

Committee Reports to the 2024 Kansas Legislature

KLRD

*Providing objective research and fiscal
analysis for the Kansas Legislature*

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

**Kansas Legislative Research Department
January 2024**

2023 Legislative Coordinating Council

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

Special Committee on Child Care Centers and Child Care Homes

Special Committee on Education

Special Committee on Elections

Special Committee on Foreign Adversary Investments and Land Purchases

Special Committee on Governmental Ethics Reform, Campaign Finance Law

Special Committee on Homelessness

Special Committee on Intellectual and Developmental Disability Waiver

Special Committee on Mental Health

Special Committee on Nursing Facility Reimbursement Rate Methodology

Special Committee on Restricted Driving Privileges

Special Committee on Taxation

J. Russell (Russ) Jennings Joint Committee on Corrections and Juvenile
Justice Oversight

Joint Committee on Child Welfare System Oversight

Joint Committee on Fiduciary Financial Institutions Oversight

Joint Committee on Information Technology

Joint Committee on Kansas Security

Joint Committee on Pensions, Investments and Benefits

Joint Committee on State Building Construction

Joint Committee on State-Tribal Relations

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

Capitol Preservation Committee

Health Care Stabilization Fund Oversight Committee

Legislative Compensation Commission

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Foreword

In the 2023 Interim, the Legislative Coordinating Council appointed 11 special committees to study 16 study topics and authorized meetings of 2 special committees created pursuant to provisions in the Appropriations Bill (HB 2184). Legislation recommended by the committees will be available in the Documents Room early in the 2024 Session. Such legislation will also be available on the Kansas Legislature's website at: <http://kslegislature.org/li/>.

Joint committees created by statute met in the 2023 Interim as provided in the statutes specific to each joint committee. Several of the joint committees have reported on their activities, and those reports are contained in this publication. Legislation recommended by these committees will be available in the Documents Room early in the 2024 Session. Such legislation will also be available on the Kansas Legislature's website at: <http://kslegislature.org/li/>.

This publication also contains reports of other committees, commissions, and task forces that are not special committees created by the Legislative Coordinating Council or joint committees. Reports of the following are not contained in this publication and will be published in a supplement:

- Special Committee on Civil Asset Forfeiture
- Special Committee on Energy and Utilities
- Legislative Budget Committee
- Special Education and Related Services Funding Task Force

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

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Summary of Conclusions and Recommendations

Special Committee on Child Care Centers and Child Care Homes

The Committee recommended the 2024 Legislature establish a Joint Committee on Child Care to further explore policies pertaining to child care centers and child care homes, as well as child care generally. The Committee also requested that the Legislative Coordinating Council compose a letter to the Office of the Attorney General requesting insight into the rules and regulations process, including a timeline for the pending proposed regulations for child care centers and child care homes, and whether those regulations can be expedited.

The Committee also made recommendations regarding examining staff-to-child ratios, considering legislation to establish an early education provider tax credit and a state-level child tax credit that mirrors the federal child tax credit, considering legislation to transition all child care license surveyor contractors to full-time-equivalent state employees under the Kansas Department of Health and Environment, considering reimbursing Child and Adult Care Food Program participants at the tier 1 rate, and exploring financial incentives for specialty child care options.

Special Committee on Civil Asset Forfeiture

The Committee recommended several reform measures related to the Kansas Standard Asset Seizure and Forfeiture Act be considered by the 2024 Legislature, including: deleting offenses involving controlled substances that apply primarily to a “user” from the list of offenses giving rise to forfeiture; requiring seizing agencies to return property if certain timelines to engage an attorney or otherwise move the case forward are not met; prohibiting pre-forfeiture waivers of rights in property; allowing a proportionality hearing to be requested at any time; requiring a judge to determine if there is probable cause supporting forfeiture as a preliminary matter; requiring an automatic stay of discovery in the forfeiture proceeding during a criminal proceeding alleging the same conduct; establishing that a seizing agency can be ordered to pay a prevailing claimant’s attorneys’ fees; and requiring the State to prove property is subject to forfeiture by a “clear and convincing” standard.

The Committee also recommended the following items be further studied by a standing committee of the 2024 Legislature: transfers and federal adoptions; the right to a jury trial in forfeiture proceedings; the right to counsel in forfeiture proceedings; and direction of forfeiture proceeds.

Special Committee on Education

The Committee proposed the Legislature reevaluate special education statutes and, specifically, that consideration be given to amending statutes regarding how special education excess costs are determined, how special education state aid is dispersed, and requiring the portion of a school district's local option budget that is derived from special education state aid be expended upon special education services.

The Committee further recommended examination and consideration be given to issues of concurrent enrollment, the Technical Education Authority, the training and treatment of teachers, long-term funding for the Mental Health Intervention Team Pilot Program, changing school enrollment years for purposes of State Foundation Aid, the tracking of homeless students in schools, and how to provide better support for improved student outcomes.

The Committee also recommended the establishment of a legislative oversight committee or process to address topics including the review of appropriate expenditures for both at-risk and special education services.

Special Committee on Elections

The Committee made no formal recommendations but suggested further study and consideration focused on issues related to election security and voter confidence, including advance mail ballots and the deadline for their return, drop boxes, voting machines, and election machine security and usability.

Special Committee on Energy and Utilities

The Committee heard presentations regarding the Southwest Power Pool, the Federal Energy Regulatory Commission, transmission line builds and rebuilds, cost allocation, generational interconnection queue, resource adequacy, integrated resource plans, siting processes, eminent domain, state energy plans, Kansas' energy office, federal funds, the Kansas Infrastructure Hub, and projected expectations with oil, gas, and clean energy. The Committee also heard panel discussions regarding updates, perspectives, integrated resource plans, load forecasts; future plans from multiple agencies and utility companies; and concerns of siting stakeholders and landowner concerns.

The Committee concluded its meetings without making any formal recommendations.

Special Committee on Foreign Adversary Investments and Land Purchases

The Committee recommended the Legislature consider the information presented to the Committee and conduct further study in several specific areas, including topics related to the intersection of current state and federal law, whether land prices are influenced by foreign purchases, and specific considerations for location restrictions and citizenship status requirements.

Special Committee on Governmental Ethics Reform, Campaign Finance Law

The Committee recommended the Legislature consider increasing contribution limits and, within the Campaign Finance Act, clarify the definitions of the terms “giving in the name of another” or “contribution in the name of another” and “political committee” or “political action committee,” and define “coordination.”

Special Committee on Homelessness

The Committee made no formal recommendations to the 2024 Legislature. The Committee made observations based on testimony provided regarding court cases and legal restrictions; the individuals, living situations, demographics, and causes of homelessness; the effects of homelessness on various communities; and lessons learned from efforts to address homelessness in other cities and states.

Special Committee on Intellectual and Developmental Disability Waiver

The Committee recommended the Kansas Department for Aging and Disability Services (KDADS) consider a number of factors in its next biennial Intellectual and Developmental Disability (I/DD) Waiver rate study; KDADS continue developing the Community Support Waiver; KDADS consider adding individual budget authority to its renewal application for the comprehensive I/DD Waiver; KDADS explore the creation of a state community support program to precede implementation of the Community Support Waiver; and KDADS explore options to provide nonmedical transportation to individuals on the waiver and its waitlist.

Special Committee on Mental Health

The Committee made recommendations that the Kansas Department of Health and Environment (KDHE), Kansas Department for Aging and Disability Services (KDADS), and Kansas State Department of Education provide additional reports on identified topics to the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight. The Committee recommends KDADS continue to monitor and report to the 2024 Legislature regarding a 2021 committee recommendation on competency evaluation and restoration, including what other states are doing. The Committee expressed its support to KDHE and KDADS for the development of a Community Support Waiver.

Special Committee on Nursing Facility Reimbursement Rate Methodology

The Committee recommended the Legislature extend the Medicaid add-on for nursing facilities for FY 2025; review the survey process for facilities; explore additional incentives, such as those targeted to behavioral health, energy efficiency, new staff, and dementia care; and explore the funding and structure required to extend targeted case management services to additional Home and Community Based Services waivers. In addition, the Committee requested that several topics be studied and reported on, including the benefits and challenges of shifting the rebase process to

include one year of cost reports rather than three years and the ownership structures of nursing facilities in Kansas.

Special Committee on Restricted Driving Privileges

The Committee recommended the Legislature consider or review topics related to the driver's license suspension and revocation process and restricted driving privileges in lieu of suspension for failure to comply with a traffic citation. The Committee also made various recommendations for future policy reforms in regard to license suspension and revocation and the restricted license program, as well as recommending the Legislature seek input from the Judicial Branch with regard to such reforms.

Special Committee on Taxation

The Committee made recommendations relating to the procedure and limitations concerning the valuation of property for ad valorem tax purposes, the uniformity of sales tax exemptions for nonprofit entities, confidentiality of taxpayer records, the evaluation of tax credits and incentives and the legislative procedure for the adoption of new tax incentives, and the process for authorization of local sales taxes, including recommending introduction of legislation to simplify the process.

J. Russell (Russ) Jennings Joint Committee on Corrections and Juvenile Justice Oversight

The Committee requested the introduction of the following two bills: a bill that would define incremental extensions to overall case length limits for juvenile offenders referenced in 2023 HB 2021 to mean no more than 90 days and a bill that would transfer funding for the operation of the Kansas Law Enforcement Training Center from fee fund revenues to revenues to the State General Fund (SGF) and direct that revenue from such fee funds be deposited in the SGF.

