thus increasing the effectiveness of cybersecurity, improving policies, and diversifying key processes. To assist in meeting these challenges, he cited leveraging the resources of KanREN, sharing data center space, and using collaborative procurement contracts. Other plans include building partnerships with industry and communities and creating a hybrid data center.

KBI

The CIO of KBI reported on the agency's IT plans, cybersecurity efforts, and budget challenges. He listed seven goals of the KBI, among which include improving cybersecurity, increasing flexibility with the Kansas Criminal Justice Information System (KCJIS), and developing collaborative systems that facilitate efficiencies for stakeholders. He cited current projects that support these goals, such as the Automated Biometric Identification System, and noted the high priority of addressing cybersecurity threats. The CIO recognized the challenge of recruiting and retaining talented staff and the constant need to balance staff and project requirements against budget parameters. Responding to questions, the CIO replied the KBI does not charge fees to users who access the database or who access KCJIS. He acknowledged the likelihood of budget enhancement requests. He reported the feasibility study for AFIS has been completed.

KDOT

The Deputy Secretary of KDOT outlined the agency's IT budget and strategic plan. She explained the agency is funded through the State Highway Fund and the IT budget is a part of the agency's budget, but is not shown as a separate line item. The IT budget is developed through collaboration among IT members, assessed by an executive IT committee, and recommended to the Secretary of Transportation, who reviews and submits the budget to the Governor. She noted two supplemental requests for IT: an asset management system for federal reporting and a construction management system. She commented on the agency's current security posture and future security needs. She added one goal is to provide more real-time information to drivers.

KDHE

The CIO of KDHE presented the agency's three-year IT plans. He stated the vision and mission of the agency and noted the diverse services being provided. He also noted the agency is funded from six different sources and IT services support a complex level of programs. He explained because Java programmers are in such demand, much of the software is being migrated to MS.net. The CIO outlined the agency's three-year IT plan: retool current systems to align with skill sets and minimize complexity; use cloud-based software solutions; leverage the most effective IT programs; and invest in security and compliance in collaboration with KISO. The CISO also listed the challenges facing IT deployment: staff retention, agency funding at the program level rather than at the enterprise level, and the constraints created by implementation of the data center as a service migration.

KHP

The CIO of KHP outlined the IT issues facing the agency, specifically that current software is not integrated, requiring duplicate entries, increased errors, and slower processing. Compounding the problem is the increase in Kansas Open Records Act requests and subpoenas. He emphasized the high level of security provided to meet KCJIS regulations. He also noted there is no separate IT budget in large part because KHP interacts with other law enforcement entities as well as the general public. He commented a request for proposal has been issued to upgrade KCJIS; the upgrade will, among other things, allow troopers to self-dispatch. In-car camera and mobile data applications will be updated and all software will be consolidated under one vendor so information can be shared with other agencies. The CIO explained how the technology used at the Training Academy in Salina will be thoroughly refreshed to be more effective not only for KHP personnel, but also for many other law enforcement and civilian groups.

Kansas State Historical Society (KSHS)

The Executive Director of the State Historical Society provided an overview and a brief history of the agency, which was established in 1875 and serves as the repository of state records, newspapers, and other artifacts as a service to the public. The services of the KSHS have progressed through the years, such as creating a website in 1994 but is now totally digital, currently storing 145 terabytes of digital data. The KSHS expects to expand by 10-15 terabytes annually. The Executive Director listed the primary IT challenges of the agency: increasing storage capacity, updating preservation software, balancing transparency and security, and submitting budget enhancements to meet increasing costs.

Kansas Board of Cosmetology

The Executive Director of the Kansas Board of Cosmetology (Board) provided information on the Board's long-term vision and budget for IT and cybersecurity. She reported the Board licenses more than 25,000 individuals and 4,700 facilities, as well as provides administrative support and enforcement of professional standards. She stated IT services are provided by OITS and by the Board of Healing Arts; the Board contracts with Ergometrics for monthly reporting. Noting the agency's IT challenges, she commented OITS has discontinued its dedicated staff assigned to each small agency for IT support, and, at the same time, has increased IT fees, resulting in the Board paying more for fewer services. Future plans include adding inspection video for each facility inspection; renewing all applications online, allowing a licensee to print his or her license; and hosting an agency website.

December 16

Executive Branch Quarterly Report and Project Status Update

The Secretary of Administration and Executive CITO reviewed the KITO report for the July-September 2019 quarter and outlined recommendations for IT project oversight. The Secretary reported 17 active projects, 9 approved projects, 10 planned projects, and 6 projects completed; 2 of those completed were the KDHE Bureau of Public Health Informatics EpiTrax ($315,000) and the PSU Oracle Cloud Implementation III ($4.4 million). Of the active projects, she stated 2 were on "caution" status: the DCF Prevention and Protection Services Placement Management System (completed and live on October 1), and the KDHE Bureau of Environmental Remediation Database (behind on deliverables, yet will be on time and within budget parameters). The Secretary listed the 5 active projects on "alert" status:

- Office of the Attorney General's iManage Document Management Project (status due to schedule overrun of 30 percent);
- FHSU's Enterprise Resource Planning (ERP) Implementation (status due to a schedule overrun of 39.0 percent, a task completion rate of 12.0 percent, and a deliverable completion rate of 89.0 percent);
- KDHE's MMIS Modernization and Fiscal Agent Operations Takeover Services Re-procurement Project III (status due to deliverable completion rate of 83.0 percent and a task completion rate of 41.0 percent);
- OITS' Data Center IT Hybrid Cloud Project–Infrastructure (status due to a schedule overrun of 25.0 percent); and
- KDOT's K-Hub (status due to a deliverable completion rate of 79.0 percent and a task completion rate of 88.0 percent).

A project manager at KDOT, responding to questions, replied that the K-Hub interfaces were more complex than anticipated, delaying completion of the project by at least one year, even though the project remains within budget. He commented two system interfaces are using older software that needs to be updated. Noting the official ending timeline of June 2020, he replied an extension is allowed for the project.

Responding to a question about the FHSU ERP, the Director of KITO replied the scope and other parts of the project will be recast and a new schedule will be developed; the project is still within budget parameters.

Regarding the KDHE project, the Enterprise Systems Director explained the go-live date of May 2020 will be extended to July 2021. She said the possibility of Medicaid expansion and other federal changes have thrown the project off schedule even though the project is under budget.

IT Project Reporting Process Review

The Secretary of Administration provided an assessment of the IT project reporting process. She expressed appreciation for the services of the ITEC policy review team and listed the goals of the ITEC review:

- Evaluate IT projects based on business risk;
- Incorporate flexibility into the oversight process;
- Improve transparency of IT resource utilization;
- Identify and close gaps in reporting;
- Simplify the process; and
- Clearly define "IT project."

The Secretary explained the proposed changes:

- Abandon the single-determining factor approach of cost threshold and instead implement a business risk-based approach to determine reporting requirements;
- Create a comprehensive registry of all IT projects regardless of cost;
- Assign the appropriate level of reporting for the corresponding level of business risk; and
- Automate the process to simplify reporting.

Finally, she referenced the proposed IT project definition, reviewed business risk factors, and stated an automation tool to assist agencies in developing projects should be ready to use by July 2021.

Members expressed appreciation for the evaluation process. A member, noting the two systems will both be active during the trial period, requested a cost comparison between the two systems. Another member requested for each project to include a return-on-investment statement.

Members requested more information on the OITS service rates assessed to agencies. The Secretary replied vendor Maximus is preparing a Statewide Cost Allocation Plan report to submit to the federal government and she expects the federal penalty to be in the 20.0 percent range with a cost estimate of $1.3 million. Regarding rates, the Secretary stated the Department of Administration's Office of Financial Management was working with the data center to adjust the rate structure as appropriate. Currently, there are 72 rates, reduced from 119. In addition to reducing the number of rates, the categories have been revised to be more easily understood.

Legislative CITO Update

The newly appointed Legislative CITO presented a brief professional history and updated the Committee on the current status of KLOIS projects and systems. He reported a request for proposal had been issued to ascertain if the present printer lease arrangement is the most cost-effective. He briefly commented on plans for additional applications for current services, such as the KLISS website research tab, a chamber search system, and a website archive system. He commented on his involvement with the ITEC policy review initiative, outlined enhanced information access for the legislative session, and offered specific plans for the future of KLISS, the latter including a member dashboard, electronic bill books, and dynamic chamber calendars. He concluded his presentation by listing strategic planning goals that will provide a "virtual Statehouse" for enhanced citizen participation, integrated and secure systems, and more accessible information. Responding to a question, he replied KLISS is flexible and easily updated, but would consider any promising alternatives.

Recent IT Security Audits

An IT auditor with the LPA presented the most recent IT security audits: the University of Kansas and the Kansas Neurological Institute. Each audit was presented in executive session pursuant to KSA 75-4319(b)(12)(C).

K-TRACS Presentation

The Executive Secretary of the Kansas Board of Pharmacy presented information about K-TRACS, which is a 24/7 web database that monitors controlled substances dispensed to Kansas patients. The service is securely accessible to prescribers and pharmacists. She explained that by separate authorizations the service is available to states, local government agencies, and the military. The data is encrypted; complies with regulations, such as the Health Insurance Portability and Accountability Act; and is shared at no cost to users. The Executive Secretary commented on future expansions of K-TRACS through KDHE and a U.S. Department of Justice grant. She also noted statistics at the end of her report to illustrate the extensive service provided by K-TRACS.

The Executive Secretary stated any state that wishes to access K-TRACS must be authorized by the Board of Pharmacy before receiving access, and such authorization may be rescinded by the Board at any time. Currently, 35 states are authorized to access K-TRACS. She reported funding comes from a variety of sources: health-related fee-fund state agencies and a $1.0 million grant from the Center for Disease Control and Prevention. An estimated 20.0 percent to 30.0 percent of the cost is funded by taxes.

Office of the Attorney General Presentation

The Deputy Attorney General and Chief Information Security Officer for the Office of the Attorney General reported on IT activity in his agency. He stated the only current project is an upgrade of the 2010 document management system that went live December 16, 2019. A possible future project could be the development of a more robust disaster recovery solution.

Committee Comments and Recommendations

Before developing recommendations for the report to the 2020 Kansas Legislature, members discussed possible revisions in the authority and focus of the Committee. A member expressed a desire for the Committee to be aware of proposed projects before they go through a formal approval process so legislative input can help prevent projects that end up being placed on caution, alert, or being recast. Another member recommended projects include not merely initial costs, but ongoing costs. Another member suggested developing policies to guide the CITOs might be more effective than putting requirements in statute. All members agreed the Committee would be more effective in oversight if project information were received ahead of time.

The CISO responded to members' desire for early information and referenced a template that could be used to assess agency compliance with the Kansas Cybersecurity Act.

Conclusions and Recommendations

The Chairperson highlighted the following documents that will provide background information and reference points for the Committee's recommendations:

- 2019 SB 57, currently in the Senate Committee on Ways and Means; the bill offers additional oversight for agency IT contracts;
- Revisor bill draft requiring IT security training for agencies; and
- Revisor bill draft requiring each branch's CITO to submit project cost estimates to the JCIT and to the Kansas Legislative Research Department.

The Chairperson referenced the proposed recommendations developed from the previous meeting and invited members to comment on each item. Members approved certain recommendations, edited or combined others, and declined to approve eight recommendations. The Committee agreed on the following recommendations:

- Continue seeking input from agencies on any proposed cybersecurity legislation and give Committee members an opportunity to add items before drafting the report to the Legislature;

- Explore the establishment of an IT capital investment fund as suggested by the Secretary of Administration;

- Execute a written agreement between Legislative Administrative Services and the Office of Information Technology Services (OITS) establishing clear rates for OITS services throughout the year;

- Determine how much the State is spending on IT, including the cost of personnel, through performance-based budgeting; and

- Direct the Department of Administration and OITS to modify 2019 SB 57 and introduce a new bill in the House during the 2020 Session.

Report of the Joint Committee on Pensions, Investments and Benefits to the 2020 Kansas Legislature

Chairperson: Representative Steven Johnson

Vice-chairperson: Senator Jeff Longbine

Other Members: Senators Rick Billinger, Vic Miller, Pat Pettey, and Mary Jo Taylor; Representatives Doug Blex, Brenda Dietrich, Broderick Henderson, Jim Kelly, Annie Kuether, Brett Parker, and Sean Tarwater

Charge

To fulfill the Joint Committee's duties and responsibilities, as provided by KSA 2018 Supp. 46-2201, the Joint Committee will monitor, review, and make recommendations regarding the Kansas Public Employees Retirement System (KPERS or Retirement System).

January 2020

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Joint Committee on Pensions, Investments and Benefits

Annual Report

Conclusions and Recommendations

The Joint Committee on Pensions, Investments and Benefits recommends the Legislative Post Audit Committee consider three studies: performance of the Deferred Retirement Option Program (DROP), expenses related to net investment performance, and contract management. With regard to the DROP, the Joint Committee further recommends no new legislation pertaining to the program be introduced or considered until the legislative session immediately prior to the program's sunset date of January 1, 2025, which should allow time for a complete evaluation of the program.

The Joint Committee recommends, either now or at the appropriate time when enough data has been collected, Kansas Public Employees Retirement System (KPERS) staff provide information to the Legislature on the trends in public retirement and working after retirement to discern the extent to which KPERS members remain active employees for greater periods of time.

The Joint Committee identified nine past interim committee reports that discuss the transfer of employees into different retirement plans. In six of the nine reports, the interim committees either did not take an action or recommended further study. While three reports recommended adding groups to the Kansas Police and Firemen's Retirement System (KP&F), only in one instance, found in 1981, did the Special Committee on Pensions and Investments introduce legislation. A few interim committee reports observed stress and a job situation should not be across-the-board determinations for movement from KPERS to KP&F. The Joint Committee recommends further discussion and study may be necessary regarding state and local corrections, Kansas Department of Parks, Wildlife and Tourism (KDWPT) and similar groups, suggesting within this report means to study the topic and guidelines for future discussions.

The Joint Committee recommends KPERS staff study the legal definition of alternative investments and reevaluate the extent to which other investments should be classified as alternative investments.

Finally, the Joint Committee recommends those standing committees of the House and Senate that are assigned pension legislation during the 2020 Session hold hearings on the KPERS Board of Trustees' newly approved rate of return and the assumptions behind it.

Proposed Legislation: None

Background

The Joint Committee on Pensions, Investments and Benefits, created in 1992, is authorized by KSA 2018 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;
- Consider and make recommendations on the confirmation of members nominated by the Governor to serve on the Board; and
- Introduce legislation it determines to be necessary.

The Legislative Coordinating Council authorized the Joint Committee to meet on one day.

Committee Activities

The Joint Committee met November 4, 2019, to review KPERS long-term funding, the investment performances of pension obligation bonds and the portfolio of the Retirement System, the Deferred Retirement Option Program (DROP), and newly enacted legislation. The Joint Committee recommended topics for the consideration of the Legislative Post Audit Committee and discussed the pension benefits for Correctional KPERS and similar groups of employees and law enforcement personnel. The Joint Committee also received a briefing on the Board's triennial experience study, which is used to establish the assumed rate of return for the subsequent three years.

Review of KPERS Long-term Funding

The Joint Committee reviewed the latest actuarial valuation, which is a snapshot of the financial condition of the Retirement System as of December 31, 2018. The actuarial value was estimated to be $19.898 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 deferred investment gains or losses will flow through valuations over the subsequent four years. There is an estimated $1.2 billion in net deferred loss to be realized in the outlying years. A year ago, there was a net deferred gain of $388.0 million.

The Retirement System's overall funded ratio for 2018 remains unchanged from 2017, at 68.4 percent. The standards for public pension plans suggest a retirement system should be funded between 80.0 percent to 100.0 percent of future liabilities owed. The unfunded actuarial liability (UAL) for the Retirement System, however, increased in 2018 by $290.0 million, leaving $9.2 billion to be funded. If current assumptions are met in the future, KPERS should be fully funded at the end of 2040. For KPERS funding to remain at a steady state, State-School Group employer contributions in FY 2020 will need to be $641.0 million, which includes $91.6 million for the normal employer cost rate, $523.6 million for the UAL, and $25.8 million for the deferred school contributions of fiscal year (FY) 2017 and FY 2019.