The Committee recommends the continuation of enhanced pay for correctional officers; a comprehensive review of the funding mechanism for Community Corrections services; that relevant agencies explore a joint project to utilize residents at correctional facilities to assist with maintenance and repair of State Parks; that an update on the implementation of 2023 HB 2021 be presented to relevant committees; funds be appropriated to the Kansas Department of Corrections to conduct an energy audit; and future consideration be given to consolidating various supervision agencies into one agency. The Committee supports the Kansas Bureau of Investigation's operational budget enhancement requests for FY 2025 and the Kansas Highway Patrol's budget enhancement request for FY 2025. The Committee requests the Specialty Court Funding Advisory Committee explore matching grant opportunities; the Secretary for children and Families report on the progress of juvenile crisis intervention centers to relevant committees; and the Judicial branch and Department for Children and Families consider sending an information gathering group to learn about Trust-Based Intervention techniques.

Joint Committee on Child Welfare System Oversight

The Committee made recommendations related to supporting the concept of the Support, Opportunity, Unity, and Legal (SOUL) Family Legal Permanency Option, exploring options to amend the responsibilities of guardians *ad litem*, directing that information on the rights of biological parents in child-in-need-of-care cases be distributed to the Committee, developing a standardized rubric for case management providers to use to report performance outcomes to the Committee, directing that certain information be reported to the Committee at a future meeting by the Department for Children and Families, and urging the House Committee on Child Welfare and Foster Care to review HB 2299 from the 2023 Legislative Session.

Joint Committee on Fiduciary Financial Institutions Oversight

The Committee submitted comments and recommendations regarding the reports submitted by State Bank Commissioner and regulated technology-enabled fiduciary financial institution (TEFFI), BFF (Beneficient Fiduciary Financial, LLC). The Committee encouraged the formation of an *ad hoc* advisory group and dialogue to add additional perspectives on future regulations and TEFFI activities, alternative assets industry features and standards, and promoting and marketing activities to help secure future TEFFI involvement in Kansas and its communities.

Joint Committee on Information Technology

The Committee made recommendations relating to the Kansas Legislative Division of Post Audit (LPA) including, but not limited to, encouraging the creation of additional information technology (IT), security audit criteria, and recommending the expansion of IT security audits by LPA. The Committee also recommended state and local government continue to improve cybersecurity protection through collaboration with federal and state partners and through actions such as obtaining a “dot gov” web address. Further recommendations by the Committee included actions that would facilitate more frequent meetings of the Committee to ensure increased legislative oversight of state IT projects.

Joint Committee on Kansas Security

The Committee recommended the House Committee on Appropriations and Senate Committee on Ways and Means consider transferring \$170,000 from the State General Fund (SGF) to the Emergency Response Fund of the Office of the State Fire Marshal to replenish moneys expended in the response to a white powder threat letter incident in June 2023. These expenditures derive from the simultaneous activation of eight of the nine regional Hazardous Materials Response teams.

The Committee supported continued use of SGF moneys by the Kansas Information Security Office (KISO) to provide state agencies with cybersecurity services rather than charging agencies for such services. Further, the Committee recommended the use of SGF moneys for the KISO to be expanded.

The Committee requested the Legislative Coordinating Council arrange for the Capitol Police to provide active shooter response training, as well as other relevant emergency response training, to legislators and legislative staff early in the 2024 Legislative Session.

Joint Committee on Pensions, Investments and Benefits

The Committee made recommendations, which include establishment of a joint Select Committee to evaluate Kansas Public Employees Retirement System (KPERS) Tier 3 to determine if it is fulfilling its intended purpose; passage of legislation addressing the statutory cap of 15.0 percent on alternative investments and delegating that authority to the KPERS Board of Trustees; and for the House Committee on Appropriations and the Senate Committee on Ways and Means to review using some of the projected State General Fund surplus ending balance to pay down the KPERS unfunded actuarial liability. The Committee also recommended the House Committee on Financial Institutions and Pensions and Senate Committee on Financial Institutions and Insurance review working after retirement rules and cost-of-living adjustments.

Joint Committee on State Building Construction

The Committee reviewed and recommended all five-year capital improvement plans. The Committee also made additional recommendations regarding the Department of Labor and inspection of cast-iron piping at a building in Topeka; two supplemental requests for the Kansas State School for the Deaf; and the Department of Corrections and support of passage of 2023 SB 275.

Joint Committee on State-Tribal Relations

The Committee recommended the 2023 Legislature approve the proposed amendment to the Prairie Band Potawatomi Nation-Kansas Gaming Compact and introduced corresponding resolutions to provide legislative approval of the amendment. [Note: Those resolutions—SR 1725 and HR 6026—were adopted on April 28, 2023.]

Legislative Budget Committee

The Committee recommended the Legislature consider the statutory restrictions and parameters of the Budget Stabilization Fund. The Committee also recommended the House Committee on Appropriations and the Senate Committee on Ways and Means receive updates and consider possible actions regarding the Food Assistance Program, planned capital improvements for the Kansas State Fair, Kansas Public Employees Retirement System (KPERS) Tier 3 benefits, and the recommendations made by the various Task Forces that met during the 2023 Interim.

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

The Committee made recommendations to amend the Children’s Health Insurance Program eligibility income guidelines in statute; for the House Social Services Budget Committee to work with the Kansas Department of Health and Environment and stakeholders to include coverage for adult dental examinations and cleanings in KanCare; for the implementation of a Community Support Waiver; and for the Elder Count and Long Term Care Resource Guide to be updated, maintained, and made available to the public digitally. The Committee recommended that, if there is a report from the Special Committee on Child Care Centers and Child Care Homes to the 2024 Legislature, the report be made available to the Committee. The Committee also requested reports to the 2024 Legislature and the Committee on mobile competency pilot projects and the availability of crisis services.

Capitol Preservation Committee

The Committee granted conditional approval of an artist for the Suffragist Memorial, and agreed to ask the Kansas State Historical Society to design a proposal for signage or a plaque to commemorate construction workers who died while building and maintaining the Capitol. The Committee also requested additional information about possible artwork for committee rooms in the Capitol.

The Committee created two subcommittees to discuss a mural honoring the 1st Kansas (Colored) Voluntary Infantry Regiment, statues in the Capitol, and possibly moving a mural from the Lieutenant Governor’s Office.

Health Care Stabilization Fund Oversight Committee

The Committee continues in its belief the Committee serves a vital role as a link between the HCSF Board of Governors, health care providers, and the Legislature, and should be continued. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability insurance marketplace, which allows for more affordable coverage to health care providers in Kansas.

The Committee submitted recommendations pertaining to the reports submitted by the Board of Governors, conditions in the insurance marketplace, defined health care providers, and the purpose of the HCSF.

Legislative Compensation Commission

The Commission directed the Legislature to set legislative salaries at \$43,000 per year beginning on the first day of the legislative session in January of 2025. For each following fiscal year after FY 2025, legislative compensation will be adjusted by applying the U.S. Bureau of Labor Statistics’ Quarterly Census of Employment and Wages (BLS QCEW–Average Annual Wages)

for Kansas Employees average percent change of the previous three years to the prior year's legislative salary. Additionally, the Commission directed adjustments to annualize the yearly legislative salary for KPERS calculation, compensate legislators for interim committees, and provide for leadership salaries. The Commission also recommended the Legislature conduct additional study on travel compensation in large districts, compensation for other leadership positions, and the compensation rate for non-legislative boards.

The directives of the Commission will be implemented unless the Kansas Legislature adopts a concurrent resolution rejecting the Commission directives that passes both the House and Senate within 30 days of the commencement of the 2024 Legislative Session.

Special Education and Related Services Funding Task Force

The Task Force made recommendations, including but not limited to: adjusting the timing of Special Education State Aid distribution to school districts, and further leveraging Medicaid funds to pay for the provisions of related special education services.

The Task Force also recommended the Legislature adopt the State Board of Education's request that a four-year funding plan be implemented to increase Special Education State Aid to the statutorily required 92.0 percent of excess special education costs.

Report of the Special Committee on Child Care Centers and Child Care Homes to the 2024 Kansas Legislature

CHAIRPERSON: Senator Renee Erickson

VICE-CHAIRPERSON: Representative Tory Marie Blew

OTHER MEMBERS: Senators Brenda Dietrich, Beverly Gossage, Kristen O’Shea, and Pat Pettey; and Representatives Susan Concannon, Angela Martinez, Susan Ruiz, Sean Tarwater, and Kenny Titus

STUDY TOPIC

The Committee is directed to:

- Study regulations and policy options for child care centers and child care homes, including day care regulation, licensing procedures, and other programs and policies, and recommend changes to ensure such services and facilities are appropriately regulated and available to meet the needs of Kansans, including those entering the workforce;
- Solicit testimony from the Governor’s Early Childhood Transition Task Force and state agencies involved in the regulation of day care facilities and ongoing reform efforts;
- Solicit testimony from parents, day care providers, licensees, businesses, and community members on the availability of day care and regulatory burdens; and
- Solicit testimony from regulatory agencies in other states that have different child-to-caregiver ratios and regulatory requirements to identify any safety concerns.

December 2023

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Special Committee on Child Care Centers and Child Care Homes

REPORT

Conclusions and Recommendations

The Special Committee on Child Care Centers and Child Care Homes (Committee) makes the following recommendations to the 2024 Legislature:

- Establish a Joint Committee on Child Care to explore the short-term recommendations during the 2024 Legislative Session, as well as the long-term recommendations, provided below; and
- Request the Legislative Coordinating Council compose a letter to the Office of the Attorney General requesting insight into the rules and regulations process, including a timeline, and request that the proposed regulations for current child care centers and child care homes be expedited.

The Committee makes the following recommendations for the proposed Joint Committee on Child Care to explore or consider during the 2024 Legislative Session:

- Support the budget process to ensure that Temporary Assistance for Needy Families funding is available for Boys and Girls Clubs;
- Examine staff-to-child ratios, including states that have adjusted their staff-to-infant ratios, and the effect that has had on child injury or death rates. The Committee also requests that the Kansas Department of Health and Environment (KDHE) provide a report on fatalities and licensed facilities to be presented to relevant committees by January 15, 2024;
- Consider legislation establishing an Early Education Provider Tax Credit and a state-level child tax credit that mirrors the federal child tax credit;
- Consider ways to provide parity among regulations governing school districts, during-school programs, and out-of-school programs held in school buildings;
- Consider legislation requiring KDHE to shift all child care licensing surveyor contracted positions to full-time equivalent state employee positions under direct supervision of KDHE as such contracts expire;
- Consider increasing income eligibility for child care assistance beyond 250.0 percent of the Federal Poverty Level;
- Analyze the advantages of putting all child care programs under one agency within the State of Kansas;
- Consider releasing assistance payments for child care directly to providers;

- Consider reimbursing Child and Adult Care Food Program participants at the tier 1 rate;
- Consider funding initiatives outside of the child care or early childhood initiatives with State General Fund moneys rather than the Tobacco Settlement funds under the Kansas Children’s Cabinet and Trust Fund; and
- Consider establishing financial incentives for specialty child care options (for example, infants, special needs, non-traditional hours).

The Committee also makes the following long-term recommendations:

- Explore the costs and benefits of providing free child care for all child care employees;
- Consider reducing the co-payment for child care assistance;
- Consider expanding Medicaid to support child care workers with lower incomes;
- Explore the costs and benefits of providing parental leave;
- Consider providing funding for the Certified Development Assistance Grant;
- Explore strategies to maintain child care slots developed through the Child Care Capacity Accelerator Grants; and
- Explore ways to provide parental choice of provider flexibility.

Proposed Legislation: None

BACKGROUND

In 2023, the Legislative Coordinating Council (LCC) appointed the Special Committee on Child Care Centers and Child Care Homes (Committee), composed of 11 members. The Committee was directed by the LCC to study regulations and policy options for child care centers and child care homes, including day care regulation, licensing procedures, and other programs and policies through soliciting testimony from the Governor’s Early Childhood Transition Task Force, state agencies, parents, providers, licensees, businesses, community members, and regulatory agencies in other states, and recommend changes to ensure the needs of Kansans are met regarding child care and the workforce.

COMMITTEE ACTIVITIES

The LCC approved two meeting days for the Committee in 2023. The Committee met twice in 2023, on September 26 and November 1, in the Statehouse.

September 26 Meeting

Presentations on the Status of Child Care in Kansas

Kansas Department of Health and Environment

The Secretary of Health and Environment, Kansas Department of Health and Environment (KDHE), provided a brief introduction of the Department and the staff members who would present information on the child care licensing program.

The KDHE Bureau Director for Family Health provided an overview of the child care licensing

program. The program is responsible for processing all licensing applications, conducting background checks, monitoring child care centers and homes through inspections and regulation enforcement, and providing training and technical assistance to local licensing specialists.

The KDHE Director of Systems and Field Services for Child Care Licensing addressed the partnerships interacting within the child care ecosystem. The ecosystem includes KDHE, the Office of the State Fire Marshal, the Kansas State Department of Education (KSDE), the Department for Children and Families (DCF), local health departments, the Kansas Association for the Education of Young Children, Child Care Aware of Kansas, Child Care Providers Coalition of Kansas, Kansas Child Care Training Opportunities, Child Care Health Consultant Network, and the Infant Toddler Specialist Network.

The KDHE Deputy Bureau Director for Family Health provided an update on the 2023 child care licensing regulation review. Key focuses of the review included implementing health and safety standards, increasing child care capacity, reducing barriers for providers, and modernizing policies for safe sleep, use of tobacco products, and breast milk storage.

The KDHE Director of Operations for Child Care Licensing presented data on fingerprinting and the background check process.

The KDHE Bureau Director for Family Health concluded by discussing KDHE's efforts to modernize the licensing process and how potential providers can find information on the KDHE website, through a provider toolkit.

Office of the State Fire Marshal

The State Fire Marshal provided an overview of the inspection process for home day care and child care centers. An inspection checklist used for fire inspections done initially or annually, or both, is given to providers prior to an inspection. This checklist includes escape paths, covers for electrical outlets, written emergency procedures for tornadoes, and documented fire drills.

Kansas Children's Cabinet

The Executive Director for the Kansas Children's Cabinet and Trust Fund provided the Committee with background information on Tobacco Settlement funds that are provided, through an annual evaluation, to programs that serve children and families. The Executive Director addressed questions from the Committee regarding the Child Care Capacity Accelerator grants that were provided throughout the state.

Department for Children and Families

The Economic and Employment Services Director for DCF addressed the Committee regarding child care development funds that are used for child care assistance. In response to questions from the Committee, the Director stated a backlog exists and a redesign of the process is in progress.

Kansas State Department of Education

The Director of Child Nutrition and Wellness, KSDE, addressed the Committee regarding the Child and Adult Care Food Program. The program provides nutritious meals and snacks to children and a financial reimbursement for meals and snacks served by child care providers. The program also includes free training that counts toward provider annual training requirements and free nutrition education resources. In addition to training, other requirements for the program include maintaining child care licensure, recording all meals and snacks, and maintaining enrollment and income eligibility documentation.

Governor's Early Childhood Transition Task Force

Two representatives from the Governor's Early Childhood Transition Task Force (Task Force) provided an update on Task Force proceedings in 2023. They stated the Task Force held nine community listening sessions and one online meeting to obtain data regarding community wants and needs regarding early childhood. The Task Force held five meetings to discuss the Kansas landscape, process lessons from other states, process information from stakeholder feedback, and draft a report with recommendations to the Governor.

Stakeholder Input

Testimony from Daycare Providers

The Committee heard testimony from nine daycare providers, six of which provided written-only testimony. The daycare providers expressed challenges they face including staffing, providing consistent and quality care to children, operational costs for business, educational opportunities for early childhood educators, and health care and benefits.

Testimony from Private Businesses

The Committee heard testimony from four private entities regarding the regulations for child care, difficulty interpreting the child day care assistance credit, limited access to child care, increased costs due to regulatory compliance, and challenges with staff-to-child ratios across the state.

Community Organizations

The Committee heard testimony from ten community organizations, including Child Care Aware of Kansas and Kansas Action for Children. The organizations presented concerns relating to recruitment, retention, and compensation of the child care workforce; affordability of child care; identifying solutions for specialty care such as during non-traditional hours and for children with disabilities; the lack of care available in rural communities; and utilizing state funds to reimburse all child care programs participating in the Child and Adult Care Food Program at the highest rate of reimbursement.

November 1 Meeting

Colorado Department of Early Childhood

The Executive Director of the Colorado Department of Early Childhood (Department) provided information on the Department, which launched in July 2022. The divisions of universal preschool; early learning, access and quality; early learning, licensing and administration; early childhood workforce; and community and family support, as well as the partnership and collaboration team, are housed under the Department. The four areas of focus of the Department are child care and preschool, child health and well-being, supporting the early childhood workforce, and improving quality

environments in all settings. A matching process is used to determine the school type and location for each child. Additionally, the Executive Director discussed grant and education opportunities that have been made available to early childhood educators by the Department.

CONCLUSIONS AND RECOMMENDATIONS

The Committee requested supplemental information regarding staff-to-child ratios, cost of starting a facility, and staff and budget for KDHE's child care licensing program. Following this discussion at the November 1, 2023 meeting, the Committee agreed on the following recommendations to the 2024 Legislature:

- Establish a Joint Committee on Child Care to explore the short-term recommendations during the 2024 Legislative Session, as well as the long-term recommendations, provided below; and
- Request the Legislative Coordinating Council compose a letter to the Office of the Attorney General requesting insight into the rules and regulations process, including a timeline, and request that the proposed regulations for current child care centers and child care homes be expedited;

The Committee makes the following recommendations for the proposed Joint Committee on Child Care to explore or consider during the 2024 Legislative Session:

- Support the budget process to ensure that Temporary Assistance for Needy Families funding is available for Boys and Girls Clubs;
- Examine staff-to-child ratios, including states that have adjusted their staff-to-infant ratios and the effect that has had on child injury or death rates. The Committee also requests KDHE provide a report on fatalities and licensed facilities to be presented to relevant committees by January 15, 2024;

- Consider legislation establishing an Early Education Provider Tax Credit and a state-level child tax credit that mirrors the federal child tax credit;
- Consider ways of providing parity among regulations governing school districts, during-school programs, and out-of-school programs held in school buildings;
- Consider legislation requiring KDHE to shift all child care licensing surveyor contracted positions to full-time equivalent state employee positions under direct supervision of KDHE as such contracts expire;
- Consider increasing income eligibility for child care assistance beyond 250.0 percent of the Federal Poverty Level;
- Analyze the advantages of putting all child care programs under one agency within the State of Kansas;
- Consider releasing assistance payments for child care directly to providers;
- Consider reimbursing Child and Adult Care Food Program participants at the tier 1 rate;
- Consider funding initiatives outside of the child care or early childhood initiatives with State General Fund moneys rather

than the Tobacco Settlement funds under the Kansas Children’s Cabinet and Trust Fund; and

- Consider establishing financial incentives for specialty child care options (for example, infants, special needs, non-traditional hours).

The Committee makes the following long-term recommendations:

- Explore the costs and benefits of providing free child care for all child care employees;
- Consider reducing the co-payment for child care assistance;
- Consider expanding Medicaid to support child care workers with lower incomes;
- Explore the costs and benefits of providing parental leave;
- Consider providing funding for the Certified Development Assistance Grant;
- Explore strategies to maintain child care slots developed through the Child Care Capacity Accelerator Grants; and
- Explore ways to provide parental choice of provider flexibility.