Investment Performance of 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 $500.0 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 $500.0 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 (SGF).

The average annualized total returns for the 2004C and 2015H bond issues, as of September 30, 2018, are 7.28 percent and 7.30 percent, respectively. The two series of bonds have added approximately $446.0 million to KPERS (2004C, $318.0 million; 2015H, $128.0 million).

Investment Performance of KPERS Portfolio

At the end of FY 2019, the net asset market value of the portfolio was more than $20.220 billion. The gross return of the total portfolio, which consists of domestic equity, international equity, fixed income, yield driven, real return, cash, real estate, and alternative investments, was 6.7 percent, 20 basis points greater than KPERS' benchmark. The top three performing asset classes were alternative investments, domestic equity, and fixed income, generating returns of 13.8 percent, 9.0 percent, and 8.2 percent, respectively. For the trailing returns of the past 3-, 5-, 10-, and 25-year periods, the portfolio has surpassed its respective benchmarks.

The Chief Investment Officer (CIO), KPERS, observed national and foreign monetary policies have increased market values. Risk factors for the future include weakening economic growth in the United States, less growth in domestic corporate earnings, international trade, geopolitics, and the possibility of negative interest rates. KPERS personnel recommended maintaining the current disciplined approach to wealth management, reducing risk while seeking increased returns where evident. The CIO noted the yield-driven portfolio is a risk class and not an asset class, noting most assets are invested in high-yield income with exposure to bank loans, real estate trust, and small yield investments.

Deferred Retirement Option Program

KPERS staff provided information on the DROP for Kansas Police and Firemen's Retirement System (KP&F) members in the Kansas Highway Patrol (KHP) and the Kansas Bureau of Investigation (KBI). In the program, a member may initiate retirement benefits, but defers the receipt of the benefits for a three- to five-year period. The member does not earn additional service credits, but continues to contribute 7.15 percent of compensation into the DROP. KHP continues to make employer contributions to KP&F. Retirement benefits are held in a separate account, and at the end of the period, the member receives the lump sum with interest. Currently, there are 600 KP&F members eligible to participate in the DROP, approximately 9.0 percent of KP&F members. KPERS staff cautioned if the DROP was extended to additional employers, the Retirement System would need to make information technology updates and hire additional staff for administration.

A representative of the KBI stated the agency requested last year to be added to the DROP because of staffing shortages for the past five years. In 2017, the KBI implemented a salary progression matrix for classified personnel of special agents who were operational and working in the field. The group maxes out at 19 years of service, and afterward they do not get additional compensation benefits for staying with the agency. Three agents have joined the DROP since July 1, 2019, when the agency started participation in the program. From the KBI's perspective, she noted, the DROP will be beneficial for the employees and the agency.

Overview of 2019 Legislation Enacted

Staff from the Office of Revisor of Statutes (Revisor) provided an overview of KPERS legislation enacted in 2019, stating HB 2031:

- Added "contraction of a bloodborne pathogen" to the definition of "service connected" in the KP&F plan;
- Amended the powers and duties of the Board;
- Established a two-year KPERS waiting period for certain membership;
- Created a working-after-retirement exemption for certain KPERS retirees;
- Exempted individuals who retired on or after July 1, 2016, and before July 1, 2019, from working-after-retirement penalties;
- Added language allowing the Executive Director of KPERS to waive working-after-retirement penalties beginning on and after July 1, 2019; and
- Added KBI agents to the eligible membership in the DROP and extended the sunset of the program to January 1, 2025.

Revisor staff said 2019 SB 9 transferred $115.0 million from the SGF to KPERS during FY 2019. House Sub for SB 25 (Section 55(b)) repealed the FY 2019 transfer of up to $56.0 million, which would have been contingent upon actual revenues exceeding the most recent joint estimate. However, Section 56(e) transferred an unconditional $51.0 million from the SGF to KPERS in FY 2020.

Communication to Legislative Post Audit Committee

The Legislative Post Auditor explained a performance audit of KPERS is required by state law at least once every three years. The Legislative Post Audit Committee will be asked in April 2020 to approve an audit of the Retirement System. By law, the Joint Committee may communicate its audit suggestions to the Legislative Post Audit Committee.

Correctional KPERS and KP&F

Kansas Legislative Research Department staff briefed the Joint Committee on the various interim studies over the decades that have discussed transferring personnel, whether state or local government employees, into either Correctional KPERS or into KP&F.

Revisor staff provided an overview of bills introduced during the 2019 Session involving changes to KP&F membership and the current status of each bill. HB 2165 would require adult corrections officers, juvenile correctional officers, and security officers to move from the KPERS Correctional Groups to KP&F. The bill also would include support staff within any correctional institution or juvenile correctional facility that have regular contact with inmates or juvenile offenders. KP&F benefits would be for service commencing on and after January 1, 2020. Benefits earned prior to that date would be calculated under KPERS statutes. The bill was referred to the House Committee on Financial Institutions and Pensions, which held a hearing on February 25, 2019. The Committee has not acted on the bill and remains in the Committee for possible action during the 2020 Session.

HB 2139 and SB 121 would permit detention deputies, corrections officers, detention officers, or jailers employed by local units of government to be covered by KP&F. HB 2139 was referred to the House Committee on Financial Institutions and Pensions, which held a hearing February 20, 2019. The bill remains in that Committee for possible action during the 2020 Session. SB 121 was referred to the Senate Committee on Financial Institutions and Insurance, which held a hearing on February 19, 2019; that Committee recommended the bill be passed as amended by making affiliation with KP&F be for future service only. The Senate has taken no action.

HB 2099 would have authorized the Kansas Department of Wildlife, Parks and Tourism (KDWPT) to become an eligible employer with KP&F commencing on July 1, 2019, for those certified, full-time officers and employees who have successfully completed law enforcement course work approved by the Kansas Law Enforcement Training Center (KLETC). Starting July 1, 2020, members would be required to make the KP&F employee contribution of 7.15 percent of compensation. The bill was referred to the House Committee on Financial Institutions and Pensions, which held a hearing February 6, 2019. The Committee recommended the bill be passed on February 12, 2019. On February 28, 2019, the bill was removed from the House Calendar pursuant to House Rule 1507.

KPERS staff gave an overview of KP&F, which consists of approximately 5.0 percent (7,695 members) of the Retirement System's total active membership (154,055 members), and the associated employer and employee contribution rates. If KPERS correctional officers contribute to Social Security, they will remain in the federal program even though the members move to KP&F. This also applies to the employers that make Social Security contributions. HB 2099 would have an estimated increase of $600,000, including a $700,000 increase for KDWPT and a decrease of $100,000 spread across all other state KP&F employers. Regarding HB 2139 and SB 121, it is not possible to estimate the impact of those bills without more information. The cost estimate for HB 2165 would be approximately $5.2 million. This would include a $6.1 million cost increase for the Kansas Department of Corrections (KDOC), but a decrease of $900,000 in savings spread across all other KP&F employers.

KPERS staff said when the number of participating employers decreases, the remaining unfunded liability must be spread over the smaller group. The vesting difference is 11 years of service for KP&F versus 9 years for Correctional KPERS. If an employee goes from one plan to another with nine years of service in Correctional KPERS, the employee would have to work six more years in KP&F to be vested. If the employee quits or retires early, that person would get regular KPERS benefits plus the employee's contributions made to KP&F, with interest, with no service benefit.

The Secretary of Wildlife, Parks and Tourism and representatives from KDOC and the Kansas Sheriffs' Association spoke in favor of increasing the membership of KP&F so as to match the service provided by various public employees and law enforcement officers and to increase retention.

KPERS Board, Experience Study, and Planning Assumptions

KPERS staff briefed the Joint Committee on the triennial experience study which, by law, covers actuarial assumptions and experience and makes preliminary recommendations to the Board regarding the assumed rate of return for the future three years. Assumptions have a significant impact on the calculation of liabilities and contribution rates. Accurate assumptions are important to ensure generational equity. The study compares the actual experience of the past three years with the current assumptions. The Board is responsible for the selection of actuarial assumptions that are used for budgeting and planning purposes. Preliminary recommendations for actuarial methods and demographic assumptions will be presented at the Board's November 2019 and January 2020 meetings for consideration and approval.

Conclusions and Recommendations

The Joint Committee recommends the Legislative Post Audit Committee consider studies pertaining to the following topics:

- The DROP's performance and its cost to KHP and other employers in KP&F. The study should focus on the extent to which the policy has kept troopers on the road, the rates of KHP employees' participation in the program, and who has benefited from it;
  - The Joint Committee further recommends to the Legislature no new legislation regarding the DROP be introduced or considered until the legislative session immediately prior to the program's sunset date of January 1, 2025, which should allow time for a complete evaluation;
- The expenses related to net investment performance. While KPERS' investment and management costs appear low, the extent to which all investment-related expenses are included should be determined and discerned whether they are reasonable; and
- The management of contracts, including contracts for actuary and investments services, to discern whether there is sufficient control and oversight since in recent years KPERS has been granted greater autonomy and administrative discretion in its procurement of contractual services than most state agencies.

The Joint Committee recommends, either now or at the appropriate time when enough data has been collected, KPERS staff provide information to the Legislature on the trends in public retirement and reemployment in Kansas to discern the extent to which KPERS members remain active employees for greater periods of time. Substantial changes were made to working-after-retirement rules during the 2017 Session.

Based upon legislative interim records starting in the 1930s, the Joint Committee identified nine past interim committee reports that discuss the transfer of employees into different retirement plans. In six of the nine reports, the interim committees either did not take an action or recommended further study. While three reports recommended adding groups to KP&F, only in one instance, found in 1981, did the Special Committee on Pensions and Investments introduce legislation to allow employees who were instructional staff at the KLETC, personnel trainers with fire service programs, or campuses' patrol officers into KP&F. When comparing the various reports, the definition of law enforcement officer or firefighter seemed to be a central point of discussion. Cost was referenced a few times. Emergency medical technicians were added later and were placed in the firefighter classification. A few interim committee reports observed stress and a job situation should not be across-the-board determinations for movement from KPERS to KP&F.

The Joint Committee recommends further discussion and study may be necessary regarding state and local corrections, KDWPT, and similar groups that want to join KP&F, perhaps through a subcommittee of a standing committee, the appointment of a select or special committee—consisting of members knowledgeable about the interrelationships between pensions, law enforcement, and corrections—or through the creation of a task force that could rely on outside expertise. The Joint Committee recommends a few guidelines to use when considering the inclusion of new employee groups into KP&F. Those positions should meet the plan's existing employee definitions. The inclusion of related but not similar employees into KP&F could invite unintended issues, such as the transition costs from KPERS to KP&F for current employees and their vesting in either or both plans. Those issues must be thoroughly explored and answered. Lastly, the Joint Committee suggests new approaches to compensation, work conditions, management practices, and the group's current KPERS plan should be considered as a better means to recruit and retain personnel rather than transferring these groups to KP&F.

The Joint Committee recommends KPERS staff study the legal definition of alternative investments and reevaluate the extent to which other investments, such as bank loans and other yield-driven assets, should be classified as alternative investments. For purposes of transparency, the Retirement System's alternative investment portfolio should be readily understandable to policymakers, pension administrators, taxpayers, and KPERS members.

Finally, the Joint Committee expresses concern in the Legislature's current level of knowledge regarding the Board's triennial experience study and its methods and assumptions. The assumed rate of return, which this study determines, is one of the foundation stones that ensures there is greater generational equity in KPERS. However, if the analyses are too limited in scope or overly pessimistic in tone, then the assumed rate of return may become too averse to risk, leading to a self-fulfilling expectation of muted performance that could result in less generational equity in KPERS. The Joint Committee recommends those standing committees of the House and Senate that are assigned pension legislation during the 2020 Session hold hearings on the Board's newly approved rate of return and the assumptions behind it.

Report of the Legislative Budget Committee to the 2020 Kansas Legislature

Chairperson: Representative Troy Waymaster

Vice-chairperson: Senator Carolyn McGinn

Ranking Minority Member: Representative Kathy Wolfe Moore

Other Members: Senators Rick Billinger, Tom Hawk, and Anthony Hensley (substituting for Senator Hawk, December 13); and Representatives Will Carpenter, Kyle Hoffman, and Ken Rahjes (substituting for Representative Carpenter, November 19)

Charge

State Budget Issues

The Committee is statutorily directed to compile fiscal information and study and make recommendations on the state budget, revenues, and expenditures, 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 its statutory duties, the Committee is to:

- Department of Transportation—Receive an update on T-Works projects and the use of the additional funds provided in FY 2019 and FY 2020;

- Department for Children and Families—Review plans for the Family First Prevention Services Act programs, receive an update on the progress on filling the new approved social worker positions, and review the plan for expenditures from the evidence-based initiative account (2017 SB 367) in coordination with the Department of Corrections and other agencies;

- Department of Corrections—Review the use and impact of additional funding for prisons;

- Board of Regents—Review the impact of additional state funding and the need for tuition increases;

- Safe and secure schools—Review the distributions and use of the additional funding by school districts;

- Department of Agriculture—Review the implementation of new or expanded water programs and an update on the impacts of flooding and federal tariffs;

- State hospitals—Review the ongoing mix of state and federal funding, future plans for Osawatomie State Hospital, and plans to reduce vacant positions at Larned State Hospital; and

- Community and technical colleges—Review and discuss topics including:
  - How the institutions are funded and how the funding is distributed;
  - Mission of the colleges;
  - Transfer of credits to state universities;
  - The efficiencies and effectiveness of the colleges; and
  - Whether the colleges are meeting the needs of Kansas residents.

Legislative Budget Committee

Annual Report

Conclusions and Recommendations

Following its review and discussion, the Legislative Budget Committee makes the following recommendations and requests for reports.

Recommendations

- The Kansas Department of Agriculture and the Department of Commerce work together to aid industrial hemp growers to market and sell industrial hemp. The initiative should aid growers in identifying businesses interested in purchasing and distributing industrial hemp grown in Kansas;
- The Legislature review the statutory obligation to transfer $6.0 million from the State General Fund (SGF) and $2.0 million from the Economic Development Initiatives Fund (EDIF) to the State Water Plan Fund (SWPF);
- The Legislature make a decision regarding the preservation, demolition, or selective deconstruction of the Docking State Office Building on or before June 30, 2020;
- Encourage the Office of Information Technology Services to complete the migration of state data centers to its cloud-based solution on or before June 30, 2020;
- The Legislature thoroughly review State Highway Fund (SHF) transfers, limiting transfers being made, and, if possible, cessation of any extraordinary transfers from the SHF that are based upon the portion of sales and compensating use tax that the SHF receives to provide funding for the next transportation plan;
- The House Committee on Appropriations, Senate Committee on Ways and Means, House Committee on Taxation, and Senate Committee on Assessment and Taxation consider restoring and revising statutory language to reinstate local government demand transfers for local property tax relief, particularly the Local *Ad Valorem* Tax Reduction Fund. The Committee requests restoration be structured to ensure disbursements to local units of government provide a measurable decrease in local property taxes for constituents of each government unit receiving local aid from the state;
- The House Committee on Appropriations and the Senate Committee on Ways and Means review the current status of inpatient mental health services for children to determine the costs and requirements to restore acute care beds for children in Hays as well as in other underserved areas of the State;
- The Compensation Commission, as authorized in KSA 46-3101, convene a meeting during the 2020 Interim, after the November 3, 2020, general election, to consider the information included in the Legislative Division of Post Audit (LPA) study on legislative pay and make recommendations for any adjustments; and
- The Legislature examine whether the Kansas Department for Aging and Disability Services (KDADS) and the state hospitals are applying for and utilizing all potential federal grants to assist with funding for the state hospitals and whether the agencies could pursue additional grant funds.