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Report of the Special Committee on Education to the 2024 Kansas Legislature

CHAIRPERSON: Representative Kristey Williams

VICE-CHAIRPERSON: Senator Molly Baumgardner

OTHER MEMBERS: Senators Chase Blasi, Renee Erickson, Beverly Gossage, and Dinah Sykes; and Representatives Susan Estes, Scott Hill, Mari-Lynn Poskin [10/9-10], Jerry Stogsdill, Adam Thomas, and Valdenia Winn

STUDY TOPIC

The Committee is directed to review topics pertaining to the K-12 education climate, special education, and technical and community college instruction and concurrent courses.

The Committee's review will consider:

- **Education climate.** The K-12 education climate from a teacher's perspective to better understand changes in teacher satisfaction and retention. Such review will include requirements for licensure and renewal, support structure for teachers, and comparative review of expectations and accountability in the classroom with changes in student expectations and accountability;
- **Education climate.** The challenges impacting K-12 public school students and the ability to graduate, from the student's perspective. Such review will include academic achievement data and changes over time, practices and policies impacting student mental health, and the influence of social media on a student's ability to focus and learn;
- **Special education.** State Board of Education guidelines and statutes concerning:
 - State Advisory Council for Special Education;
 - Constitutionality of statutes relating to certain service availability;

- Requirements to qualify for an individual education plan (IEP) and disciplinary policies and practices for students with IEPs; and
- Funding distribution, both state and federal level, and services and funds provided to students with IEPs in public and nonpublic schools;
- Technical and community college instruction and dual or concurrent courses: college courses and appointments:
 - Current statutes and State Board of Education guidelines that allow a student to take college classes while in high school;
 - Structure, responsibilities, and interaction of the Kansas Board of Regents, the Technical Education Authority (TEA), the Kansas Advisory Committee for Career and Technical Education (KACCTE), and the State Board of Education to ensure students are prepared to take college classes; and
 - Terms and professional requirements of appointees of the TEA and KACCTE;
- Technical and community college instruction and dual or concurrent courses: SB 155 courses. Approval process for 2012 SB 155 courses offered to high school students and the students' outcomes; and
- Technical and community college instruction and dual or concurrent courses: agreements, enrollment, and funding:
 - All funding streams for general and technical education classes in technical and community colleges;
 - Impacts on technical colleges following affiliation and merger agreements;
 - Impact of agreement of community college transfer with junior status to Kansas independent colleges versus no agreement in place with Regents universities; and
 - Dual and/or concurrent enrollment for general and technical education classes from technical and community colleges, with considerations including funding agreements (public and private high schools), marketing of courses, number of high school students served and other data regarding instruction provided, and funding interactions with the Kansas State Department of Education and individual school districts.

Special Committee on Education

REPORT

Conclusions and Recommendations

The Special Committee on Education recommends the 2024 Legislature:

- Reevaluate the special education excess cost statute regarding the formula for the calculation and distribution of funding. Also evaluate alternative funding sources, such as Medicaid;
- Consider amending statutes to establish a definition of “special education expenditures” for the purpose of determining special education excess cost;
- Consider a long-term review and update of special education statutes, including the special education funding formula, in the next iteration of the Kansas School Equity and Enhancement Act, which expires in 2027;
- Consider amending statutes to require the portion of a school district’s local option budget derived from special education state aid to be used for special education purposes, similar to requirements for at-risk local option budget funding;
- Examine and address issues of double funding for concurrent credit students;
- Examine statutes regarding the Technical Education Authority to ensure its board is composed of a diverse group of business and industry sectors;
- Further study the college and university instruction and training for perspective teachers regarding the identification of students with exceptionalities in the classroom;
- Consider alternatives for funding for the Mental Health Intervention Team Pilot Program in future iterations of the school finance formula;
- Revisit the language vetoed by the Governor in 2023 House Sub. for SB 113 with regards to which enrollment years districts can use for determination of State Foundation Aid;
- Establish a legislative oversight committee, review process, or change in statute to address topics including, but not limited to, ensuring the appropriate expenditures of at-risk and special education state aid;
- Explore ways teachers can be protected and better supported in the classroom with the necessary administrative support for day-to-day safety, health, leadership, instruction, and learning;
- Investigate what is required to have smaller student-to-teacher ratios and class sizes for kindergarten through grade 3;

- Examine how teachers are being compensated for concurrent credit courses to ensure equity;
- Further study how homeless students are being tracked within schools, what services are being provided to them within the school system, and whether those services are effective; and
- Review how the Legislature can better support families, students, and teachers for the best student outcomes.

Proposed Legislation: None.

BACKGROUND

The Special Committee on Education (Committee) was created by the Legislative Coordinating Council (LCC) to study issues regarding K-12 education climate, special education, technical and community college instruction, and concurrent courses.

The Committee was authorized by the LCC to meet for four days and met at the Statehouse on October 2, 3, 9, and 10, 2023.

COMMITTEE ACTIVITIES

October 2 Meeting

The Committee met to hear testimony and informational presentations regarding recent legislative action and funding of the K-12 system, how students are performing in the state, what challenges public schools are facing, and what innovative solutions are being used to address challenges to schools and students.

Overview of Recent Legislation

An Assistant Revisor of Statutes from the Office of Revisor of Statutes (Revisor's Office) provided an overview of education-related legislation that was passed within the past five years. The conferee focused primarily on legislation passed during the 2021, 2022, and 2023 Sessions.

A Senior Research Analyst from the Kansas Legislative Research Department (KLRD) presented a memorandum on recent changes to the rules and regulations promulgated by the Kansas

State Department of Education (KSDE) for the accreditation of public and participating private schools.

Representatives from KSDE provided testimony to the Committee on how the agency disseminates information on changes in law and how the agency generally communicates and engages with school districts to provide guidance and information.

A representative of the Kansas State High School Activities Association (KSHSAA) provided an overview to the Committee of how KSHSAA provides statutory guidance and updates to its member organization. Specific focus was given to how the organization was implementing provisions in 2023 House Sub. for SB 113 regarding participation in KSHSAA-regulated activities by students not attending member institutions.

State Funding to School Districts

An Assistant Revisor of Statutes from the Revisor's Office provided the Committee with an overview of the major findings in the Kansas Supreme Court *Gannon v. State* decisions and how they led to the current school finance formula.

A Fiscal Analyst from KLRD provided an overview of various documents that detail K-12 education spending by the State and how it has changed year over year.

State Assessments and Other Standardized Tests

A Senior Research Analyst from KLRD presented to the Committee on state assessment, ACT, and National Assessment of Educational

Progress (NAEP) scores for K-12 students from 2017 to 2022. The analyst also provided comparison test data for both the ACT and NAEP for neighboring states.

A representative of KSDE provided a further overview and breakdown of K-12 student test scores and addressed elements such as the rigor of the state assessments and how to interpret the various results.

Representatives of the Kansas Association of School Boards (KASB) and the Kansas Policy Institute (KPI) provided testimony on their respective organization's perspectives on state assessment, ACT, and NAEP results.

School Needs Assessment

An Assistant Revisor of Statutes from the Revisor's Office reviewed state statute regarding school needs assessments.

Representatives of KASB and KPI provided testimony to the Committee regarding their respective organization's perspectives on the school needs assessment and how it impacts student achievement.

Challenges Facing Schools

A representative of Unified School District (USD) 259 Wichita provided testimony on the challenges that district faces as an urban school district and how the district has gone about addressing those challenges.

A representative of Americans for Prosperity – Kansas discussed how they believe school choice programs could help address educational challenges faced by rural students living in poverty.

An Assistant Revisor of Statutes from the Revisor's Office provided an overview of state law regarding compulsory school attendance and the truancy process for students who do not meet compulsory attendance requirements.

A Senior Research Analyst from KLRD presented information on the percentages of students who were chronically absent by school district from school year 2018 through school year 2022.

Initiatives to Improve Student Achievement

A representative of USD 329 Wabaunsee gave a presentation on the "Leader in Me" program that the district has incorporated into its coursework and the impact district leaders believe have occurred as a result.

The State Dyslexia Coordinator, KSDE, presented to the Committee on the topic of literacy, the impact struggling to read can have on a student, and what types of tools are available to identify reading issues among students.

An Assistant Revisor of Statutes from the Revisor's Office provided an overview of the Every Child Can Read Act enacted in 2022 Senate Sub. for HB 2567.

A KSDE representative presented an update on the Every Child Can Read Act and its implementation. An update was also provided on the Virtual Math Program.

A representative of the Office of the Governor presented an update on the Kansas Education Enrichment Program, developed using American Rescue Plan Act funds to offset learning loss.

The Commissioner of Education provided testimony on the accreditation process and a current report on the system. He discussed elements of the Board of Education's goals, how the accreditation process was constructed, common risk factors found among schools and students, and other similar topics.

October 3 Meeting

The Committee met to hear testimony and informational presentations regarding at-risk student funding and programs, challenges and opportunities facing K-12 teachers, parental rights, stakeholder-proposed solutions regarding student achievement, and the building needs assessment.

At-Risk Student Outcomes

An Assistant Revisor of Statutes from the Revisor's Office provided an overview of how at-risk state aid is determined in the school finance formula, permissible uses of those funds, and other statutory requirements on this funding, such as

reporting requirements for longitudinal data on students utilizing at-risk programs.

A Fiscal Analyst from KLRD provided documents showing at-risk state aid for the previous five school years and state assessment scores since 2018.

A KSDE representative reviewed the criteria under which a student is identified as being “at-risk,” how KSDE guidance on at-risk funding and expenditures has changed, and how the agency monitors and ensures school districts’ compliance with the law.

At-Risk Expenditure Audit

A representative of the Kansas Legislative Division of Post Audit presented the agency’s audit *Evaluating At-Risk Expenditures and Statutory Compliance*, released in July 2023.