Reports

- The House Committee on Appropriations and the Senate Committee on Ways and Means receive a report from the Kansas Department of Transportation (KDOT) during the 2020 Legislative Session on outstanding debt by transportation program by year;
- The Senate Committee on Ways and Means and House Committee on Appropriations receive a report from the Kansas Department of Corrections detailing implementation of fiscal year 2020 pay increases, construction and financing of the new Lansing Correctional Facility, hepatitis C treatment among inmate populations, and inmate outsourcing to county jails and a private prison in Arizona during the 2020 Legislative Session. The Committee seeks clarity regarding the population size of inmates infected with hepatitis C, methods for treatment, and anticipated costs of future treatment. The Committee notes its concern regarding the Department's process for soliciting outsourced beds at county jails in Kansas prior to utilization of an out-of-state facility in Arizona;
- The Legislature receive a report during the 2020 Legislative Session from KDADS on the current state of the buildings of the former Larned Juvenile Correctional Facility and examine the feasibility of using these structures for other purposes in the future;
- The Legislature receive a report during the 2020 Legislative Session from KDADS on salaries and turnover of state hospital employees, including pay disparity between employees at those facilities and the amounts in salaries provided by other employers for similar positions, and consider the amount of funding needed to make state hospital employee salaries consistent with salaries of similar employees;
- The House Committee on Appropriations and Senate Committee on Ways and Means receive a report from the LPA on the five remaining Alvarez and Marsal recommendations that are being implemented during the 2020 Legislative Session; and
- The House Committee on Appropriations and Senate Committee on Ways and Means receive a report from the Kansas Legislative Research Department on the status of performance-based budgeting during the 2020 Legislative Session.

Notations and Commendations

The Committee also makes the following observations:

- Notes revenue from the lottery ticket vending machines was not receipted in the time frame of the original projections and encourages the Legislature in the future to not implement any programs based on new and unproven revenue streams;
- Notes the popularity of KDOT's cost-share program and that many local units of government have already approached KDOT with their individual project plans and matching funds, hoping to find a way to progress forward with their projects; and
- Commends the agencies involved in fire suppression activities around the state, and notes it will take all those agencies working together as a team to prepare and implement suppression strategies in order to be successful.

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, and 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 Legislative Coordinating Council authorized seven meeting days for the Committee during the interim. The Committee met six times during the interim on the following days: August 13, October 2, November 19 and 20, and December 13, 2019, and January 9, 2020.

On August 13, the Committee received an update on the status of the Kansas budget, reviewed the federal Family First Prevention Services Act; received an update on staffing at the Department for Children and Families (DCF); reviewed expenditures from the Evidence-based Initiatives Account in the Kansas Department of Corrections (KDOC); received an update on T-Works projects, as well as the use of additional transportation funding provided by the 2019 Legislature; and received an update from the Department of Corrections on the use of additional funds provided by the 2019 Legislature and the status of the construction of the Lansing Correctional Facility.

On October 2, the Committee received briefings from the Department of Agriculture, Kansas Water Office, and Kansas Department of Health and Environment (KDHE) on federal tariffs, flooding, and new and expanded water programs. The Committee also received briefings on the Safe and Secure Schools Program and industrial hemp cultivation and reviewed the findings of the Fall 2019 Mental Health Bus Tour.

On November 19 and 20, the Committee reviewed the revised human services consensus caseload, education, and consensus revenue estimates. [*Note:* The revised human services caseload estimate reduced State General Fund (SGF) expenditures by $15.3 million in fiscal year (FY) 2020. The education estimate reduced SGF expenditures by $38.6 million in FY 2020. The SGF consensus revenue estimate included an increase of $525.5 million, including $220.4 million in FY 2020 and $305.1 million in FY 2021.] The Committee also received updates on the Statehouse Snack Bar, Kansas higher education funding, fire suppression efforts, the Cyber and Financial Crimes Unit of the Kansas Bureau of Investigation, abandoned well plugging, elected officials' pay, the use of the Economic Development Initiatives Fund, the Main Street Program in the Department of Commerce, lottery ticket vending machine revenue, T-Works projects, Memorial Bridge designations, and the Docking State Office Building.

On December 13, the Committee received an update from the Office of Information Technology Services on the Information Technology Modernization Plan, reviewed selected agency budget requests for FY 2020 and FY 2021, received a report on the availability of psychiatric inpatient beds at KVC Health Systems, reviewed the implementation of the 2016 Alvarez and Marsal Efficiency Study recommendations, and received an update on the Veterans Claims Assistance Program.

On January 9, the Committee received an update on SGF receipts through December 2019, a report on statutory local government transfers, and the Job Creation Program Fund of the Department of Commerce. The Committee also made recommendations to the 2020 Legislature.

Specific information about each topic follows.

State Revenue and Expenditure Updates

Overview of SGF consensus revenue estimate. At the November 19, 2019, meeting, the principal economist from the Kansas Legislative Research Department (KLRD) presented information on the SGF revenue estimates for FY 2020 and FY 2021. The Consensus Estimating Group met November 7, 2019. The overall estimate for FY 2020 and FY 2021 reflects an increase of $525.5 million. Total taxes increased by $510.0 million and by $15.5 million from other revenue sources. The economic forecast for Kansas reflects modest growth. The Kansas personal income growth projection was reduced from 3.9 percent to 3.6 percent. The Kansas Department of Labor reports 20,700 non-farm jobs were added, primarily in the leisure and hospitality sector, and with professional and business services. The trade, transportation, and utilities sector experienced a decrease of 400 jobs. Nominal hourly earnings were up 5.9 percent and the Kansas unemployment rate was 3.4 percent. Net farm income has experienced modest growth attributable to the federal market facilitation payment program. For most of the state, weather conditions were favorable this growing season; wheat and soybeans acreage will be low, as many farmers chose to plant corn. The energy sector continues to experience declines in oil and natural gas production and price, which reflect decreased severance tax receipts, and taxable crude and taxable natural gas prices.

The Consumer Price Index is expected to remain at moderate levels and current interest rates of 2.35 percent on the SGF portfolio are projected to decrease to 1.75 percent for FY 2020 and 1.25 percent for FY 2021. Four key revenue sources are individual income, corporation income, retail sales and compensating use taxes. The revised estimates for SGF receipts reflect an increase of $220.4 million for FY 2020 and $305.1 million for FY 2021. Non-tax sources estimates reflect a decrease of $21.0 million in FY 2020 and $30.7 million in FY 2021.

The KLRD principal economist noted estimates will be adjusted in mid-April prior to the conclusion of the 2020 Legislative Session. Consensus revenue estimates are based on current federal and state laws. Pending litigation that may involve payment of back taxes and interest is estimated to cost $60 million, to date. Other areas of uncertainty include foreign trade, health and tax policies, and the volatility in both global and domestic markets.

The KLRD principal economist further stated discontinuation of the federal market facilitation payment program would impact the agriculture sector in Kansas as this program has been responsible for half of the growth in farm income for the past two years.

At the December 13, 2019, meeting, the Director of Legislative Research (KLRD Director) provided an update on SGF receipts after the consensus revenue estimates and a SGF profile. The total receipts for November was $15.1 million, or 0.5 percent, above the revised estimate. The component of SGF receipts from taxes only was $12.2 million, or 0.4 percent, above the revised estimate. Tax sources that exceeded the estimate by more than $1.0 million included retail sales at $6.5 million, insurance premium tax at $4.2 million, and individual income taxes at $2.2 million. The KLRD Director stated November tends to be a quiet month, while December and January receipts reflect holiday shopping and estimated taxes. Corporation income tax estimated payments are due in December and individual income tax estimated payments are due in January.

At the January 9, 2020, meeting, the KLRD principal economist provided an update on the SGF receipts through December 2019: they were $53.9 million, or 1.5 percent, above the revised estimate. The component of SGF receipts from taxes only was $50.9 million, or 1.4 percent, above the revised estimate. Total receipts through November 2019 had been $15.1 million, or 0.5 percent, above the revised estimate, and taxes only were $12.2 million, or 0.4 percent, above the revised estimate. He indicated the Kansas economy was growing at 2.8 percent—0.2 percent faster than estimated.

Five-year profile. At the December 13, 2019, meeting, the KLRD Director presented the five-year SGF profile projections. The Five-year SGF Profile indicates the SGF ending balance may decrease from $945.5 million with the FY 2020 approved budget expenditures to $5.5 million at the end of FY 2024. The projection includes returning to the statutory determined transfers from the SGF to various funds, including $54.0 million to the Local *Ad Valorem* Tax Reduction Fund (LAVTRF), $78.1 million to the County and City Revenue Sharing Fund (CCRSF), a $33.5 million cap on the transfer to the Job Creation Fund, and $13.0 million to the Special City and County Highway Fund (SCCHF). These transfers have been suspended or not approved since 2003 or 2004. This profile also assumes no transfers are made from the State Highway Fund (SHF) to the SGF starting in FY 2021.

Overview of Consensus Human Services Caseload Estimates. At the meeting on November

19, 2019, the KLRD Assistant Director for Fiscal Affairs (KLRD Assistant Director) presented an overview of the Fall 2019 Human Services Consensus Caseload Estimates for FY 2020 and FY 2021. The estimates are for entitlement services in the human services area only, and do not include all expenditures in the KanCare program. She stated the FY 2020 estimate reflects a decrease of $24.7 million from all funding sources, attributable to reappropriation of money not expended in FY 2019. The Temporary Assistance for Needy Families (TANF) estimate reflects an increase of $1.6 million. The Foster Care program estimate reflects an increase of $3.5 million from all funding sources. The KanCare Medical estimate reflects a decrease of $20.4 million from all funding sources, primarily attributable to decreased estimated population growth, which is partially offset by new high-cost drug expenditures and the delivery system reform incentive payment.

The Kansas Department for Aging and Disability Services (KDADS) non-KanCare estimate reflects a decrease of $9.4 million from all funding sources, primarily attributable to decreased expenditures on fee-for-service payments and medical expenditures for the Program for All-inclusive Care for the Elderly. For FY 2021, the estimate reflects an all funds increase of $482.7 million. The TANF estimate is the same as FY 2020. The Foster Care program estimate is an increase of $13.7 million from all funding sources, attributable to an increased number of children served. The KanCare Medical estimate is an all funds increase of $468.0 million from all funding sources, which includes a change in the Medicaid matching rate, and includes a decrease in the required state share of approximately $34.5 million.

A review of the Medicaid disproportionate share hospital allotment followed. Kansas is estimated to realize an allotment decrease from $48.6 million to $32.8 million and the caseload estimate was reduced to match the estimated decrease. Estimates include $42.0 million to provide rebasing for the nursing facilities reimbursement rates and a decrease of $66.7 million due to the sunsetting of the nursing facility provider assessment. The KDADS non-KanCare estimate reflects an increase of $1.0 million, primarily attributable to increasing population growth. The combined estimate for FY 2020 and FY 2021 is an all funds increase of $458.0 million and a SGF increase of $65.2 million.

The KLRD Assistant Director stated the federal medical assistance percentages reimbursement formula is calculated each year with a three-year look-back period. Rates are determined by both Kansas and national economic indicators. The nursing facility provider assessment is scheduled to sunset July 1, 2020. If the Legislature does not take any action to extend the assessment, the rates the nursing facilities receive for Medicaid payments would be reduced and the revenue the State receives would go away. As such, nursing homes with Medicaid patients would experience a decrease in their reimbursement rates.

Education consensus update. The Fall 2019 Education Consensus Estimates, presented to the Committee by KLRD staff on November 19, 2019, include major categories of state aid to school districts and Kansas Public Employees Retirement System employer contributions. The estimates include revised estimates for FY 2020 and FY 2021, along with an initial estimate for FY 2022. [*Note:* The 2019 Legislature appropriated funding for the major categories of state aid to school districts for FY 2021; therefore, the revised estimate for FY 2021 is described as a change from the approved budget.] The FY 2020 revised estimate is $4.9 billion, including $3.9 billion from the SGF. This is a decrease of $40.5 million, including $32.9 million from the SGF, below the FY 2020 approved amount. The FY 2021 revised estimate is $5.1 billion, including $4.0 billion from the SGF. This is a decrease of $67.5 million, including $38.6 million from the SGF, below the FY 2021 approved amount. The changes for FY 2020 and FY 2021 are primarily attributable to decreased estimates for weighted full-time equivalent (FTE) enrollment, particularly due to the phase-out of new facilities weighting. The initial estimate for FY 2022 is $5.2 billion, including $4.1 billion from the SGF. This is an increase of $137.0 million, including $111.8 million from the SGF, above the FY 2021 revised estimate. The increase is primarily attributable to the additional funding for K-12 education approved by the 2018 and 2019 Legislatures.

Review of FY 2020 and FY 2021 agency budget requests. At the December 13, 2019, meeting, KLRD staff presented an overview of FY 2020 and FY 2021 agency budget requests and the budget supplementals and enhancements. The FY 2020 approved budget has been increased by $110.2 million, all from the SGF, for reappropriations from FY 2019 and FY 2020. The majority of the reappropriations are from the KDOC, KDADS, and KDHE. After adjusting for reappropriations, the FY 2020 revised estimate is an all funds increase of $230.2 million, or 1.2 percent, and a SGF increase of $16.4 million, or 0.4 percent, above the FY 2020 approved budget.

KLRD staff highlighted the requests for FY 2021 by function of government. He noted the FY 2021 budget is not yet approved. For SGF expenditures, General Government agencies requested $386.9 million; Education agencies requested $5.1 billion; Human Services agencies requested $2.1 billion; Agriculture agencies requested $19.0 million; and Public Safety agencies requested $540.7 million. The Kansas Department of Transportation (KDOT) budget request does not include SGF expenditures, although the agency requested $1.6 billion from the SHF and other special revenue funds for FY 2021. For FY 2021, the agency request is an increase of $277.9 million above the FY 2020 revised estimate.

KLRD staff stated KDADS had requested funding for a new electronic medical records and patient management system for the four state hospitals in previous years, but the funds were not approved. For FY 2021, $4.8 million is requested for a new system integrating the four state hospitals, including $2.0 million in yearly recurring support and maintenance costs. KLRD staff stated the agency request includes $4.6 million to renovate a building for additional patient beds, not to build a new structure at Osawatomie State Hospital (OSH). In January 2019, the agency provided a report indicating which buildings could be renovated and which buildings should be razed.

The Secretary for Children and Families and Aging and Disability Services confirmed the renovation at OSH would be for 26 licensed beds, but these beds would not be Medicaid-certified beds. The renovation request is part of a larger plan that is being developed. The concept is to get the federal moratorium on admissions to OSH lifted and to help with enhancement of regional beds so the State can better serve individuals closer to their home communities. KDADS will present the full plan during the 2020 Legislative Session.

Fiscal year-to-date spending. KLRD staff discussed FY 2020 SGF year-to-date spending. The purpose of the report is to identify agencies that are either spending substantially less than anticipated or more than anticipated for FY 2020. The report found 37 agencies were spending below the 2019 rate and 17 agencies were spending above the 2019 rate. He stated the report indicated no major concerns for 2020.

Review of local government transfers. At the January 9, 2020, meeting, KLRD staff provided information and background on the suspension of local demand transfers to local units of government. No transfers have been made from the SGF to the LAVTRF or the CCRSF since FY 2004. The State has not made any transfers from the SGF to the SCCHF since FY 2010. Historically, the transfers to the LAVTRF and CCRSF have been made to reduce the burden on local governments, particularly cities and counties, for property tax assessments for their constituents. The CCRSF has primarily been utilized for repair, maintenance, and construction of streets and highways. Before complete suspension of the transfers, the State had reduced or limited the transfers to these funds due to state budgetary concerns. In recent years, these demand transfers have been treated as revenue transfers so these funds cease to be SGF expenditures and are no longer subject to the ending balance requirement.

Current statutes require 3.63 percent of sales and use taxes received by the State to be distributed to cities, counties, and other eligible jurisdictions from the LAVTRF; 2.823 percent of sales and use taxes received by the State to be distributed to cities and counties *via* the CCRSF; and 33.63 percent of motor-vehicle fuel taxes and all motor carrier vehicle taxes or annual commercial vehicle fee revenue to be distributed to cities and counties *via* the SCCHF. The LAVTRF, CCRSF, and SCCHF include distributions generally based on 65 percent based on population and 35 percent apportioned on the basis of equalized assessed tangible valuations on tax rolls. The KLRD chief economist indicated that while property tax reduction is the purpose for LAVTRF and CCRSF, there is no requirement that each taxing authority receiving local aid show a real dollar decrease in the payable property tax amount for everyone within its jurisdiction.