Representatives of KSDE and KPI followed the audit presentation with each organization’s response to the audit.

At-Risk Programs

A representative of Jobs for America’s Graduates – Kansas (JAG-K) testified before the Committee on how the organization works with and supports at-risk students, how JAG-K staff track and monitor students in their programs, and the outcomes that their students have both in school and following graduation.

A representative of Graduation Alliance presented information on that organization’s adult learner program, which is run in partnership with USD 112 Central Plains (Ellsworth County), and the difficulties the organization has been having with regards to the KSDE audit process for adult learner programs.

A representative of SparkWheel, formerly known as Communities in Schools, presented an overview of how the organization helps at-risk students, how it is funded, and what outcomes and impacts the organization’s programs have had on participating students.

Opportunities and Challenges Facing Teachers

A representative of KASB discussed fallout from the COVID-19 pandemic, social media, and select actions of the Legislature as providing challenges to teachers in the classroom.

A private citizen, self-identified as a current K-12 teacher, provided testimony to the Committee on Diversity, Equity, and Inclusion (DEI) training in K-12 education and what she believes the Legislature should do to address it.

A representative of the Kansas School Board Resource Center provided testimony on the challenges Center staff heard in their discussions with current teachers and school board members.

Representatives of Emporia State University Teachers College reviewed the most recent Kansas Teacher Retention Survey and the significant results of the survey.

A representative of USD 305 Salina presented on the district’s struggles to hire licensed teaching staff and the initiatives and retention programs the district has created to address the issue.

A representative of the Kansas Association of American Educators presented the results of a teacher survey conducted of its membership over the summer.

Parental Rights

A representative of the Yes. Every Kid. Foundation provided testimony regarding school choice programs.

An Assistant Revisor of Statutes from the Revisor’s Office provided the Committee with an overview of state statutes regarding parental rights in certain situations such as non-academic surveys and the release of student data from K-12 schools.

A representative of Kansas Family Voice addressed the Committee on the organization’s support of parental rights and the importance of strong parental rights for a student’s education.

A KSDE representative reviewed the impacts of recent changes to statutes regarding nonacademic tests, questionnaires, surveys, and

exams and what guidance has been provided to school districts.

A representative of the Kansas National Education Association provided testimony on the organization's stance on parental rights and examples of parental rights policies already adopted by many school districts.

A private citizen provided testimony on social and emotional learning.

Proposed Solutions to Improve Student Achievement

A private citizen, self-identified as a professor of education with the University of Arkansas, but not speaking on behalf of the university, reviewed academic studies on various impacts that school choice programs have on student education and on public schools.

Representatives from KASB, KPI, KSDE, and USD 512 Shawnee Mission Public Schools provided testimony to the Committee on actions that could be taken to improve student achievement.

October 9 Meeting

The Committee met to hear testimony and informational presentations regarding special education.

Review of Special Education Statutes

An Assistant Revisor of Statutes with the Revisor's Office presented an overview of current federal and state statutes regarding special education services.

Implementing Special Education Law

A Fiscal Analyst from KLRD provided information regarding special education funding.

A representative of KSDE presented testimony on the guidance the agency provides to school districts, what assistance it provides to school districts, and how dispute resolution is handled between parents and a school district regarding special education. Such disagreements could include whether a student is eligible for an individual education plan (IEP), the contents of a

student's IEP, or the services being, or not being, provided to the student.

Excess Cost Calculations

A Senior Research Analyst from KLRD presented to the Committee on how the statutes require special education excess cost to be determined, how special education cooperatives and inter-locals impact excess cost calculations, and what the formula looks like when applied to individual school districts.

A representative of KSDE provided information on how special education excess costs are functionally calculated and how to understand the breakdown of school district revenues and expenditures.

A representative of KPI provided testimony on aspects of school funding that the organization believes should be counted toward the statutory funding limit for special education state aid.

Complaint Process and Litigation

An Assistant Revisor of Statutes with the Revisor's Office reviewed state and federal law pertaining to the special education complaint process and the holdings of recent court cases involving special education disputes.

Opportunities and Challenges for Students with Individual Education Plans

A representative of KSDE provided an overview on the current state of special education in Kansas and discussed current trends, challenges, and opportunities in the special education field.

A current school social worker and current school special education teacher testified to the Committee regarding what their jobs look like day to day and what challenges they each face in their schools.

Recommendations for Improving Special Education Statutes and Funding

Representatives of the following organizations presented testimony regarding their organization's recommendations for improving special education in the state:

- Infant Toddler Services of Johnson County;
- KASB;
- KPI;
- KSDE;
- Northwest Kansas Educational Service Center;
- USD 233 Olathe Public Schools; and
- A private citizen.

October 10 Meeting

The Committee met to hear testimony and informational presentations regarding higher education initiatives in K-12 education and recent closures of school attendance centers. The Committee also held discussion and made recommendations for the 2024 Legislature.

Science of Reading

A representative of the Kansas Board of Regents (KBOR) reviewed current actions being taken by KBOR and its member institutions regarding the teaching of structured literacy to prospective teachers.

Representatives of Emporia State University provided testimony on what curriculum and teaching methods the university uses to teach prospective teachers how to teach reading.

Higher Education Faculty Compensation

Representatives of the Kansas Association of Community Colleges (KACC), KBOR, and Manhattan Area Technical College, provided testimony regarding the typical compensation received by faculty members at their respective institutions and how that compensation is determined. Specific attention was given to how that compensation differed or was impacted by state-sponsored concurrent credit enrollment with K-12 students.

Concurrent Enrollment

A representative of KSDE reviewed the role KSDE plays in concurrent and dual credit courses in K-12 schools. The conferee also discussed the career pathway and other elements associated with concurrent credit courses.

Representatives of KACC, KBOR, and Manhattan Area Technical College provided testimony regarding concurrent credit enrollment statewide and in their specific institutions. Conferees also addressed related topics, including credit transfer for concurrent credit students and trends they are seeing among students choosing whether to participate in concurrent credit courses.

Career and Technical Education

A Senior Assistant Revisor of Statutes with the Revisor’s Office provided an overview of the statutes that provide for state-funded career and technical education and for the establishment of the Technical Education Authority (TEA).

Representatives of the KACC and Manhattan Area Technical College provided testimony on the impact the TEA has on their institutions’ programming and their concerns regarding its ability to quickly adapt and be forward thinking.

A representative of KBOR described how the TEA has been implemented, how its membership is derived, and how it assists the agency in its work.

Diploma Plus

A representative of KBOR provided the Committee with an introduction to the Diploma Plus initiative that will be included in the agency’s FY 2025 budget.

Attendance Center Closures

An Assistant Revisor of Statutes from the Revisor’s Office summarized state statutes regarding the disorganization of school districts and the transference of land between school districts.

A representative of USD 112 Central Plains provided testimony regarding the decision by the

USD 112 school board to close the attendance center for grades 7–12 in Wilson.

Private citizens of USD 112, both supporting and opposing the school district disorganization question, provided their perspectives on the issue and what they believed needed to change.

A representative of USD 113 Prairie Hills presented testimony on the school district’s decision to close an attendance center in Wetmore.

A representative of USD 335 North Jackson presented testimony on how the decision by USD 113 has impacted that district in the number of students seeking to transfer in and how that has impacted the district’s finances.

CONCLUSIONS AND RECOMMENDATIONS

Following the conclusion of all testimony, the Committee discussed the issues heard over the four days of meetings. No formal recommendations were adopted during the discussion, but draft recommendations were distributed to Committee members via email for formal adoption following the discussion.

The recommendations made by the Committee to the 2024 Legislature are as follows:

- Reevaluate the special education excess cost statute regarding the formula for the calculation and distribution of funding. Also evaluate alternative funding sources, such as Medicaid;
- Consider amending statutes to establish a definition of “special education expenditures” for the purpose of determining special education excess cost;
- Consider a long-term review and update of special education statutes, including the special education funding formula, in the next iteration of the Kansas School Equity and Enhancement Act, which expires in 2027;
- Consider amending statutes to require the portion of a school district’s local option

budget derived from special education state aid to be used for special education purposes, similar to requirements for at-risk local option budget funding;

- Examine and address issues of double funding for concurrent credit students;
- Examine statutes regarding the TEA to ensure its board is composed of a diverse group of representatives of business and industry sectors;
- Further study the college and university instruction and training for prospective teachers regarding the identification of students with exceptionalities in the classroom;
- Consider alternatives for funding for the Mental Health Intervention Team Pilot Program in future iterations of the school finance formula;
- Revisit the language vetoed by the Governor in 2023 House Sub. for SB 113 with regard to which enrollment years districts can use for determination of State Foundation Aid;
- Establish a legislative oversight committee, review process, or change in statute address topics including, but not limited to, ensuring the appropriate expenditures of at-risk and special education state aid;
- Explore ways that teachers can be protected and better supported in the classroom with the necessary administrative support for day-to-day safety, health, leadership, instruction, and learning;
- Investigate what is required to have smaller student-to-teacher ratios and class sizes for kindergarten through grade 3;

- Examine how teachers are being compensated for concurrent credit courses to ensure equity;
- Further study how homeless students are being tracked within schools, what services are being provided to them within the school system, and whether those services are effective; and
- Review how the Legislature can better support families, students, and teachers for the best student outcomes.

Report of the Special Committee on Elections to the 2024 Kansas Legislature

CHAIRPERSON: Senator Mike Thompson

VICE-CHAIRPERSON: Representative Pat Proctor

OTHER MEMBERS: Senators Oletha Faust-Goudeau, Rick Kloos, Mike Petersen, and Tim Shallenburger; and Representatives Michael Dodson, Cyndi Howerton, Tom Sawyer, Paul Waggoner, and Brandon Woodard

STUDY TOPIC

The Committee is directed to address these election integrity topics and make recommendations to the 2024 Legislature regarding further study or legislation:

- Continue to evaluate a limit on the number of advance voting ballots delivered on behalf of other voters, remote ballot drop boxes, and the deadline for returning advance voting ballots;
- Review laws, rules and regulations, and procedures regarding voter roll maintenance;
- Review the process to replace a U.S. senator in the case of a vacancy; and
- Discuss restoring voter confidence.

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Special Committee on Elections

REPORT

Conclusions and Recommendations

The Special Committee on Elections suggests further study and consideration on the following topics:

- Evaluate statutory elections audit requirements and consider expanding the audits to evaluate more races in each election;
- Consider making election day a state holiday;
- Solicit testimony from voting machine vendors;
- Consider legislation requiring recount procedures and audits to be completed with paper ballots;
- Consider the benefits and drawbacks of restricting the use of advance voting ballots, particularly as it relates to election security;
- Evaluate the signature-verification methods used for advance mail ballots and consider implementing additional training;
- Consider how other states evaluate their election security through ethical hacking and other testing methods;
- Consider legislation to create a Citizen Oversight Board for elections that would oversee, track, and follow up on voter fraud reports;
- Provide for more consistent oversight of election procedures at the county level;
- Request a closed session meeting for legislators to learn more about election security procedures;
- Request more information regarding the difference in powers and duties between the county election officers and the Office of the Secretary of State;
- Direct counties to ensure their election policies and procedures are documented in writing; and
- Continue to study issues with voting machines and strategies for combating bad actors.

Proposed Legislation: None.

BACKGROUND

As election integrity has been a topic of consideration for the Legislature over the past several sessions, the Legislative Coordinating Council (LCC) authorized the Special Committee on Elections (Committee) to continue study on advance voting ballots, voter roll maintenance, and other issues related to election security.

COMMITTEE ACTIVITIES

The LCC approved two meeting days for the Committee during the 2023 Interim. Members met at the Statehouse on September 28 and 29, 2023.

September 28 Meeting

Election Law Overview

A Kansas Legislative Research Department (KLRD) Research Analyst provided an overview of election laws enacted since 2017, including laws regarding the three-day grace period for advance mail ballot return (2017 HB 2158), the requirement for a paper record to be produced for every vote cast on voting machines (2018 HB 2539), and limitations on ballot harvesting (2021 Senate Sub. for HB 2183). The analyst also provided a memorandum with information on advance voting ballots, ballot return deadlines, voting machines, and drop boxes, as well as responses on these topics provided by the Secretary of State (Secretary) and the Kansas County Clerks and Election Officials Association.

Legal Proceedings on Election Law

A Senior Assistant Revisor of Statutes from the Office of Revisor of Statutes provided an overview of the litigation status on challenged election laws. Three provisions from 2021 HB 2183 were challenged in Shawnee County District Court, regarding false representation of an election official (KSA 25-2438), signature verification on advance voting ballots (KSA 25-1124(h)), and the limit of ten advance voting ballots an individual could deliver on behalf of others (KSA 25-2437). The Senior Assistant Revisor stated provisions of KSA 25-2438, KSA 25-1124(h), and KSA 25-2437 remained in full force and effect pending review on appeal by the Kansas Supreme Court.

Two provisions in 2021 HB 2332 were challenged in federal district court for the District of Kansas. These provisions prohibited third parties from sending advance voting ballot applications to Kansas voters with personalized information already completed on the application form (KSA 25-1122(k)(2)), and prohibited third parties located outside of Kansas from sending any such applications to Kansas voters (KSA 25-1122(l)(1)). The district court issued a permanent injunction on KSA 25-1122(l)(1) on the basis that it violated the Plaintiff's constitutional rights. Similarly, the district court found that subsection (k)(2) violated the Plaintiffs' constitutional rights of speech and association and was overbroad in that it criminalized a substantial amount of protected speech. The court permanently enjoined the enforcement of KSA 25-1122(k)(2), and the State has filed an appeal with the 10th Circuit Court of Appeals.

Agency Involvement in Voter Registration

Two Visiting Fellows from Opportunity Solutions Project addressed a 2019 memorandum of understanding (MOU) Governor Kelly entered into with Loud Light, Demos, the American Civil Liberties Union (ACLU), and the ACLU of Kansas, intended to settle concerns regarding alleged violations by the State of the National Voter Registration Act of 1993 (NVRA). The conferees stated the Legislature was informed of the MOU when Demos released a press release in 2021, with a similar press release coming from Governor Kelly's office shortly thereafter.

The conferees stated that, in December 2020, Demos published a policy paper outlining a strategy for advancing voting rights through executive action, including directing federal agencies to provide voter registration services. In March 2021, President Biden signed Executive Order 14019, which, among other things, directs the head of every federal agency to "evaluate ways in which the agency can, as appropriate and consistent with applicable law, promote voter registration and voter participation." It also directs all federal agencies to consider "soliciting and facilitating approved, nonpartisan third-party organizations and State officials to provide voter registration services on agency premises."

The conferees pointed out that Haskell Indian Nations University in Lawrence is one such

designated voter registration agency under the NVRA. The conferees stated the concern with this Executive Order is the appearance of federal resources being used to engage in targeted voter registration efforts designed to benefit left-wing candidates.

The conferees proposed three solutions for addressing this issue:

- Require legislative approval for new federal funding and guidance;
- Pass legislation declaring null and void any National Voter Registration Agency designations under the NVRA made to date by anyone other than the Legislature; and
- Use legislative oversight power in coordination with the Attorney General to investigate and prosecute any wrongdoing.

Post Audit Report: Reviewing Kansas's Procedures for Election Security, Part 2

A Principal Auditor from the Kansas Legislative Division of Post Audit (LPA) presented the second of a two-part report focused on the State's procedures for election security. The report, *Reviewing Kansas's Procedures for Election Security, Part 2*, concerns the following question: Do county election offices have adequate policies and practices to ensure the accuracy and security of voting machines, ballots, storage units, and devices used to tabulate votes during elections?

The Principal Auditor stated LPA reviewed national best practices for election security and selected 50 individual practices to review, organized into five categories:

- Overall process security;
- Election management computer security;
- Ballot security;
- Voting and tabulation machine security; and

- Transfer and movement security.

LPA also included five additional election security requirements from state law. Reviews of 13 counties' policies and practices from the 2022 primary or general election are included in the report; LPA also reviewed policies in Chase and Ford counties but was not able to verify their practices because most of the 2022 election documentation was sealed prior to LPA review.

The Principal Auditor provided an overview of the findings included in the report:

- Counties reviewed generally had adequate practices to ensure overall election process security;
- Counties reviewed generally had adequate election management computer security practices;
- County results varied, but ballot security practices were weaker overall than other election management security measures;
- Most counties reviewed had inadequate voting and tabulation machine security practices except for physical security practices; and
- Counties had some transfer and movement security practices that were adequate, but others that were generally inadequate.

The Principal Auditor stated that larger counties generally had stronger security practices than smaller counties, likely because of their greater security needs and resources. None of the counties had adequate written election security policies or guidelines. LPA suggested the Secretary's Office be more proactive in giving county election officers baseline or minimum security guidelines to follow to help them move toward best practices. LPA made recommendations to the Secretary's Office, to which the Office provided responses as included in the report.

Overview of Election Topics — Office of the Secretary of State

The General Counsel and the Director of Elections from the Secretary's Office provided testimony and answered questions before the Committee.

The General Counsel stated Kansas stands out in several categories of election administration:

- Kansas uses a decentralized model of election administration, which allows counties to be responsive to their own unique circumstances and available resources;
- Kansas is one of nine states that have a strict voter identification law for both mail and in-person voting;
- Kansas has strong procedures in voter roll maintenance;
- Kansas requires signature verification for advance mail ballots and provides individualized tracking when the ballot is returned;
- Kansas is one of few states with pre- and post-election tabulation testing, post-election audits, audits of close election, procedural audits, and expansive recount laws;
- Kansans report one of the highest levels of voter confidence in their state system; and
- Kansas has a successful record of prosecuting election fraud.

The Director of Elections also addressed several topics before the Committee:

- Usability of voting machines, particularly reporting from voters about issues with machines. The Director discussed the Secretary's Office's approach to handling such reports;

- Issues from the 2022 Primary Election, including the error caught in Cherokee County;
- Implementation of watermarked ballots as required by KSA 25-2912 as enacted in 2022 Senate Sub. for HB 2138;
- The designation of election equipment as critical infrastructure essential to national defense by President Barack Obama, which was reaffirmed by Presidents Donald Trump and Joe Biden; and
- Efforts to continue training election officials in best practices through the Office's Certified Election Training Program in response to the LPA report.

The General Counsel also provided an update on implementation of enacted 2023 bills (SB 221, Senate Sub. for HB 2053, HB 2087) and enacted 2022 bills (Senate Sub. for HB 2138) and discussed recount procedures and challenges some counties have with staffing elections. The Director of Elections provided information to the Committee regarding ballot printing, certification and maintenance of voting systems, internet connectivity capability of electronic poll books, mailing of advance mail ballots, and the upcoming presidential preference primary.

Committee Discussion

During discussion, Committee members requested the following items:

- A copy of draft rules and regulations from the Secretary's Office;
- An example of the watermark that will be required on ballots;
- Information on how many ballots are printed county-by-county to determine whether a standard could be established;
- Information about federal funds that are used for voter registration efforts; and

- A copy of the MOU between Governor Kelly and Loud Light, *et al.*

September 29 Meeting

Overview of Advance Mail Ballot Deadlines

A Senior Research Analyst for KLRD provided an overview of deadlines for advance mail ballots in different states. All states offer some options for voting outside the polling place through absentee or mail ballots, and the terminology varies by state. In Kansas, the advance mail ballot return deadline is the third day following the election if it is postmarked on or before election day. Senate Sub for HB 2053 (2023), which provides for the presidential preference primary, sets a return deadline for advance mail ballots at the close of polls on the primary's election day for that election.