Human Services Updates

Review of Family First Prevention Services Act. At the August 13, 2019, meeting, the KLRD Assistant Director provided an overview of the federal Family First Prevention Services Act (FFPSA). The FFPSA was signed into law in 2018. It focused on funding state programs to support children at risk of entering the foster care system and prevent their entry. The Act requires that states implement an electronic interstate foster-care system; eliminates time limit for family reunification; provides a 50 percent reimbursement rate through 2026 for qualifying prevention services and in 2027 it goes to the federal medical assistance percentage (commonly known as FMAP) rate (for FY 2020, the state match is 41.4 percent); defines qualifying services as those that are trauma-informed, evidence-based, and provided by a qualified clinician; requires 50 percent of federal funds to a state be for prevention services categorized as "well-supported" by the national clearinghouse; sets maintenance of effort for foster care expenditures at FY 2014 expenditure amounts; and permits the use of Social Services Act Title IV-B and E funding for prevention services.

HB 2103 (2019) amended the Revised Kansas Code for Care of Children to implement the FFPSA and defined qualified residential treatment programs (QRTPs) and related steps. The 2019 Legislature approved $6.9 million from the SGF, and $13.5 million total funds (including matching federal funds) for FY 2020. The DCF released a request for proposal (RFP) for FFPSA grant funding on May 31, 2019.

The Deputy Secretary for Children and Families provided an overview of the steps DCF was taking to implement the FFPSA, an update on the filling of new positions approved by the 2019 Legislature, and a review of the plan for expenditures from the evidence-based initiative account.

Under the FFPSA, the two key priorities are qualifying prevention services and assuring family-based placement. The DCF reached out to six communities (Dodge City, Hays, Olathe, Pittsburg, Salina, and Wichita) plus Topeka regarding the opportunities provided by the FFPSA. These conversations created a state-level and six regional advisory groups to guide this process. In addition to informing the community about the FFPSA, DCF has been refreshing DCF staff on eligibility and available services so they can be a bridge between the families and community organizations.

While the national clearinghouse is still sending monthly updates categorizing programs as either promising, supported, or well-supported, DCF initiated RFPs for FFPSA funding for evidence-based programs for mental health, substance abuse, parent skill building, and kinship navigation in May. DCF received 55 distinct responses (60 total), the most (26) of which were focused on parent skill building. These grants are for one year, with the option of renewing three times.

The FFPSA also created a new category and standard of service for congregated care: QRTPs. To receive federal funding in this category, the center must be accredited, have a trauma-informed treatment model, have a licensed nursing staff, involve the family in the child's treatment, and provide discharge and aftercare support. DCF communicated with existing partners to determine whether meeting these requirements was possible, and five or six organizations were considering going forward with this accreditation so Kansas can draw down the federal match for that. DCF estimates 120 beds would be required. Some are already accredited, but DCF is providing technical assistance to those that are not. DCF established the daily QRTP rate at $250. DCF also has a rate for those centers in progress of becoming QRTPs. DCF worked with KDADS to get an RFP out for an independent assessor to screen the youth.

Update on staffing new positions at DCF. The Deputy Secretary for Children and Families provided an update on the 42 new positions approved by the 2019 Legislature. As of the first week of August 2019, 95 percent were filled. The two positions not filled were in the Central Program and the West Region. The Deputy

Secretary reported DCF was working on recruitment efforts, including new job advertisements on Indeed and partnering with the universities. Out of these partnerships, DCF is looking to expand the practicum and cultivating students who can enter DCF upon graduation.

Plans for expenditures from the Evidence-Based Initiative Account at KDOC. The Deputy Secretary for Children and Families provided an update on DCF plans for the Evidence-Based Initiative Account following 2016 SB 367 comprehensive juvenile justice reform and definitions for the fund. She reported DCF and KDOC were collaborating to learn more about crossover youth, or those youth involved with both the DCF and KDOC. In Spring 2019, a budget proviso group looked at all the data sets and definitions of that and, in the fall, a budget proviso group was expected to take a deeper dive in the information on crossover youth. In June 2019, the Secretary for Children and Families outlined some opportunities to serve youth with juvenile offender behaviors, services that could use funds from the Evidence-Based Initiative Account. DCF is not requesting any funds, but merely submitted a letter outlining opportunities that could use those funds.

The Deputy Secretary of Juvenile and Adult Community-Based Services, KDOC, provided a further update on allocation of funds. KDOC has obligated $2.0 million annually to crisis centers, and DCF is included as part of the memorandum of understanding. DCF has requested just under $3.0 million of the reinvestment funds. The Reinvestment Subcommittee determines whether the request meets the definition set out and whether it is evidence-based. The Oversight Committee votes and the KDOC will then allocate.

In June 2019, the Oversight Committee approved more than 20 initiatives and services, including the Georgetown Youth Practices Model, which will place a position with the DCF and one with KDOC to allow all the entities to work together with the youth under best practices to establish what system will work best for that judicial district. Juvenile correctional advisory boards were expected to provide information to the subcommittee in October 2019, and would be included in the implementation going forward.

Mental Health Bus Tour. At the October 2, 2019, meeting, KLRD staff presented an overview of the Legislative Mental Health Bus Tour (Tour), which took place September 9, 10, and 11, 2019. KLRD staff explained the purpose of the Tour was to tour facilities providing mental health services in order to inform legislators about issues within the state. Invited members of the Tour included members of the Senate Committee on Ways and Means, the House Committee on Appropriations, the Legislative Coordinating Council, and the Joint Committee on State Building Construction. KLRD staff noted those on the Tour traveled 632 miles, visiting facilities providing mental health services in El Dorado, Hays, Hutchinson, Larned, Manhattan, Newton, Salina, and Wichita. He provided a summary of the facilities visited and entities providing information during the Tour.

The Executive Director for the Association of Community Mental Health Centers provided testimony including an overview of the Kansas community mental health system. The Executive Director further discussed the role that community mental health centers (CMHCs) serve in Kansas, a history of mental health reform, and current challenges under the current system, as well as opportunities for improvement. The Executive Director also summarized several options that could be pursued at the state and federal levels to increase mental health services.

The Executive Director for High Plains Mental Health Center (High Plains) provided testimony including descriptions of services provided by High Plains. The Executive Director discussed challenges such as the cost of uncompensated care, traveling significant distances to provide services, and competition from other potential employers in retaining and recruiting staff. The Executive Director discussed efforts to overcome challenges, such as through increased utilization of telepsychiatry and telebehavioral health and encouraging enhanced mobile broadband in Western Kansas. The Executive Director also presented testimony on KVC Hospitals Hays recently closing certain inpatient psychiatric beds for youth after communications with KDADS. The Executive Director further noted concern about the distance children would have to travel for services, as those beds were moved to Wichita. The Commissioner for Behavioral Health Services (BHS), KDADS, (BHS Commissioner) answered questions from Committee members concerning the timeline of changes for KVC Hospitals Hays and the reasons that certain acute care beds for youth were moved to Wichita. The BHS Commissioner indicated KDADS received a letter from the federal Centers for Medicare and Medicaid Services (CMS) noting KVC could not have a facility licensed for both acute care beds and psychiatric residential treatment facility (PRTF) beds, where the children were co-mingled. To provide necessary separation, a change was made to have separate wings and not co-mingle the youth. The BHS Commissioner indicated KVC Hospitals Hays made the decision to close the acute care beds and convert the facility to being exclusively PRTF beds. The BHS Commissioner indicated some youth experienced injuries during the co-mingling time period.

The Executive Director of Central Kansas Mental Health Center (CKMHC) provided testimony on services provided by CKMHC and the Legislative School Mental Health Initiative Pilot (Pilot) authorized by the 2018 Legislature. The Executive Director reported CKMHC had been part of the Pilot since 2018 and had worked to fill gaps in the system at a low cost. The CKMHC Executive Director indicated the Pilot has led to students in rural towns receiving better access to mental health services in their own communities, which has resulted in students avoiding missed classroom time and other transportation barriers to receiving services. The Executive Director noted, due to the success of the initial Pilot, several more school districts requested services for the 2019-2020 school year. She reported CKMHC had an on-site therapist at 23 schools and provided emotional skill building in 17 schools. The CKMHC Executive Director indicated services are also offered when school is over for the day and during summer and holiday breaks. The CKMHC Executive Director reported current challenges include low Medicaid reimbursement rates for behavioral health services and that more therapists and psychiatrists are needed in Kansas.

The State Hospital Commissioner and Special Counsel for KDADS presented testimony concerning the Tour's visit to Larned State Hospital (LSH). She provided an overview of the state hospital, including details on the services and patients receiving treatment in the Psychiatric Services Program, the State Security Program, and the Sexual Predator Treatment Program. The State Hospital Commissioner identified challenges for the facility, including competition from other potential employers in retaining and recruiting staff, wage disparity for certain positions compared to similar positions at other agencies, mandated overtime, and safety concerns for patients and staff. She provided information on a new electronic health records patient management system for LSH and the other three state hospitals, noting KDADS identified one-time funding to begin to develop and implement the system, but there would be additional significant costs to maintain and support the system.

The Chairperson of the Department of Social Work for Fort Hays State University provided testimony on the Bachelor of Social Work (BSW) program and the Masters of Social Work program at Fort Hays State University. He noted the programs' goal of providing improved access to health and mental health care for residents of undeserved areas. The Chairperson provided information on strategies to educate practitioners, including online coursework and face-to-face clinical training. The Chairperson further reported the cohort programs were designed to be delivered in the local community so nontraditional students and students who were established and committed to a community could complete the degree and maintain their roots in the community. He further noted the first three Garden City cohort classes graduated 30 BSW students and these former students made up more than half of the licensed BSW social workers in the county; 14 students graduated from the Dodge City cohort in May 2019 and 24 students began in Fall 2019; the Liberal cohort program has 8 students; and the Colby cohort launched in Fall 2019 with 14 students.

The Deputy Secretary of Facilities Management, KDOC, provided testimony concerning the tour of El Dorado Correctional Facility and the mental health services that were described during the tour. The Deputy Secretary noted the correctional system is the largest provider of residence-based mental health services in Kansas, serving approximately 4,150 incarcerated persons diagnosed with mental illness. Challenges identified include treating a high volume of individuals, safety concerns for inmates and staff, the transition process from incarceration back to a home community, and access to appropriate housing and mental health treatment upon release.

Representatives of Behavioral Health Community Collaborating for Sedgwick County, and COMCARE of Sedgwick County, provided information on mental health treatment and substance abuse, including formation of the Mental Health and Substance Abuse Coalition (Coalition). The representative of COMCARE provided information on the efforts to coordinate services among COMCARE, local hospitals, district attorneys involved in cases in which individuals have a mental health or substance use disorder, and detention facilities. The representative of COMCARE further discussed some of the current challenges, such as workforce issues, funding uncertainty, gaps in service, and logistical concerns about the ability to expand the program to meet needs due to space constraints. The representative of COMCARE shared future plans for the Coalition, including increased communication with shareholders to review research findings and receive input, finalizing a strategic plan, and working to define the role of mental health and substance abuse committees around strategic initiatives.

Update on psychiatric bed availability at KVC Health Systems. At the December 13, 2019, meeting, the President of KVC Hospitals (KVC) presented testimony to the Committee concerning the transition of KVC Hospitals in Hays from a facility with both acute care beds for children and PRTF beds for youth to a facility offering exclusively PRTF beds. The KVC representative provided background on the difference between acute care beds providing shorter-term treatment and stabilization for youth, with an average length of stay of 5 to 7 days, compared to PRTF beds in which youth receive intensive clinical services in a structured, home-like environment, for a longer term to practice skills, with an average length of stay of 60 to 90 days. He stated KVC was created as a dual-licensed facility beginning in 2010 for both short-term acute and longer-term residential patients. The KVC representative stated this allowed the facility to combine staff and operating costs between the two separate treatment programs, but same-gender youth within appropriate age ranges were able to share bedrooms at night.

In 2017, Kansas notified KVC that CMS might discontinue permitting dual licensing. The KVC representative noted KVC expressed concern to KDADS and stakeholders, if regulations were changed, KVC would not be able to sustain a stand-alone unit. In February 2019, KVC was informed by KDADS that CMS would require the facility to operate separate units by April 1, 2019. Costs for required building upgrades would exceed \$1.0 million and KVC would need continued funding to sustain overhead costs. As of October 21, 2019, KVC had operated as a PRTF-only facility. The KVC representative noted KVC opened a psychiatric hospital for children in Wichita, which included 54 acute beds. Additionally, the transition in Hays includes plans to add beds for a total of 50 PRTF beds. Between the opening of KVC Hospitals Wichita and adding PRTF beds in Hays, KVC will have added 42 new beds for acute care and 38 PRTF beds in the state.

Committee members asked whether KVC had experienced problems due to the mixed populations over the years KVC was operating a dual-licensed facility. The KVC representative stated across the ten years the facility operated as a dual-licensed facility, he did not recall any significant issues due to the mixed populations. Committee members asked whether KVC ever received documentation from CMS that it was discontinuing the policy allowing dual-licensed facilities, and the representative indicated he did not receive anything from CMS on this subject. Responding to Committee member questions on where children needing acute care services were being served after those beds were closed in Hays, the KVC representative indicated some were served in Wichita and some were served in Kansas City. Committee members asked for clarification on the \$1.0 million in structural improvements needed for the facility. The KVC representative stated State Fire Marshal regulations would require, if the facility were to have acute care and PRTF beds, the entire building to meet certain standards, even though the dual-licensed unit was using only one wing on the third floor. Committee members asked whether KVC had considered relocating to another building in Hays, and the KVC representative indicated this could be possible, but additional funding would be needed.

Committee members asked about the impact on the effectiveness of treatment if a child is placed far from family. The KVC representative indicated that including necessary individuals in-person is always preferred, but recent improvements in technology, including telehealth, have helped with this issue.

The Secretary for Aging and Disability Services stated KVC has been a "fantastic" partner for the State and she would like nothing more than for this facility to continue operating as they had prior to the change. However, she noted that the blending of the populations at night was unacceptable and KDADS could not put the State at risk of violating CMS requirements leading to dis-allowances or having federal funds recouped. The Secretary provided a map of acute care hospitals serving children in Kansas, noting many areas lack services. The Secretary informed the Committee it would be meeting with facilities in Dodge City, Garden City, and Hays in January and February 2020 concerning locations for children's acute care beds and crisis services. The Secretary noted her goal is to identify at least one site for acute care services, while also looking at the utilization of telemedicine through the University of Kansas. The Secretary indicated she planned to report back to the Committee by March 2020.

Committee members noted the map showing acute care hospitals for children and expressed concern about the lack of services in the western areas of the state and a lack of a transition plan after the beds were closed in Hays. Committee members asked for clarification of CMS requirements that expressly prohibit dual-licensed facilities. The Secretary stated the requirements did not allow KVC to function the way it did, noting that a dual-licensed facility was possible, but blending the populations at night was not permitted.

The State Fire Marshal responded to questions from Committee members regarding building requirements for dual-licensed facilities. The Fire Marshal indicated he had conversations with CMS officials and noted CMS has different standards for PRTF facilities and acute care facilities. He further noted, if the acute care beds are in a hospital, the requirements fall under certain guidelines, but if the beds are in a building with separate facilities, such as offices, the requirements are different. The Fire Marshal stated it was originally believed the entire building would need to be protected by sprinklers but, after further conversations with CMS, the office of the Fire Marshal did not believe that standard applied because it is not attached to an actual hospital setting. The Fire Marshal indicated he had received the architectural drawings for the new KVC acute care facility and there were plans to inspect the facility in the following week. The Fire Marshal stated there was a possibility the facility could be cleared for operations around the beginning of 2020, but he could not address federal reimbursement eligibility or timeline.

At the January 9, 2020, meeting, KDADS provided written testimony stating if the KVC hospital was to lose its certification, between $1.8 million and $2.0 million in federal funds annually would be at risk.

State hospital records system update. At the January 9, 2020, meeting, KDADS provided a written update on the costs to update the state hospital records system. The agency estimated the potential costs of a new electronic health record by conducting a request for information from potential vendors in 2018. The estimate includes an estimated $5 million to cover start-up costs and up to $2 million in ongoing costs to bring in a vendor. The agency planned to allocate a portion of re-appropriated funds for the purposes of the vendor start-up costs.