Three-day Grace Period for Advance Mail Ballots

A former Kansas State Representative provided testimony regarding the acceptance of advance mail ballots postmarked before the close of the polls on election day and received no later than the third day following the election. When the Legislature passed HB 2158 in 2017, legislators were told the ballots would always have a postmark on them or a barcode that could be deciphered. The former Representative stated that, today, not all mail is routinely postmarked, and some postmarks are unreadable, so it is difficult to tell whether a ballot was mailed before the close of the polls on election day as required in KSA 25-1132. He stated he would request the statute relating to the deadline be returned to the standard of having all ballots in hand at the close of the polls on election day and remove the three-day grace period.

Overview of Election Integrity Issues and Election Machine Vulnerabilities

Five representatives of the Liberty Lions League provided testimony on issues related to election integrity and security.

Overview and introduction of speakers. The first conferee provided an overview of potential issues with voting machines, stating that contractual requirements of voting machine

vendors prohibit any investigation of what is inside the machines, how they operate, or the software or code used in the election process. As a result, he stated, there is no way to ensure the machines are safe to use.

Election machines and malware. The second conferee provided information from her perspective as a software designer and developer. She stated potential vulnerabilities tend to be ignored because of overconfidence in election systems. The second conferee further stated vendors of voting machines are from all over the world, and U.S. officials and citizens have no control over how those vendors program the machines; this also makes it difficult to identify vulnerabilities and fix them.

Election machine vulnerabilities and audits. The third conferee testified regarding his personal experience working for a congressman in Florida who, according to the conferee, asked him to write code to flip votes in the 2000 election. He stated that, to be secure, ballots must be paper and counted by hand. The third conferee stated that election systems currently being used cannot be examined to learn their source code or blueprint the system to ensure the code functions as it should. He stated computer programmers can hide their work and audits are not helpful for identifying those problems.

During Committee discussion, the Senior Assistant Revisor stated that KSA 25-3009 requires post-election audits to be conducted each year and specifies which types of races are to be selected for audit by the Secretary depending on the year and types of elections that are held. KSA 25-3010 provides for county audits of election procedures and administration after elections held in even-numbered years.

Mechanics and vulnerabilities of election machines. The fourth conferee from Liberty Lions League, a cybersecurity and network consultant, spoke about the election machine ecosystem and how the various machines can be used to manipulate elections from the outside. He explained the ecosystem includes voter registration databases, voter validation systems, tabulation systems, and reporting systems. He suggested electronic poll books, for example, can

be manipulated in terms of the total number of voters.

The fourth conferee further stated that a decentralized system for elections is needed in order to ensure control of the process stays in the hands of local citizens. He provided a demonstration showing how someone might go about changing votes in a voting system. The fourth conferee stated the only way to stop these problems is to go back to the precinct level, use paper ballots and poll books, and ensure the citizens are able to be a part of the entire voting process.

Election integrity, remote ballot drop boxes, and ballot harvesting. A fifth conferee representing Liberty Lions League testified about election integrity, remote ballot drop boxes, and ballot security. He stated many concerns with election integrity he has observed:

- Counties themselves do not program their election machines. This has been outsourced to third-party for-profit contractors, which can lead to problems;
- Drop boxes are not addressed in the statutes, so no laws govern or standardize their use;
- Laws are needed to standardize the chain of custody for ballots;
- The Kansas Open Records Act does not provide for enough transparency for citizens; and
- Signature-verification procedures for advance mail ballots are lacking, and such ballots should have additional security measures in place.

The fifth conferee made several recommendations regarding reforms to election law and procedure.

CONCLUSIONS AND RECOMMENDATIONS

Following discussion, the Committee made no formal recommendations but made suggestions for further study and consideration:

- Evaluate statutory election audit requirements and consider expanding the audits to evaluate more races in each election;
- Consider making election day a state holiday;
- Solicit testimony from voting machine vendors;
- Consider legislation requiring recount procedures and audits to be completed with paper ballots;
- Consider the benefits and drawbacks of restricting the use of advance voting ballots, particularly as it relates to election security;
- Evaluate the signature-verification methods used for advance mail ballots and consider implementing additional training;
- Consider how other states evaluate their election security through ethical hacking and other testing methods;
- Consider legislation to create a Citizen Oversight Board for elections that would oversee, track, and follow up on voter fraud reports;
- Provide for more consistent oversight of election procedures at the county level;
- Request a closed session meeting for legislators to learn more about election security procedures;
- Request more information regarding the difference in powers and duties between the county election officers and the Secretary's Office;

- Direct counties to ensure their election policies and procedures are documented in writing; and
- Continue to study issues with voting machines and strategies for combating bad actors.

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Report of the Special Committee on Foreign Adversary Investments and Land Purchases to the 2024 Kansas Legislature

CHAIRPERSON: Senator Mike Thompson

VICE-CHAIRPERSON: Representative Ken Rahjes

OTHER MEMBERS: Senators Ethan Corson, Rick Kloos, Virgil Peck, and Kellie Warren; and Representatives Dennis Highberger, Nick Hoheisel, Susan Humphries, Lisa Moser, and Rui Xu

STUDY TOPIC

The Committee is directed to:

- Study preventative law and rules and regulations concerning land purchases and investments by foreign adversaries; and
- Review and make recommendations regarding the procedures for monitoring and updating the list of foreign adversaries.

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Special Committee on Foreign Adversary Investments and Land Purchases

REPORT

Conclusions and Recommendations

The Special Committee on Foreign Adversary Investments and Land Purchases (Committee) recommends the 2024 Legislature consider the information and perspectives provided to and discussed by the Committee. The Committee agrees stakeholders should be provided further opportunity to provide input during standing committee deliberations.

The Committee further agrees that the following topics be explored in more depth:

- Whether the federal foreign adversary list should be included in law, or which state officials or deliberative body should make a decision regarding countries to include on the list;
- Whether the federal Corporate Transparency Act would solve the issues contemplated in foreign adversary legislation currently before the Legislature;
- How the federal Agricultural Foreign Investment Disclosure Act operates, and what information is already tracked and reported from Kansas;
- Whether an appeal process should be included in legislation;
- Whether geographical or acreage limits should be a threshold contained in legislation;
- What information counties should solicit from those seeking tax abatements;
- Whether purchases by foreign investors drive up the purchase price of acreage in the state;
- Whether retroactivity should apply to current lease arrangements, and how those existing or future arrangements would be affected by proposed legislation;
- How the current anti-corporate farming laws operate, including enforcement mechanisms and statistics;
- How the current right-to-farm laws operate within the state, and how those laws would be affected by proposed legislation;
- Whether certain industries or sensitive government facilities within the state should be protected by a geographical radius; and
- Whether legal permanent residents should be included in the definition of “foreign nationals” or added to an exemption.

Proposed Legislation: None.

BACKGROUND

The Legislative Coordinating Council (LCC) directed the Special Committee on Foreign Adversary Investments and Land Purchases to study preventative law and rules and regulations concerning land purchases and investments by foreign adversaries and to review and make recommendations regarding the procedures for monitoring and updating the list of foreign adversaries.

COMMITTEE ACTIVITIES

The LCC authorized two meeting days for the Committee during the 2023 Interim. The Committee met on September 26 and September 27, 2023.

September 26, 2023, Meeting

The Committee heard informational presentations from legislative staff and received testimony concerning potential threats from foreign adversaries and an informational briefing on foreign ownership restriction laws and related litigation.

Staff Presentations

A Senior Assistant Revisor from the Office of Revisor of Statutes provided an overview and comparison of foreign adversary legislation considered in the 2023 Legislative Session. He explained the provisions of each bill and compared the bills.

The Senior Assistant Revisor answered questions concerning the bills and other topics, including who would be restricted from owning real property, information reporting requirements, and which official in Kansas could enforce divestiture requirements.

The Managing Research Analyst for the Kansas Legislative Research Department provided an overview of federal foreign adversary designation policies that are cited in the 2023 legislation. He discussed the ways the list of adversaries may be amended and the limited purposes of the list with regard to policing specific technological transactions and services.

The Managing Research Analyst answered questions concerning whether Congress could amend the list of adversaries found in federal regulations and whether and how the State could amend its list if any of the previously introduced bills became law in Kansas.

Presentation on Potential Threats by Foreign Adversaries

A representative of the China Aid Association presented testimony regarding his personal experiences with the Chinese Communist Party (CCP). He discussed strategies of the CCP in gaining intelligence in the United States and his belief that actors from malicious countries should not be able to purchase land in Kansas.

The conferee answered questions concerning religious persecution in China, whether proposed legislation would address religious persecution issues, and the asylum process.

Presentation on Kansas-specific Threats

The Attorney General of Kansas presented testimony concerning threats to the state. He discussed foreign ownership of land across the country, stating foreign ownership of land has recently increased at a rapid pace. He discussed national security threats, including specific recent incidents and information concerning sensitive sites in Kansas. The conferee also discussed food security, cartel operations, land affordability, and legislation suggestions.

The Attorney General answered questions concerning corporate organization involving persons of foreign descent, potential processes to modify a foreign adversary list, trends in foreign ownership of agricultural land, and topics included in the legislative proposals submitted by the conferee.

Presentation on Threat Assessment

A representative of the Center for Security Policy presented testimony concerning the Chinese military and its activities in the Pacific. A second representative of the Center discussed incidents involving purchases of land near U.S. military installations and issues related to food security. A third representative further discussed similar topics, including issues with intellectual

property theft and manufacture of certain drugs that are brought into the country.