The agency also identified one-time facility infrastructure modernization costs of $2.7 million across the hospitals to ensure the hospitals could properly host a new system. These estimates were derived by hospital and agency staff.

Summary of lottery ticket vending machine revenues for human services. At the November 20, 2019, KLRD staff presented an overview of the implementation of lottery ticket vending machines authorized by 2018 Sub. for HB 2194. The bill directed the net profits from lottery ticket vending machines to be transferred to KDADS, split 75.0 percent for community crisis stabilization centers and 25.0 percent for clubhouse model programs. The bill limited aggregate transfers to KDADS to $4.0 million for FY 2019 and $8.0 million for FY 2020 and each fiscal year thereafter. KLRD staff noted it was originally anticipated the lottery ticket vending machines would be operational for one half of FY 2019 and each full year thereafter; however, there were delays in the implementation of the program. According to the Kansas Lottery, the first batch of machines was ordered in Fall 2018 and received in May 2019, and machines began to be tested in June and July 2019. Machine installation in grocery stores and other locations statewide continued.

KLRD staff indicated transfers to KDADS totaled $35,017 in September, $53,785 in October, and $54,891 in November. He summarized funding for crisis centers and clubhouse model programs within the KDADS budget. Representatives of KDADS provided written testimony showing the planned amounts of expenditures for crisis centers and clubhouse model programs for FY 2020 and FY 2021; they estimated revenue from lottery ticket vending machines totaling $352,000 in both FY 2020 and FY 2021. The Director of Finance, Kansas Lottery, responded to questions from Committee members concerning which facilities would house the lottery ticket vending machines and the mechanics of the machines. The Director of Finance stated he anticipates the revenue from the lottery ticket vending machines would exceed the estimate provided by KDADS. The Director of Operations, KDADS, answered Committee member questions concerning agency plans if lottery ticket vending machine revenue is lower than previously estimated.

Veterans Claims Assistance Program statutory update. At the December 13, 2019, meeting, the Deputy Director, Kansas Commission on Veterans Affairs' Office, provided testimony on the Veterans' Claims Assistance Program (VCAP), which assists Kansas residents in obtaining veteran and survivor benefits from the state and federal governments. The Deputy Director stated VCAP provides service grants to eligible veteran service organizations, used by the organizations to hire service officers through the program. From 2006 to 2013, the amount of grants distributed through VCAP totaled $500,000 annually. This amount was increased to $600,000 for FY 2014 through FY 2019. Beginning in FY 2020, annual VCAP funding totals $650,0000. The Deputy Director provided a table with the FY 2019 VCAP expenditures broken out by category of expenditure, as well as a table showing total dollars awarded to veterans and family members who were assisted by the grant participants over the previous five years.

Responding to Committee member questions on why the amount of claims fluctuates significantly year to year, the Deputy Director stated the variability can involve changes in eligibility for U.S. Department of Veterans Affairs benefits, such as when a certain disease is added as a presumptive condition for certain benefits. The Deputy Director noted when changes in conditions or eligible benefits are made at the federal level, the agency attempts to contact eligible Kansas veterans to seek those benefits. Responding to a question from Committee members on the requested increase of $50,000 in VCAP funding for FY 2021, the Deputy Director stated the increase was being sought primarily to help cover inflationary costs. Responding to a question, the Deputy Director indicated the total number of claims by female veterans had been increasing recently.

Transportation Updates

T-Works projects updates. At the August 13, 2019, meeting, the Deputy Secretary of Transportation (Deputy Secretary) presented an update on each of the delayed expansion and modernization projects planned for the Transportation Works for Kansas (T-Works) program and their status. The Deputy Secretary reviewed the additional funding for projects as approved by the Legislature and Governor in 2019. Of the $166.0 million from reduced SHF transfers, $50.0 million for highway preservation adds 200 miles of preservation work and heavier preservation actions; 5 delayed T-Works projects were moved forward, costing $86.4 million; $5.0 million was allocated for local bridge improvements; $11.0 million was allocated for the new Cost-Share Program for State/Local Partnerships; $10.0 million was allocated for an Enhanced Safety Program; $2.0 million was allocated for an increase from $3,000 to $5,000 per lane mile of maintenance payments to cities for city connecting links; and $2.0 million was allocated for the Statewide Bike and Pedestrian Plan and infrastructure improvements. A review of the seven delayed T-Works projects scheduled for FY 2019 and FY 2020 and a review of the list of remaining delayed T-Works projects followed.

The 2019 Legislature provided a one-time $50.0 million transfer from the SGF to the SHF in FY 2019, as approved by the Governor and Legislature, for funding transportation projects with city and county providing a 25.0 percent match. The Deputy Secretary stated regional priorities were being reviewed for further T-Works projects, as identified by the 2018 Joint Legislative Transportation Vision Task Force, and she further emphasized the need to safeguard preservation work projects at an estimated cost of $500.0 million annually, as opposed to the $200.0 million allocated.

At the November 20, 2019, meeting, KLRD staff provided an overview of the components of 2010 T-Works transportation legislation as originally enacted in 2010 Senate Sub. for Senate Sub. for HB 2650, and actions that led to the delay of 25 announced T-Works modernization and expansion projects.

The KDOT Director of Policy updated the Committee at the November 20 meeting on the status of the 25 delayed projects, noting that 7 of those projects had been rescheduled and were to be let in FY 2019 and FY 2020. He also provided an update on projects announced as selected to receive matching funds provided as part of the transfer of $50.0 million from the SGF to the SHF in 2019 House Sub. for SB 25, which required a 25.0 percent local match. He also provided the committee with a listing of all state memorial highway and bridge designations.

Agriculture and Water Issues

Review of programs in the Kansas Water Office. At the October 2, 2019, meeting, the Acting Director of the Kansas Water Office, the Director of the Division of Environment, KDHE, and the Executive Director of the Division of Conservation of the Department of Agriculture reviewed new and expanded water management programs in FY 2020 and for FY 2021, which include:

- Information technology (IT) enhancement for the Kansas Water Office;
- Reservoir operation and maintenance;
- Technical assistance to water users;
- Watershed conservation practice implementation;
- Water injection dredging;
- The Arbuckle Study;
- The Drinking Water Protection Program;
- Watershed dam construction;
- Conservation Reserve Enhancement Program;
- Water Resources Cost-Share Program;
- Streambank stabilization;
- Real-time water management telemetry; and
- Water supply restoration.

Updates from the Department of Agriculture on tariffs and flooding. At the October 2, 2019, meeting, the Secretary of Agriculture provided an update on the impacts of federal tariffs on Kansas agriculture. In 2018, Kansas exports totaled $3.8 billion, with Mexico, Japan, and Canada as the leading trade partners. In response to foreign tariffs, the U.S. Department of Agriculture (USDA) was providing Market Facilitation Program (MFP) payments to assist producers of non-specialty crops, dairy, hogs, and specialty crops impacted by the tariffs. He reported Kansas farmers received $500 million in the first round of MFP payments in CY 2018.

The Secretary of Agriculture also provided an update on the impacts of flooding on Kansas agriculture. Many reservoirs have received damage; the cost of repairs should be covered by the reservoirs' maintenance or repair funds. Damage to agricultural land is more difficult to calculate. The USDA was expected to release information on crop insurance claims that would aid in quantifying the impacts. The Kansas Department of Agriculture (KDA) hopes to partner with KDHE to use satellite imagery to track the daily impact of flooding in the future.

Update from the Kansas Corporation Commission on plugging of abandoned wells. At the October 2, 2019, meeting, the Director of the Conservation Division of the Kansas Corporation

Commission (KCC) provided information on funding to plug abandoned oil and gas wells and the KCC plan to combine its Abandoned Oil and Gas Well Fund and its Well Plugging Assurance Fund, which provide funding for plugging wells drilled prior to and after July 1, 1996, respectively. The majority of wells that require plugging were drilled prior to July 1, 1996, and therefore require more funding.

At the October 2, 2019, meeting, the chairman of the Kansas Independent Oil and Gas Association (KIOGA) provided information on funding to plug abandoned oil and gas wells. He stated KIOGA supports the KCC's plan to combine the Abandoned Oil and Gas Well Fund and the Well Plugging Assurance Fund and combining the funds will delay raising fees on the oil and gas industries.

Review of regulation and status update on industrial hemp cultivation. At the October 2, 2019, meeting, KLRD staff provided an overview of legislation relating to industrial hemp.

She reviewed two pieces of federal legislation that affect how industrial hemp may be handled at the state level. The 2014 Farm Bill legitimized industrial hemp research and allowed state departments of agriculture and institutions of higher education to grow hemp for research purposes. This legislation defined industrial hemp as a part of the *Cannabis sativa L.* plant that contains no more than 0.3 percent tetrahydrocannabinol (THC) concentration on a dry weight basis. The 2018 Farm Bill removed industrial hemp from regulation under the Controlled Substances Act and allows states and tribes to submit plans to the USDA to regulate industrial hemp within their territories.

KLRD staff also reviewed two bills passed by the Kansas Legislature: 2018 SB 263 (the Alternative Crop Research Act) and 2019 Senate Sub. for HB 2167 (the Commercial Industrial Hemp Act). The Alternative Crop Research Act allowed the KDA, either alone or in coordination with a state institution of higher education, to create an industrial hemp pilot program to grow and cultivate industrial hemp and promote the research and development of industrial hemp in accordance with federal law. The Commercial Industrial Hemp Act requires the KDA, in consultation with the Governor and Attorney General, to submit a plan to the USDA for the KDA to monitor and regulate the production of industrial hemp in Kansas.

A representative of the KDA provided an update on Kansas' Industrial Hemp Research Program (created by the Alternative Crop Research Act). The KDA representative stated there were 260 total active licenses for the 2019 growing season, and 196 of those were grower licenses. He stated 2,376 acres of industrial hemp were planted in 57 Kansas counties. He discussed challenges faced by these growers, including difficulty obtaining seed and inability to plant or harvest due to flooding. He stated six total pre-harvest inspections found industrial hemp testing above the limit of 0.3 percent THC concentration.

The KDA representative also discussed the commercial program currently being developed by the KDA. He stated the KDA was in the process of formally adopting program regulations, which might be adopted in February 2020.

The representative explained the USDA had not yet released its interim final rules for commercial industrial hemp. [*Note:* The USDA subsequently published the interim rule on October 31, 2019.] The representative stated the KDA plans to submit the Kansas plan to the USDA at the same time it is adopting the program regulations in Kansas. The representative stated the KDA plans to have the commercial program in place for the 2020 growing season.

The KDA representative stated the beginning cash balance of the Commercial Industrial Hemp Act Licensing Fee Fund (Fund) was $451,464 on July 1, 2019. He explained the relatively high carryover balance was due to the timing of revenue in (from license fees) and the expenses of the program. He explained this carryover balance should fund an anticipated deficit in the Fund for six to seven years.

A representative of Mechanized Concepts, a product design and consultancy firm that opened a hemp product manufacturing plant in Russell, Kansas, provided information on the plant's expected effects on the community. She stated the company intends the plant as a rural revitalization effort through public private partnerships. She stated at the time of the meeting, the company had 26 employees and hoped to have 50 employees by the end of 2019. The estimated cost of the plant is roughly $500,000 for the required machinery.

In response to another question on the potential economic benefit of hemp to Kansas, the Mechanized Concepts representative stated Russell County sales tax revenue tripled as a result of the plant. She stated the company expects the property tax in the area to expand as more people relocate to Russell for employment at the plant. and she hopes there will be 100 employees at the Russell plant in 10 years. She stated the company hopes to partner with schools to promote the Rural Opportunity Zone program for teachers (so more teachers will move to the area and their spouses can work for the company).

Education Reports and Updates

Department of Education, Safe and Secure Schools Initiative. The Committee received an update from a representative of the Kansas State Department of Education (KSDE) on the Safe and Secure Schools grants. The 2019 Legislature appropriated $5.0 million from the SGF for the grants for FY 2020 and required the grants be used for specific security improvements, including the installation of security cameras, other monitoring equipment, and securing any entrances to school facilities. For FY 2020, the State Board of Education awarded grants to 169 of the state's 286 school districts. The average grant was $29,585. The smallest grant was awarded to Moscow (USD 209) for $670 and the largest was awarded to Wichita (USD 259) for $921,475. The representative of KSDE also provided information on specific school safety projects in Ashland (USD 220), Salina (USD 305), and Kansas City (USD 500).

K-12 education funding used for salary increases. At the January 9, 2020, meeting, KLRD staff presented a memorandum regarding K-12 education funding, addressing a Committee request from its December 13, 2019, meeting for information on what portion of the increased funding for K-12 education is being used by school districts for salaries and benefits. Based on the Fall 2019 Education Consensus Estimates, State Foundation Aid payments are projected to increase by $160.9 million from school year (SY) 2018-2019 to SY 2019-2020.

According to the KSDE, school districts planned to use approximately 77.3 percent of increased funding, or $124.4 million of the increased State Foundation Aid, on salaries and benefits. This includes salaries and benefits for the following:

- Continuing licensed personnel (*e.g.*, teachers, school psychologists, social workers): 41.9 percent;
- New licensed personnel: 12.1 percent;
- Continuing non-licensed, classified personnel (*e.g.*, janitors, food service bus drivers): 15.2 percent;
- New non-licensed, classified personnel: 4.1 percent; and
- Administration personnel: 4.0 percent.

Community technical colleges and state higher education institution funding. The President and Chief Executive Officer of the Kansas Board of Regents (President) spoke about the Board's new strategic plan that will focus on Kansas families, businesses, and improving economic prosperity. The President also spoke about the systemwide transfer of credits between colleges and universities. The largest portion of the discussion was around the cost of education, tuition increases, and the decrease in state funding of the universities over the years. He reported the Board of Regents has enhancement requests exceeding $93.0 million for FY 2021. The President also discussed state funding of the community and technical colleges within the state.

The Executive Director of the Kansas Association of Community Colleges discussed the cost model and other funding sources for the community colleges. She stated the cost model was not intended to cover the full cost of college operations and provided a pie chart for college expenditures.

A representative from the technical colleges discussed college funding and the success of the Excel in Career Technical Education Program. The representative also discussed the vocational capital outlay funding, which has increased only $500,000 since it was established in 1977, as well as the return on investment of the students who graduate from technical colleges.

General Government and Capital Improvements

Update on the Statehouse Snack Bar. At the November 19, 2019, meeting, a representative from the Department of Administration's Office of Facilities and Property Management provided an update on the status of the Statehouse Snack Bar (Capitol Café). The contract for the Capitol Café was awarded to Kelly Construction of Topeka for $147,000. The representative indicated construction began September 3, 2019, and was scheduled to be completed by November 22, 2019. The representative further indicated the DCF Business Enterprise Program will be responsible for the equipment, setup, and management of the Capitol Café, following completion of construction.

A representative from the Business Enterprise Program provided an overview of the program, indicating federal requirements restrict bids to individuals who meet the definition of blindness established by the Social Security Administration, and reviewed state laws with the right of refusal to the program in state, county, and municipal buildings. The representative also indicated that vendor agreements are typically long-term commitments and that applications are processed through the open vendor rehabilitation case, which helps fund training, initial stock, and supplies, including food service kiosks and vending machines. Responding to questions, the representative indicated there are no special disability requirements for employees, just for the vendor.

Docking State Office Building. At the November 19, 2019, meeting, a representative of the Department of Administration provided an update on the Docking State Office Building (Docking Building). The representative indicated, as directed by the Joint Committee on State Building Construction, the Department of Administration enlisted the services of the Clark Huesemann consulting firm to conduct an analysis and prepare a report regarding budget proviso requirements for the Docking Building. The Department of Administration representative reviewed overall space utilization of the building, tenant surveys conducted in Shawnee County, and business use and needs for the next three to five years for state agencies around and within the Capitol Complex. The representative also indicated the Department's recommendation would be completed by November and its final report would be submitted to the Committee by January 1, 2020. [*Note:* It is now anticipated the report will be received by the end of January 2020.]

A representative from the Department of Administration's Office of Facilities and Property Management responded to questions regarding the utility plant in the Docking Building. The representative indicated the Clark Huesemann findings analyze the utility plant's footprint and space, potential operating loads, and costs associated with resizing the building. The representative also indicated decisions need to be made on which parts can be improved upon, heat recovery chillers, savings realized through increased energy efficiency, and what can be used and planned over time.

Office of Information Technology Services update. At the December 13, 2019, meeting, the Executive Branch Chief Information Technology Officer (CITO) from the Office of Information Technology Services (OITS) provided a summary of IT activity in state agencies, including network and staffing capabilities. The CITO indicated the top five challenges to state agencies are technology obsolescence, budget constraints, security, recruitment and retention, and resource constraints. The CITO also indicated OITS continued to work on the data center migration and was about 20.0 percent complete. Speaking on the Statewide Cost Allocation Plan (SWCAP), the representative indicated federal officials had determined the State overcharged for IT rates in FY 2016 and had until FY 2019 to take corrective action. The matter remained unresolved, and the CITO indicated a percentage of the $5.6 million excess amount will be charged to OITS as a penalty. Lastly, the OITS representative indicated a dispute with Legislative Administrative Services regarding a historical arrangement with OITS for services continued.

Report on the Job Creation Program Fund. At the January 9, 2020, meeting, a representative of the Department of Commerce briefed the Committee on the Job Creation Program Fund (JCPF) and the Economic Incentives Database. The agency representative indicated the JCPF is the deal-closing fund for the State. It was created in 2011 by combining Investments in Major Projects and Comprehensive Training (known as IMPACT) and the Kansas Economic Opportunities Initiatives Fund. Between 2.0 percent and 4.0 percent of projects handled by the Department of Commerce annually receive JCPF moneys. JCPF awards are structured in two ways: milestone payments dispersed over five years upon goal completion or as an upfront cash payment in the form of a forgivable loan. The Department of Commerce representative also provided a list of JCPF awards from FY 2014 through FY 2019.

KSA 74-50,224 authorizes the Department of Commerce to use job creation moneys for projects related to any one of eight purposes:

- Major expansion of an existing Kansas commercial enterprise;
- Potential location in Kansas of the operations of a major employer;
- Award of a significant federal- or private-sector grant that has a financial matching requirement;
- Potential departure from Kansas or the substantial reduction of the operations of a major Kansas employer;
- Training or retraining activities for employees in Kansas companies;
- Potential closure or substantial reduction of the operations of a major state or federal institution;
- Projects in counties with at least a 10 percent population decline during the period from 2000 to 2010; or
- Other unique economic development opportunities.

Report on the Economic Incentives Database. At the January 9, 2020, meeting, a representative of the Department of Commerce briefed the Committee on the Economic Incentives Database. HB 2223 (2019) required the formation of an incentive database to be housed with the Department of Commerce. The agency representative stated the goal of this database is to create a more transparent government by sharing incentive data with the public including metrics on economic development incentive programs. The database went online on the day of the briefing.

Public Safety

Review of the implementation of the Cyber Crimes and Financial Integrity Unit. At the November 19, 2019, meeting, the Director of the Kansas Bureau of Investigation (KBI) provided information and background on the Cyber Crimes Unit (CCU). House Sub. for SB 25 (2019) provided $1.0 million from the SGF and 8.0 FTE positions for a cyber and financial crimes initiative for FY 2020. The agency's initial budget request included $1.9 million and 15.0 FTE positions. However, after discussion with legislators and local law enforcement, the agency determined that amount received would exclusively be focused on the CCU to conduct cyber-related investigations and gather cyber-related intelligence in the state.

The KBI Director explained the new 8.0 FTE positions will include 6.0 FTE special agents, a 1.0 FTE criminal intelligence analyst, and a 1.0 FTE supervisor position, all organized within the agency's Field Investigations Division. The agency has assigned an Assistant Special Agent in Charge to manage the CCU and its personnel and transferred two special agents to the CCU. The agency was in the process of hiring additional staff and all candidates were expected to have IT background or education.

The headquarters for the CCU will be in the Wichita Regional Office in Kechi with two special agents stationed in the KBI Kansas City office (in Lenexa) and two in the Garden City office. The KBI Director described staff to be situated in Kansas City as essential to the CCU's operations because they will be assigned to the Federal Bureau of Investigation Cyber Crimes Task Force and the U.S. Secret Service Cyber Task Force. This will allow staff to work with federal partners if contacts and information are needed outside of the KBI's jurisdiction. The agency expects that casework can begin to be accepted in July 2020 with the special agents assigned to the federal task forces in November 2021.

The KBI Director stated the agency was focused on training personnel, obtaining the necessary equipment, and identifying the most serious threats in the cyber crimes environment. The Director noted the agency does not currently know how many cases it will be engaged in as this will be primarily determined by requests from local law enforcement and prosecutors. He stated the current cyber crimes capabilities in the state are provided primarily by the state's federal partners, who have a monetary threshold before they are involved. The KBI believes it can address crimes involving smaller amounts, but it will likely have the resources to focus only on business-related crimes rather than on crimes against individuals.

Prison funding and Lansing Correctional Facility construction. At the August 13, 2019, meeting, the Acting Secretary of Corrections provided updates on the use of additional funding for prisons and the Lansing Correctional Facility construction.

The 2019 Legislature approved additional funding for correctional and parole officer pay increases, contract beds, hepatitis C treatment, safety equipment, and increased prison capacity for female inmates. The Acting Secretary of Corrections stated correctional officer pay increases had successfully reduced vacancies and improved retention at all facilities; however, overtime remains elevated until new employees complete training. The emergency staffing declaration at the El Dorado Correctional Facility was scheduled to end in October 2019 as a result of vacancy reductions. Parole officer turnover remained unchanged due to continued retention challenges.

The Acting Secretary of Corrections stated the Kansas Sentencing Commission projects inmate population exceeding KDOC capacity in FY 2020. The 2019 Legislature appropriated $9.9 million for contract beds to house inmates at non-state facilities. To date, KDOC had contracted with county jails for approximately 130 beds. KDOC entered a contract with CoreCivic in August 2019 for 360 medium- and maximum-security beds at the Saguaro Correctional Center, a private prison in Eloy, Arizona. The contract cost is $74.76 per inmate per day, which compares to the KDOC rate of $72.35. Even with inmate outsourcing, a need for 200 beds remains. Efforts to repurpose in-state facilities are being considered.

The Acting Secretary of Corrections noted an additional $4.5 million was appropriated for treatment of hepatitis C among inmates in FY 2020, which supplements funding already built into the medical contract, for a total of $8.5 million. This funding allows for the treatment of 567 patients. As of the Committee's August 13 meeting date, 647 inmates required treatment and an estimated 528 new admissions were expected to require treatment in FY 2021.

Funding in the amount of $344,400 was appropriated for safety equipment that included stab vests, used by tactical teams, and ballistic vests, used by correctional and parole officers for perimeter security and transport of offenders. A total of 574 vests were expected to arrive in early September 2019.

The Acting Secretary of Corrections stated an additional $241,600 was appropriated for the replacement of 11 high-mileage vehicles deemed unreliable for offender transport. He anticipated orders would be placed in September 2019.

The female inmate population has exceeded capacity at the Topeka Correctional Facility, the state's only female facility, the Acting Secretary of Corrections noted. To address this, $3.0 million was appropriated for renovation of an underutilized housing unit at the Kansas Juvenile Correctional Complex in Topeka to provide 120 beds. A proviso in 2019 House Sub. for SB 25 states funds may be used only for renovation; however, minimal renovations are required and funds are instead needed for operations. Progress on the project had halted pending adjustments to the proviso language.

The Acting Secretary of Corrections stated construction of the Lansing Correctional Facility was estimated to be completed by January 2020. In January 2018, a lease agreement was signed with CoreCivic for partial demolition of existing structures and construction of two sites with a total capacity of 1,920 inmates. The first site is a maximum- and medium-security facility including two cell houses with 896 beds and a support building with infirmary, kitchen, and dining rooms. The second site is a minimum-security facility including one building with 512 beds and support space for medical and food services, a visiting area, and staff offices. Once complete, the facility will have a net gain of 27 beds.

Update on fire suppression funding. The Adjutant General updated the Committee at its November 19, 2019, meeting on the $155,500 in SGF moneys provided by the 2019 Legislature for wildland firefighting equipment in FY 2020. Expenditures were to provide for the purchase of seven wildland engine skid tank units, two helicopter dip tanks, 60 sets of personal protective equipment, and skid tank unit maintenance. The Adjutant General reported the agency had been able to purchase 60 sets of personal protective equipment and a pump for a helicopter dip tank, and anticipated being able to purchase the dip tanks and skid units in early calendar year 2020.

The Director for Extension, Kansas State University Research and Extension, addressed the Committee on expenditures made by the Kansas Forest Service from the wildfire suppression account created by 2019 House Sub. for SB 25. Of the $650,000 appropriated, $37,500 had been spent to date.

Reports and Updates from Kansas Legislative Division of Post Audit

Elected Official Pay Study. At the November 20, 2019, meeting, Legislative Division of Post Audit (LPA) staff presented a review of LPA's study on legislative compensation. According to the 2019 data collected on salaries and per diem amounts, Kansas legislators' annual base pay is an average of $21,900, based on a 92-day legislative session length. The report combined statutory base salary with the statutory per diem amounts into one number for comparison purposes. Kansas legislative pay is lower than that of 8 of the 14 states reviewed. According to the study, Kansas is in the mid-range for part-time legislatures and lower than most nearby states with hybrid legislatures. Legislative leadership position salaries increase above the base by approximately $14,000. LPA staff noted salaries for judges and district magistrate judges are lower than in most other states; however, Kansas does not require a district magistrate judge to have a law degree.

LPA staff stated the Kansas Lieutenant Governor's annual salary was $54,000 in 2018 and increased to $76,300 in 2019. It was noted historically the salary for this position varies based on extra responsibilities above those in statutes that establish base pay for the position. A review of leadership pay followed. It was noted the budget of the leadership staff would fall under the Legislative Coordinating Council and was not included in this data.

Reports on the Economic Development Initiatives Fund. At the November 20, 2019, meeting, a LPA principal auditor presented the *Economic Development Initiatives Fund (EDIF): Evaluating the State's Accountability of the Use of EDIF Funding* audit report. He reviewed the history of creation of the EDIF by the Legislature.

In FY 2018, the State spent $42.3 million of these funds, which were transferred to other funds. The principal auditor stated the audit indicates the State does not design and award EDIF funds according to the best practices as identified, and the State does not track EDIF recipients or performance or evaluate EDIF effectiveness. Approximately $7.8 million of FY 2018 EDIF funds went to programs consistent with specific legislative intent. He stated approximately $14.4 million in EDIF spending in FY 2018 related to economic development and $20.1 million of EDIF spending in FY 2018 did not relate to economic development. Additionally, auditors found no tracking mechanisms in place to identify whether EDIF funds are disbursed across Kansas as required by law. The principal auditor stated three EDIF accounts specified in state law have not been used in recent years. Audit recommendations for the Legislature include the creation of an oversight body to ensure EDIF funds are used according to legislative intent and best practices and utilization of the three EDIF accounts in state law or amending state law.

Committee members discussed the lack of knowledge related to the specific uses of EDIF dollars, looking into the spending of EDIF moneys to ensure the funds are used according to the 1986 legislative intent, and whether amending the statute is required. It was stated EDIF funds transferred to the SGF are not tracked to ensure the dollars are used in accordance with law.

A review of the distribution of lottery receipts followed. It was noted approximately $49 million was transferred to the EDIF and approximately

$46 million was transferred to the SGF from lottery receipts in FY 2019. A review of the EDIF by the House Committee on Appropriations and the Senate Committee on Ways and Means was recommended.

Progress Report on the 2016 Alvarez and Marsal Efficiency Recommendations. At the December 13, 2019, meeting, LPA staff provided a Progress Report on the 2016 Alvarez and Marsal Efficiency Recommendations. The Alvarez and Marsal report contained 105 recommendations. LPA staff stated LPA reaches out to state agencies annually to self-report on recommendations that had not already been addressed. Of the remaining recommendations, 42 were rejected, 43 were implemented, and 5 were in progress. LPA staff stated the 43 implemented recommendations had saved an estimated $60 million across all agencies.

Conclusions and Recommendations

Following its review and discussion, the Committee makes the following recommendations, requests for reports, and notations and commendations.

Recommendations:

- The KDA and the Department of Commerce work together to aid industrial hemp growers to market and sell industrial hemp. The initiative should aid growers in identifying businesses interested in purchasing and distributing industrial hemp grown in Kansas;
- The Legislature review the statutory obligation to transfer $6.0 million from the SGF and $2.0 million from the EDIF to the State Water Plan Fund (SWPF);
- The Legislature make a decision regarding the preservation, demolition, or selective deconstruction of the Docking Building on or before June 30, 2020;
- Encourage OITS to complete the migration of state data centers to its cloud-based solution on or before June 30, 2020;
- The Legislature thoroughly review SHF transfers, limiting transfers being made, and, if possible, cessation of any extraordinary transfers from the SHF that are based upon the portion of sales and compensating use tax that the SHF receives to provide funding for the next transportation plan;
- The House Committee on Appropriations, Senate Committee on Ways and Means, House Committee on Taxation, and Senate Committee on Assessment and Taxation consider restoring and revising statutory language to reinstate local government demand transfers for local property tax relief, particularly the LAVTRF. The Committee requests that restoration be structured to ensure disbursements to local units of government provide a measurable decrease in local property taxes for constituents of each government unit receiving local aid from the State;
- The House Committee on Appropriations and the Senate Committee on Ways and Means review the current status of inpatient mental health services for children to determine the costs and requirements to restore acute care beds for children in Hays, as well as in other underserved areas of the state;
- The Compensation Commission as authorized in KSA 46-3101 convene a meeting during the 2020 Interim, after the November 3, 2020, general election, to consider the information included in the LPA study on legislative pay and make recommendations for any adjustments; and
- The Legislature examine whether KDADS and the state hospitals are applying for and utilizing all potential federal grants to assist with funding for the state hospitals and whether the agencies could pursue additional grant funds.

Requests for reports:

- The House Committee on Appropriations and the Senate Committee on Ways and Means receive a report from KDOT during the 2020 Legislative Session on outstanding debt by transportation program by year;

- The Senate Committee on Ways and Means and House Committee on Appropriations receive a report from the Kansas Department of Corrections detailing implementation of fiscal year 2020 pay increases, construction and financing of the new Lansing Correctional Facility, hepatitis C treatment among inmate populations, and inmate outsourcing to county jails and a private prison in Arizona during the 2020 Legislative Session. The Committee seeks clarity regarding the number of inmates infected with hepatitis C, methods for treatment, and anticipated costs of future treatment. The Committee notes its concern regarding the Department's process for soliciting outsourced beds at county jails in Kansas prior to utilization of an out-of-state facility in Arizona;

- The Legislature receive a report during the 2020 Legislative Session from KDADS on the current state of the buildings of the former Larned Juvenile Correctional Facility and examine the feasibility of using these structures for other purposes in the future;

- The Legislature receive a report during the 2020 Legislative Session from KDADS on salaries and turnover of state hospital employees, including pay disparity between employees at those facilities and employees of other employers for similar positions, and consider the amount of funding needed to make state hospital employee salaries consistent with similar employees;

- The House Committee on Appropriations and Senate Committee on Ways and Means receive a report from LPA on the five remaining Alvarez and Marsal recommendations being implemented during the 2020 Legislative Session; and

- The House Committee on Appropriations and Senate Committee on Ways and Means receive a report from KLRD on the status of performance-based budgeting during the 2020 Legislative Session.

Notations and commendations:

- Notes revenue from the lottery ticket vending machines was not receipted in the time frame of the original projections and encourages the Legislature in the future to not implement any programs based on new and unproven revenue streams;

- Notes the popularity of KDOT's cost share program and that many local units of government have already approached KDOT with their individual project plans, matching funds, hoping to find a way to progress forward with their projects; and

- Commends the agencies involved in fire suppression activities around the state, and notes it will take all those agencies working together as a team to prepare and implement suppression strategies in order to be successful.

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Report of the Legislative Task Force on Dyslexia to the 2020 Kansas Legislature

Chairperson: Jim Porter

Vice-chairperson: Representative Brenda Dietrich

Legislative Members: Senators Bruce Givens and Ty Masterson

Non-Legislative Members: Jennifer Bettles, Sarah Brinkley, Jaime Callaghan, Tally Fleming, David Hurford, Jennifer Knight, Alisa Matteoni, Christina Middleton, Jeanine Phillips, Jeri Powers, Angie Schreiber, and Sonja Watkins

Ex Officio Members: Mike Burgess, Laura Jurgensen, Lori McMillan

Charge

Pursuant to 2018 Sub. for HB 2602, the Task Force shall advise and make recommendations to the Governor, the Legislature, and the State Board of Education regarding matters concerning the use of evidence-based practices for students with dyslexia.

- In 2019, the Task Force shall evaluate the progress and effectiveness of the previous recommendations of the Task Force.

January 2020

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Legislative Task Force on Dyslexia

Report

Conclusions and Recommendations

The Legislative Task Force on Dyslexia restates the previous recommendations of the Task Force and specifically recommends the creation of a statewide dyslexia coordinator within the Kansas State Department of Education (KSDE).

Proposed Legislation: The Task Force requests legislation to appropriate sufficient additional funds to the KSDE to hire a statewide dyslexia coordinator.

Background

The Task Force was created by 2018 Sub. for HB 2602, codified at KSA 72-8193, to advise and make recommendations to the Governor, Legislature, and Kansas State Board of Education (KSBE) on or before January 30, 2019 regarding matters concerning the use of evidence-based practices for students with dyslexia.

The Task Force initially reported to the Governor, Legislature, and KSBE in January 2019.

The Task Force was extended through fiscal year 2022 by 2019 House Sub. for SB 16, allowing the Task Force to meet once per year in 2019, 2020, and 2021.

The January 2019 report of the Task Force may be found on the Kansas Legislative Research Department website with materials for 2018 Interim Committees, at www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2018CommitteeReports/legis_tf_dyslexia-cr.pdf.

Committee Activities

The Task Force met December 9, 2019. Staff from the Kansas State Department of Education (KSDE) provided an overview of the work of KSBE and KSDE in response to the initial report of the Task Force. A Task Force member also presented to the Task Force on what efforts are being undertaken by an example school district toward education of students with dyslexia. The Task Force discussed the implementation of the recommendations of the initial report.

Conclusions and Recommendations

The Task Force restates the recommendations of its initial report. The Task Force specifically recommends a statewide dyslexia coordinator position be created within KSDE and the Legislature appropriate sufficient funds to fill the position; it recommends whatever legislation is necessary to accomplish this recommendation.

The Task Force submits its report for consideration to the following standing committees of the 2020 Legislature: House Committee on Appropriations, Senate Committee on Ways and Means, House and Senate Committees on Education, House Committee on K-12 Education Budget, and House Committee on Higher Education Budget.

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Report of the Statewide Broadband Expansion Planning Task Force to the 2020 Kansas Legislature

Chairpersons: Senator Ty Masterson and Representative Joe Seiwert

Other Members: Senators Marci Francisco and Mike Petersen; Representatives Annie Kuether and Mark Schreiber

Non-Legislative Members: Kurt David, Daniel Friesen, Patrick Fucik, Colin Hansen, John Idoux, Colleen Jamison, Molly Kocour Boyle, Catherine Moyer, Lon Pishny, Erik Sartorius, Doug Shepherd

Ex Officio Members: Christine Aarnes, Richard Felts, Jennifer Findley, Jim McNiece, Larry Thompson

Charge

The Committee will receive reports and recommendations from subcommittees that were assigned portions of the Task Force's mission and develop the final report due to the Legislature on or before January 15, 2020. Senate Sub. for HB 2701 (2018) directs the Task Force to:

- Work collaboratively to develop an approach that includes, but is not limited to, the development of criteria for the creation of a statewide map for defining and evaluating the broadband needs of Kansas citizens, businesses, industries, institutions, and organizations;

- Identify and document risks, issues, and constraints associated with a statewide broadband expansion project and to develop any corresponding risk mitigation strategies where appropriate;

- Consider any recent actions by the Federal Communications Commission (FCC) relating to broadband services including, but not limited to:
    - The 2018 Broadband Deployment Report;
    - Recommendations of the Broadband Deployment Advisory Committee; and
    - Any actions to implement broadband initiatives using the Connect America Fund Phase II, the Mobility Fund II, or the Remote Areas Fund;
- Identify opportunities and potential funding sources to:
    - Expand broadband infrastructure and increase statewide access to broadband services;
    - Remove barriers that may hinder deployment of broadband infrastructure or access to broadband services; and
    - Consider options for the deployment of new advanced communication technologies;
- Develop criteria for prioritizing the expansion of broadband services across Kansas;
- Review current law and regulations concerning access to the public right-of-way for public utilities and make corresponding recommendations for any changes necessary to encourage broadband deployment; and
- Propose future activities and documentation required to complete the statewide broadband expansion plan, including an upgradeable, functional map of the state of available broadband service, as well as including which technologies should be deployed and the methods to finance broadband expansion.

Statewide Broadband Expansion Planning Task Force

Final Report

Conclusions and Recommendations

The Legislature should consider the following:

Broadband Policy and Goals

- Create a broadband policy statement goal that considers broadband as not only reliable Internet access, but as a tool for attracting and promoting economic development, public safety, educational opportunities, health care, and agriculture;

- Adopt the following amended declaration of public policy for broadband:

  - **Broadband; declaration of public policy.** It is hereby declared to be the public policy of the State to:

    - (a) Ensure that every appropriate location in Kansas will have access to a first class broadband infrastructure that provides excellent services at an affordable price;

      (b) Be among the top 25.0 percent of states with access to broadband for all appropriate locations in Kansas;

      (c) Ensure that end users throughout the state realize the benefits of competition through increased services and improved broadband facilities and infrastructure at reduced rates;

      (d) Promote end user access to a full range of broadband services, including advanced services, that are comparable in urban and rural areas throughout the state;

      (e) Advance the development of a statewide broadband infrastructure that is capable of supporting applications, such as access to Internet providers, distance learning, modern agricultural applications, public library services, public safety, services for persons with special needs, telemedicine, and others;

      (f) Promote economic development in both urban and rural areas across the state by encouraging deployment of broadband infrastructure, given its vital importance in the conduct of commerce;

      (g) To develop, amend, or reduce policy and regulation that reduces barriers to the expedient deployment of broadband infrastructure; and

(h) Protect consumers of broadband services from fraudulent business practices and practices that are inconsistent with the public interest, convenience, and necessity;

- Update the current definition of broadband in KSA 66-1,187(a), which states:
  - "Broadband" means the transmission of digital signals at rates equal to or greater than 1.5 megabits per second (Mbps); and
- The State's goal should be to ensure every Kansan has access to broadband services and access should be at a speed of, at a minimum, 25 Mbps (download)/3 Mbps (upload), with scalable technology.

Broadband Grant Funding Program

Broadband Grant Funding Program (1)

- If state broadband grant funding becomes available, establish 25 Mbps (download)/3 Mbps (upload) as the acceptable minimum speed for any state grant funding of broadband access;
- Request funding to maintain the current Kansas Broadband Map and request Connected Nation create a broadband availability map that includes projects that have been awarded Connect America Fund–Phase II (CAF-II), Alternative Connect America Cost Model–Phase I and II (ACAM I, ACAM II), and other grant funding for broadband that has been deployed or is planned for development;
- If state broadband grant funding becomes available, develop a rebuttal or challenge process to ensure such state funding is only used for unserved or underserved areas;
- If state broadband grant funding becomes available, establish grading or scoring criteria for evaluating and prioritizing broadband grant applications with higher priority given to applications that provide greater benefits in terms of speeds and coverage; and
- Require broadband service providers and broadband infrastructure providers to participate in statewide mapping projects as a condition for receiving any state grant funds.

Broadband Grant Funding Program (2)

- The Department of Commerce should be given authority for creating rules and regulations to establish an advisory body and any other specifics pertaining to the grant program, its funding, and elements to be considered in the ranking system for awarding funding grants;
- The Legislature should initially appropriate $10.0 million for grant program funding. The source of the funding could include any existing funds, including, but not limited to, the State General Fund and the Kansas Universal Service Fund;
- The Legislature should charge the Kansas Corporation Commission to recommend appropriate manners to fund broadband *via* the Kansas Universal Service Fund;

- Funding should be a partnership of public and private dollars, with the State providing up to 50.0 percent of the funding and the remainder coming from sources other than state or federal dollars;

- The grant program funding should have a ceiling so one provider cannot receive all the funding for one project;

- The provider should be able to meet certain deadlines for broadband deployment and, should those deadlines not be met, the provider would not be able to apply for funding for two grant cycles. In addition, funding from the State would be provided only after certain benchmarks are met during the entire broadband deployment project;

- A weighting scheme, modeled after that of 2018 Missouri HB 1872, should be utilized when considering an application, using the following criteria (changes proposed from the Subcommittee to the Missouri bill are <u>underlined</u>):

    - The financial, technical, and legal capability of the applicant to deploy and operate broadband Internet service;

    - The number of locations served in the most cost-efficient manner possible considering the project area density;

    - Available minimum broadband speeds;

    - Ability of the infrastructure to be scalable to higher broadband Internet speeds;

    - Commitment of the applicant to fund at least 50.0 percent of the project <u>from sources other than state or federal dollars</u>;

    - Length of time the provider has been operating, length of time the provider <u>has been operating broadband Internet services, and where the provider has been operating</u>;

    - The offering of new or substantially upgraded broadband Internet service <u>important to communities</u>;

    - The offering of service to economically distressed areas of the state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;

    - The offering of service at a low-cost rate for a person or family that meets certain low-income requirements;

    - The ability to provide technical support and training to residents, businesses, and institutions in the community of the proposed project to utilize broadband Internet service;

    - Plans to actively promote the adoption of the newly available broadband Internet service in the community; and

    - Strong support for the proposed project from citizens, businesses, and institutions in the community;

- Priority of awarding funding would go to projects that are:
  - Unserved (meaning under 10 Mbps [download]/1 Mbps [upload]); and
  - Underserved (meaning under 25 Mbps [download]/3 Mbps [upload]);
- The challenge process should mirror the process in Missouri HB 1872 as follows, but should also allow for public comment (technical changes underlined):
  - At least 30 days prior to the first day applications may be submitted each fiscal year, the Department of Commerce shall publish on its website the specific criteria and any quantitative weighting scheme or scoring system the Department will use to evaluate or rank applications and award grants under [insert new section reference]. Such criteria and quantitative scoring system shall include the criteria set forth in section [insert new section reference];
  - Within three business days of the close of the grant application process, the Department of Commerce shall publish on its website the proposed unserved and underserved areas, and the proposed broadband Internet speeds for each application submitted. Upon request, the Department shall provide a copy of any application to an interested party;
  - A broadband Internet service provider that provides existing service in or adjacent to the proposed project area may submit to the Department of Commerce, within 45 days of publication of the information under [insert new section reference], a written challenge to an application. Such challenge shall contain information demonstrating:
    - The provider currently provides broadband Internet service to retail customers within the proposed unserved or underserved area;
    - The provider has begun construction to provide broadband Internet service to retail customers within the proposed unserved or underserved area; or
    - The provider commits to providing broadband Internet service to retail customers within the proposed unserved or underserved areas within the time frame proposed by the applicant;
  - Within three business days of the submission of a written challenge, the Department of Commerce shall notify the applicant of such challenge;
  - The Department of Commerce shall evaluate each challenge submitted under this section. If the Department determines the provider currently provides, has begun construction to provide, or commits to provide broadband Internet service at speeds of at least 25 Mbps download and 3 Mbps upload, but scalable to higher speeds, in the proposed project area, the Department shall not fund the challenged project; and
  - If the Department of Commerce denies funding to an applicant as a result of a broadband Internet service provider challenge under this section and such broadband Internet service provider does not fulfill its commitment to provide broadband Internet service in the unserved or underserved area, the Department of Commerce shall not consider another challenge from such broadband Internet service provider for the next two grant cycles, unless the Department determines the failure to fulfill the commitment was due to circumstances beyond the broadband Internet service provider's control.

Broadband Mapping

- The broadband map presented by Connected Nation on July 31, 2019, is an excellent resource. Because of the financial investment made by the State of Kansas in the map and the mapping process, the Task Force believes the State should have the fullest access to the map's data set. However, the map should not be the guiding principle behind what funding, if any, is allocated in a potential grant program;

- Should there be funding for a grant program in the future, any providers wanting to receive funding would be required to provide certain data aligned with federal requirements in order to receive those funds; and

- Charge responsibility for the map (including future data sets), future growth, monitoring, and deployment of broadband to the Department of Commerce.

Other Broadband-related Topics

- Conduct a survey of Internet service providers and community anchor institutions regarding what broadband funding is currently available to them;

- Revise KSA 2019 Supp. 17-1902—which establishes the rights, powers, and liabilities of telecommunications service providers and determines occupation of public right-of-way and prohibition of use—by having the statute extend to all county public rights-of-way in the state; and

- Consider adoption of a modified version of "Article 5: Special Provisions for Railroad Crossings of the Model Code for States" by the Broadband Deployment Advisory Committee of the Federal Communications Commission.

Proposed Legislation: None [*Note:* The Task Force is not authorized to introduce legislation.]

Background

The Statewide Broadband Expansion Planning Task Force (Task Force) was created by 2018 Senate Sub. for HB 2701, codified at KSA 66-1286. The Task Force is charged with working collaboratively to develop criteria for the creation of a statewide map for defining and evaluating the broadband needs of Kansas, identifying issues associated with a statewide broadband expansion project, considering recent action by the Federal Communications Commission (FCC) related to broadband services, identifying funding sources to expand broadband, developing criteria for prioritizing the expansion of broadband services across Kansas, reviewing current law concerning access to the public right-of-way for public utilities, and proposing future activities to complete the statewide broadband expansion plan.

The Task Force is composed of 22 members (17 voting members and 5 ex officio members), with 3 from the House of Representatives and 3 from the Senate; 11 non-legislative members appointed by the Kansas Association of Counties, League of Kansas Municipalities, Kansas Rural Independent Telephone Coalition, Kansas Cable Telecommunications Association, Cellular Telecommunications Industry Association, an electing carrier, an incumbent local exchange carrier, Kansas Electric Cooperatives, State Independent Telephone Association, Kansas Municipal Utilities, and Kansas Independent Fiber Association; and 5 ex officio members appointed by the Governor, Kansas Hospital Association, Kansas Corporation Commission, Commissioner of Education, and the Secretary of Transportation. The Task Force is permitted to meet in an open meeting at any time upon call of either co-chairperson.

As required by statute, the Task Force submitted its initial report to the House Committee on Energy, Utilities and Telecommunications and the Senate Committee on Utilities prior to January 15, 2019. The statute also requires the Task Force to submit its final report to the Legislature prior to January 15, 2020. Without further legislative action, the Task Force is scheduled to sunset June 30, 2020.

Task Force Activities

The Task Force met March 28 and December 17, 2019. Between the two Task Force meetings, three subcommittees, created by the Task Force, each met two times.

March 28, 2019

Federal Broadband Policies and Funding

By teleconference, an assistant to U.S. Senator Moran outlined federal policies and funding resources. He cited the *2018 Broadband Progress Report* from the FCC showing that, using the benchmark of 25 megabits per second (Mbps) download and 3 Mbps for uploads (25/3), more than 24 million Americans lack access to terrestrial broadband service; however, in one year, that figure has dropped by 25.0 percent, a drop primarily caused by broadband deployment in rural areas. Nevertheless, he commented Senator Moran's office continues to seek ways to expand broadband services through the FCC's Universal Service Fund (USF) and programs administered by the U.S. Department of Agriculture (USDA).

The conferee cited two other initiatives offering expanded broadband services administered by the USDA: the Rural Utilities Service (RUS), which provides federal funding for broadband deployment in rural communities, and Rural eConnectivity, which is a pilot loan and grant program established in the Consolidated Appropriations Act of 2018 to expand broadband service to rural areas without sufficient broadband access, defined as 10/1 Mbps.

The conferee referenced other programs offered by the federal government and, commenting on bipartisan support for broad deployment in Washington, D.C., noted the President's 2018 release of the administration's *Legislative Outline for Rebuilding Infrastructure in America*, a wide-ranging program with discretionary grants, including for rural broadband deployment. The conferee stated the Senator's office supports the work of the Task Force and recognizes broadband access is vital for today's economy.

Rural Broadband Needs, Barriers, and Solutions

The Chief Executive Officer (CEO) of Wheatland Electric Cooperative (Wheatland), Scott City, stated Wheatland was created in 1948, now covers a service area of 4,633 square miles, and has 33,579 active accounts and 141 employees. He recounted the increasing need for broadband for the company's customers and the decision in 2001 to deploy a separate broadband network, which now utilizes both multi-point microwave and fiber. Planning for the future, he reported the company will expand its fiber coverage, and he recommended USF moneys be made available to electric cooperatives and wireless telecommunication providers. The Wheatland CEO stated obtaining right-of-way over railroad tracks causes delays in broadband deployment.

The CEO of Butler Electric Cooperative Association (Cooperative), El Dorado, outlined the various services available through the Cooperative and reviewed the Cooperative's broadband initiative. He also provided a supplemental case study for broadband deployment. He stated the Cooperative is finishing infrastructure build-out and, with an underserved market of more than 6,000, is beginning to sign up broadband customers. He noted construction costs (aerial, $28,000 per mile; underground, $60,000 per mile; and 100-foot tower, $80,000) and a loop backbone that will provide 25 Mbps to 100 Mbps download speeds with fiber to the street and wireless to each home. He requested legislative assistance in the form of grants for low-density areas, property tax relief for voice over Internet protocol (VoIP), and expediting approval for construction near railroad crossings.

The owner of Blackdragon Networks recounted various scenarios illustrating the digital divide even within local communities. She said erratic availability of broadband affects citizens' and companies' quality of life and economic well-being. She cited obstacles and roadblocks to broadband build-out; recommended resources for counties, cities, and rural electric cooperatives; and concluded initiatives for expanding fiber must come from local sources.

The Computer Support Representative for Finney County, Garden City, recounted the decision of county leaders to build their own fiber backbone and the current status of the initiative. He explained the intent was to provide broadband services to city and county agencies, business entities, school districts, the local college, and Wheatland; ultimately, fiber could be made available to homes. He cited project barriers and associated costs, such as opposition by service providers, the requirement to bury cable, and the distance between drops.

Kansas Department of Transportation

The Director of Innovative Technologies, Kansas Department of Transportation (KDOT), reviewed KDOT's right-of-way resources: approximately 10,000 miles of highways with about 1,200 miles of existing fiber built through a partnership with CenturyLink, Zayo, Wichita Electric Co., and the Kansas Turnpike Authority. He noted a range of access to the fiber: full access on interstate highways, limited access on the U.S. 75 expressway, and no access on two-lane highways except by permit. He reported KDOT's vision is to have fiber or access to fiber on all Kansas highways. KDOT manages Kansas highway rights-of-way and the decisions on whether access is granted are guided by the KDOT Utility Accommodation Policy. A member commented the present seven-foot corridor access to fiber is almost always full, so permit requests are rejected.

Discussion on Subcommittees

By consensus, the Task Force agreed to separate the Task Force's charge into three sections, which would be assigned to three subcommittees that would meet throughout the summer and fall of 2019. The Task Force also agreed to allow the Co-chairpersons to establish the membership of each subcommittee, based upon input from Task Force members.

Subcommittee Activities

Subcommittee 1 (Mapping and Funding) met June 19 and October 10, 2019. Subcommittee 2 (Deployment) met July 12 and October 17, 2019. Subcommittee 3 (Oversight and Projected Timeline) met July 17 and September 26, 2019.

Each subcommittee prepared a report to the Task Force on its activities and recommendations. The subcommittee reports can be found as testimony to the December 17, 2019, Task Force meeting at www.kslegislature.org/li/b2019_20/committees/ctte_tf_broadband_expansion_planning_task_force_1/documents/.

December 17, 2019

Rural Broadband Funding and Initiatives

The General Field Representative, Rural Development, Loan Origination and Approval Division, Rural Utilities Service–Telecommunications Program, USDA (USDA field representative), showed a video of broadband services in Alaska's Copper River Valley and reviewed the USDA's initiatives and funding opportunities for rural broadband deployment. He said the Copper River Valley initiative illustrates even remote areas can prosper in education, healthcare, and economic development through strategic use of broadband. The initiative provides a model for other rural communities that want to provide world-class educational opportunities, excellent health-care services, and other value-added economic benefits.

The USDA field representative compared the values of wireless and fiber broadband: wireless is more quickly deployed, but leaves some dead spots and must be updated every two to four years; fiber infrastructure costs $20,000 per mile in rural areas and $5,000 per mile in cities and often is preceded by wireless. He outlined the federal programs for broadband deployment through the USDA ReConnect program, which provides grants, loans, and combinations of loans and grants for communities in rural areas. He stated there was $1.4 billion in applications for Phase 1 of the ReConnect program, with $500.0 million in available funding. Most applications were denied because it was for development of 10/1 service. Phase 2 of the ReConnect program will begin in January 2020 with $500.0 million in funding, plus an additional $200.0 million rolled over from the previous phase. The USDA field representative noted there is opportunity for Kansas to receive some of these funds. He explained market studies identify those rural areas eligible for broadband and provide a basis for broadband build-out that justifies the costs. He also noted the importance of preparing communities for broadband, stating adoption or "take rate" is one of the biggest hurdles in making an expansion project work. The USDA field representative indicated a broadband adoption rate of 85.0 percent to 90.0 percent would be necessary in Kansas for broadband service providers to recoup their investment in a reasonable time frame. He noted the Kansas Department of Commerce is a resource for communities or other entities in going forward with broadband expansion.

The State Director, Rural Development, USDA, explained how the USDA works with state agencies and local entities to better serve the rural areas of Kansas through broadband deployment. She gave an overview of the grant infrastructure to show how communities can qualify for loans and grants and noted an additional $500.0 million is now available nationally to help match funds with proposed projects. She also noted another opportunity for funding is available through the Disaster Relief Fund, which currently provides $2.0 million for the 77 Kansas counties designated as disaster areas. She concluded by saying the USDA is available to help Kansas communities find the appropriate partners for broadband deployment.

Current Action at the Federal Level

The Vice President for Government Affairs, Connected Nation, commented on the recently developed Kansas broadband map and provided an update on relevant federal programs. He cited new funding for broadband build-out: the FCC's Rural Digital Opportunity Fund ($20.4 billion over ten years), the FCC's 5G Fund for Rural America ($9 billion over ten years), and the USDA's ReConnect Grant Program Round 2 ($550 million). He outlined other promising federal initiatives being considered by Congress: HR 4229 and S 1822, which would provide more granular data for broadband, and the FCC's Digital Opportunity Data Collection Report, which offers a more serviceable data process for locating served, unserved, and underserved broadband areas. He noted the "census-block" approach (one service provider within a designated census area) is inadequate in identifying unserved and underserved locations; the new "location fabric" approach will provide more accurate data and, within two years, should offer a much improved broadband map. He explained the new role of the State will be data validation—challenging the federal data map in order to assure comprehensive broadband coverage for Kansas. He replied to a question that agricultural land will be factored into the map. To another question, he responded a shift from a citizen receiving broadband to a location receiving broadband is a policy question; the goal and standards should be to assure 100 percent broadband coverage.

Discussion

The Task Force adopted the recommendations of the three subcommittees, with the following modifications:

- Modify the proposed deceleration of public policy by removing reference to download and upload speeds (Subcommittee 1);
- Remove the term "precision" from "precision agriculture" in the recommendation proposing a broadband policy goal be adopted (Subcommittee 1);
- Replace the terms "Kansan" and "every citizen" with the phrase "appropriate location in Kansas" in the proposed declaration of public policy for broadband (Subcommittee 2);
- Recommend the current definition of broadband in KSA 66-1,187(a) be updated;
- Change "would" to "should" in the recommendation relating to the Department of Commerce's rule-making authority (Subcommittee 3); and
- Remove the word "county" in the recommendation to revise KSA 17-1902, relating to the occupation of public rights-

of-way by telecommunications service providers (Subcommittee 2).

Conclusions and Recommendations

The Legislature should consider the following.

Broadband Policy and Goals

- Create a broadband policy statement goal that considers broadband as not only reliable Internet access, but as a tool for attracting and promoting economic development, public safety, educational opportunities, health care, and agriculture;

- Adopt the following amended declaration of public policy for broadband to replace the version that appears in KSA 66-2001:

  - **Broadband; declaration of public policy.** It is hereby declared to be the public policy of the State to:

    (a) Ensure that every appropriate location in Kansas will have access to a first class broadband infrastructure that provides excellent services at an affordable price;

    (b) Be among the top 25.0 percent of states with access to broadband for all appropriate locations in Kansas;

    (c) Ensure that end users throughout the state realize the benefits of competition through increased services and improved broadband facilities and infrastructure at reduced rates;

    (d) Promote end user access to a full range of broadband services, including advanced services, that are comparable in urban and rural areas throughout the state;

    (e) Advance the development of a statewide broadband infrastructure that is capable of supporting applications, such as access to Internet providers, distance learning, modern agricultural applications, public library services, public safety, services for persons with special needs, telemedicine, and others;

    (f) Promote economic development in both urban and rural areas across the state by encouraging deployment of broadband infrastructure, given its vital importance in the conduct of commerce;

    (g) To develop, amend, or reduce policy and regulation, which reduces barriers to the expedient deployment of broadband infrastructure; and

    (h) Protect consumers of broadband services from fraudulent business practices and practices that are inconsistent with the public interest, convenience, and necessity.

- Update the current definition of broadband in KSA 66-1,187(a), which states:

  - "Broadband" means the transmission of digital signals at rates equal to or greater than 1.5 megabits per second; and

- The State's goal should be to ensure every Kansan has access to broadband services and that access should be at a speed of at a minimum 25 Mbps (download)/3 Mbps (upload), with scalable technology.

Broadband Grant Funding Program

Broadband Grant Funding Program (1)

- If state broadband grant funding becomes available, establish 25 Mbps (download)/3 Mbps (upload) as the acceptable minimum speed for any state grant funding of broadband access;

- Request funding to maintain the current Kansas Broadband Map and request Connected Nation create a broadband availability map that includes projects that have been awarded Connect America Fund–Phase II (CAF-II), Alternative Connect America Cost Model–Phase I and II (ACAM I, ACAM II), and other grant funding for broadband that has been deployed or is planned for development;

- If state broadband grant funding becomes available, develop a rebuttal or challenge process to ensure such state funding is only used for unserved or underserved areas;

- If state broadband grant funding becomes available, establish grading or scoring criteria for evaluating and prioritizing broadband grant applications with higher priority given to applications that provide greater benefits in terms of speeds and coverage; and

- Require broadband service providers and broadband infrastructure providers to participate in statewide mapping projects as a condition for receiving any state grant funds.

Broadband Grant Funding Program (2)

- The Department of Commerce should be given authority for creating rules and regulations to establish an advisory body and any other specifics pertaining to the grant program, its funding, and elements to be considered in the ranking system for awarding funding grants;

- The Legislature should initially appropriate $10.0 million for grant program funding. The source of the funding could include any existing funds, including, but not limited to, the State General Fund and the Kansas Universal Service Fund;

- The Legislature should charge the Kansas Corporation Commission to recommend appropriate manners to fund broadband *via* the Kansas Universal Service Fund;

- Funding should be a partnership of public and private dollars, with the State providing up to 50.0 percent of the funding and the remainder coming from sources other than state or federal dollars;

- The grant program funding should have a ceiling so one provider cannot receive all the funding for one project;

- The provider should be able to meet certain deadlines for broadband deployment and should those deadlines not be met, then the provider would not be able to apply for funding for two grant cycles. In addition, funding from the State would be provided only after certain benchmarks are met during the entire broadband deployment project;

- A weighting scheme, modeled after 2018 Missouri HB 1872, should be utilized when considering an application, using the following criteria (changes proposed from the Subcommittee to the Missouri bill are <u>underlined</u>):

  - The financial, technical, and legal capability of the applicant to deploy and operate broadband Internet service;

  - The number of locations served in the most cost-efficient manner possible considering the project area density;

  - Available minimum broadband speeds;

  - Ability of the infrastructure to be scalable to higher broadband Internet speeds;

  - Commitment of the applicant to fund at least 50.0 percent of the project <u>from sources other than state or federal dollars</u>;

  - Length of time the provider has been operating, length of time the provider has been operating broadband Internet services, and where the provider has been operating;

  - The offering of new or substantially upgraded broadband Internet service important to communities;

  - The offering of service to economically distressed areas of the state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;

  - The offering of service at a low-cost rate for a person or family that meets certain low-income requirements;

  - The ability to provide technical support and training to residents, businesses, and institutions in the community of the proposed project to utilize broadband Internet service;

  - Plans to actively promote the adoption of the newly available broadband Internet service in the community; and

  - Strong support for the proposed project from citizens, businesses, and institutions in the community;

- Priority of awarding funding would go to projects that are:

  - Unserved (meaning under 10 Mbps [download]/1 Mbps [upload]); and

  - Underserved (meaning under 25 Mbps [download]/3 Mbps [upload]);

- The challenge process should mirror the process in Missouri HB 1872 as follows, but should also allow for public comment (technical changes underlined):

  - At least least 30 days prior to the first day applications may be submitted each fiscal year, the Department of Commerce shall publish on its website the specific criteria and any quantitative weighting scheme or scoring system the Department will use to evaluate or rank applications and award grants under [insert new section reference]. Such criteria and quantitative scoring system shall include the criteria set forth in section [insert new section reference];

  - Within three business days of the close of the grant application process, the Department of Commerce shall publish on its website the proposed unserved and underserved areas, and the proposed broadband Internet speeds for each application submitted. Upon request, the Department shall provide a copy of any application to an interested party;

  - A broadband Internet service provider that provides existing service in or adjacent to the proposed project area may submit to the Department of Commerce, within 45 days of publication of the information under [insert new section reference], a written challenge to an application. Such challenge shall contain information demonstrating that:

    – The provider currently provides broadband Internet service to retail customers within the proposed unserved or underserved area;

    – The provider has begun construction to provide broadband Internet service to retail customers within the proposed unserved or underserved area; or

    – The provider commits to providing broadband Internet service to retail customers within the proposed unserved or underserved areas within the time frame proposed by the applicant;

- Within three business days of the submission of a written challenge, the Department of Commerce shall notify the applicant of such challenge;

- The Department of Commerce shall evaluate each challenge submitted under this section. If the Department determines the provider currently provides, has begun construction to provide, or commits to provide broadband Internet service at speeds of at least 25 Mbps download and 3 Mbps upload, but scalable to higher speeds, in the proposed project area, the Department shall not fund the challenged project; and

- If the Department of Commerce denies funding to an applicant as a result of a broadband Internet service provider challenge under this section and such broadband Internet service provider does not fulfill its commitment to provide broadband Internet service in the unserved or underserved area, the Department of Commerce shall not consider another challenge from such broadband Internet service provider for the next two grant cycles, unless the Department determines the failure to fulfill the commitment was due to circumstances beyond the broadband Internet service provider's control.

Broadband Mapping

- The broadband map presented by Connected Nation on July 31, 2019, is an excellent resource. Because of the financial investment made by the State of Kansas in the map and the mapping process, the Task Force believes the State should have the fullest access to the map's data set. However, the map should not be the guiding principle behind what funding, if any, is allocated in a potential grant program;

- Should there be funding for a grant program in the future, any providers wanting to receive funding would be required to provide certain data aligned with federal requirements in order to receive those funds; and

- The map, including future data sets, future growth, monitoring, and deployment of broadband should be charged to the Department of Commerce.

Other Broadband-related Topics

- Conduct a survey of Internet service providers and community anchor institutions regarding what broadband funding is currently available to them;

- Revise KSA 2019 Supp. 17-1902—which establishes the rights, powers, and liabilities of telecommunications service providers, and determines occupation of public right-of-way and prohibition of use —by having the statute extend to all county public rights-of-way in the state; and

- Consider adoption of a modified version of "Article 5: Special Provisions for Railroad Crossings of the Model Code for States" by the Broadband Deployment Advisory Committee of the FCC.