The conferees answered questions concerning the activities and positions of the Center for Security Policy, purchases near sensitive U.S. facilities, submarine missile capabilities, and whether states have specifically regulated land purchases near sensitive locations.

Presentation on Land Leases via Foreign Companies

A Washburn University School of Law professor presented information concerning the evolution of federal reporting laws and a brief history of the development of state policies. The professor also discussed legislative proposals he had drafted, and he provided information on recently enacted bills in other states. Lastly, the professor discussed a legal challenge to a Florida statute restricting foreign ownership, noting that a Federal District Court decision had been appealed to the 11th Circuit Court of Appeals.

The professor answered questions concerning the Florida law and related litigation, constitutional issues, surface rights versus subsurface rights, and Kansas requirements for foreign landowners.

Presentation on Energy Threats to U.S. Security

A representative of the Heritage Foundation presented testimony concerning rare-earth minerals, which are needed to produce certain technology, that are controlled by countries such as China, scrutinization of land purchases, and the banning of the application TikTok.

A second representative of the organization discussed the interface of wind power and needed materials from China. She also discussed electric vehicles and the materials needed to manufacture such vehicles, reliance on renewable energy in vehicles and potential issues, and environmental policies of companies that may favor companies associated with a foreign adversary.

The conferees answered questions concerning whether climate change is a national security issue, whether modern technology transmits information back to countries such as China, federal environmental rules and standards

regarding renewable energy, and the potential of export controls being imposed.

September 27, 2023, Meeting

The Committee received testimony concerning property rights, economic development issues, perspectives by private citizens, and information on Kansas land values and ownership. The Committee concluded the meeting by developing recommendations.

Presentations on Property Rights

A representative of the Committee for a Constructive Tomorrow presented testimony concerning foreign holdings of U.S. land by citizens of other countries. She discussed the rise in the percentage of foreign-owned land attributed to Chinese nationals; investment in croplands; and environmental, social and governance (ESG) standards.

A representative of American Stewards of Liberty discussed property rights, stating the organization defends the use of lands and attempts to restore local control. The conferee discussed the federal 30X30 Initiative and the investment in natural resources by foreign-held corporations. She concluded by stating her preference that local governments be given authority to restrict foreign ownership of lands in Kansas.

Conferees answered questions concerning the conflict between capitalism and property rights, public versus privatized land management, climate change, ESG, and efforts by local governments in other states to investigate land leases for renewable energy companies.

Presentation on County Economic Development Issues

A Johnson County Commissioner presented testimony concerning recent economic development efforts in the county. She discussed solar farms planned in the county as well as a nanotube company that has secured a facility in a business park, including tax incentives offered to the company. Additionally, the conferee discussed issues related to fentanyl and the effects of increasing agricultural land values on farmers.

The conferee answered questions concerning local government management of economic development, foreign-held land in Johnson County, and issues related to tax incentives.

Private Citizen Perspectives

Two private citizens presented testimony to the Committee. The conferees discussed topics including revenue bond processes, large land purchases in suburban counties and associated incentives offered to businesses, federal statutes and bodies that oversee federal lands and natural resources, and conservation efforts that protect large areas of land.

The conferees answered questions concerning conservation easements, which countries should be included on an adversary list, advocacy and policy drafting by nongovernmental organizations, the percentage of federal lands in Montana, and coal production.

Presentation on Kansas Land Values and Ownership

An agricultural economist from Kansas State University presented information concerning trends in Kansas land values and ownership. The economist discussed the rise in agricultural land values since 2020. She also discussed the residency of owners of agricultural plots of land in Kansas; foreign holdings, including national and Kansas statistics; and wind and solar energy leases held by foreign persons or entities, which she posited makes up the vast majority of foreign holdings in Kansas.

The economist answered questions concerning lease reporting, the severance of mineral rights, information available on the Kansas State University agricultural land webpage, required reporting, and associated penalties.

Committee Recommendation Discussion

The Senior Assistant Revisor of Statutes reviewed Kansas anti-corporate farming statutes for the Committee before the recommendation discussion began. Members discussed their positions and concerns with legislation that has been previously considered. Members also noted specific groups to contact for testimony during future hearings. The Committee members agreed

to a list of topics for further consideration by the Legislature.

CONCLUSIONS AND RECOMMENDATIONS

Following discussion, the Committee agreed to recommend the appropriate standing committees of the Legislature consider the information and perspectives provided to and discussed by the Committee. The Committee agreed stakeholders should have opportunities to provide input during those deliberations.

The Committee further agreed that the following topics be explored in more depth:

- Whether the federal foreign adversary list should be included in law, or which state officials or deliberative body should make a decision regarding countries to include in the list;
- Whether the federal Corporate Transparency Act (31 U.S.C. § 5336) would solve the issues contemplated in foreign adversary legislation currently before the Legislature;
- How the federal Agricultural Foreign Investment Disclosure Act (7 U.S.C. § 3501 *et seq.*) operates, and what information is already tracked and reported from Kansas;
- Whether an appeal process should be included in legislation;
- Whether geographical or acreage limits should be a threshold contained in legislation;
- What information counties should solicit from those seeking tax abatements;
- Whether purchases by foreign investors drive up the purchase price of acreage in the state;
- Whether retroactivity should apply to current lease arrangements, and how those

existing or future arrangements would be affected by proposed legislation;

- How the current anti-corporate farming laws operate, including enforcement mechanisms and statistics;
- How the current right-to-farm laws operate within the state, and how those laws would be affected by proposed legislation;

- Whether certain industries or sensitive government facilities within the state should be protected by a geographical radius; and
- Whether legal permanent residents should be included in the definition of “foreign nationals” or added to an exemption.

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Report of the Special Committee on Governmental Ethics Reform, Campaign Finance Law to the 2024 Kansas Legislature

CHAIRPERSON: Representative Pat Proctor

VICE-CHAIRPERSON: Senator Mike Thompson

OTHER MEMBERS: Senators Chase Blasi, Elaine Bowers, Ethan Corson, and Ronald Ryckman; and Representatives Emil Bergquist, Leah Howell, Cindy Neighbor, Mari-Lynn Poskin, and Jeff Underhill

STUDY TOPIC

The Committee is directed to:

- Evaluate current laws and regulations concerning the Kansas Governmental Ethics Commission and campaign finance and recommend changes to the Legislature.

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Special Committee on Governmental Ethics Reform, Campaign Finance Law

REPORT

Conclusions and Recommendations

The Special Committee on Governmental Ethics Reform, Campaign Finance Law submits the following recommendations to the 2024 Legislature:

- To address concerns that defined terms in the Campaign Finance Act are too vague, the Committee recommends:
 - Defining the term “coordination” in the Campaign Finance Act;
 - Clarifying the definition of the term “giving in the name of another” or “contribution in the name of another” in the Campaign Finance Act; and
 - Clarifying the definition of the term “political committee” or “political action committee” (PAC) and clarifying the test for determining what is a PAC in the Campaign Finance Act.
- To address concerns that contribution limits are too low, the Committee recommends considering increasing contribution limits.
 - *Proposed Legislation:* None.

BACKGROUND

The Special Committee on Governmental Ethics Reform, Campaign Finance Law was created by the Legislative Coordinating Council (LCC) to study current laws and regulations concerning the Kansas Governmental Ethics Commission and campaign finance and recommend changes to the Legislature. The need for additional study arose during conversations regarding 2023 House Sub. for SB 208, which was enacted.

The Committee was authorized by the LCC to meet for two days and met at the Statehouse on October 5 and October 6, 2023.

COMMITTEE ACTIVITIES

October 5, 2023

Review of Study Topic

The Chairperson of the Committee and research analysts from the Kansas Legislative Research Department (KLRD) reviewed the Committee’s study topic and additional resources.

Presentation on Regulating First Amendment Activity

A professor from Northwestern University Pritzker School of Law discussed guiding principles for regulating free speech, U.S. Supreme Court case law, legislative principles, and policy recommendations.

The professor discussed arguments both for and against regulating speech in campaigns and elections. Those in favor of regulation argue regulation ensures everyone has an equal opportunity to speak and that money is not speech. Those against regulation argue the First Amendment is not an equality right, but a right of individuals to express and support their beliefs and that regulation is not necessary to protect equal speech. Further, money is considered speech; therefore, the First Amendment applies to any legislation that attempts to target campaign contributions.

The professor provided an overview of the U.S. Supreme Court case *Buckley v. Valeo* (1976), in which the Supreme Court found both independent expenditures and campaign contributions are protected by free speech, but differently. Independent expenditures, which are moneys spent by a candidate or an individual expressing support for a candidate, cannot be limited, as they are free speech. Campaign contributions, which are moneys given directly to a campaign, can be reasonably restricted, as they could give the appearance of a *quid pro quo*, which would reduce the confidence in elections. The professor expounded on other U.S. Supreme Court cases relevant to campaign finance law.

The professor provided principles that are important for state legislatures to observe, including the following:

- Independent expenditures should be unlimited;
- Restrictions on campaign contributions should be reasonable and take into account inflation and changing times;
- There should be a clear distinction between expenditures and coordinated expenditures; and
- Laws should not be vague.

The professor provided the Committee with two policy recommendations. The first recommendation would be to structure laws, such as the definitions of the terms “independent expenditure” and “coordination,” to be in tune

with the federal rules, so there is less uncertainty and vagueness. The second recommendation would be to increase contribution limits to help avoid polarization.

Comments from the Office of the Governor

The Chief of Staff for Governor Kelly addressed the Committee and stated the Office of the Governor supports promoting transparency and placing limits on campaign contributions. The Chief of Staff also discussed being open to increasing contribution limits, making contribution limits unlimited for political parties, and putting protections in place so political parties do not influence primary races.

Public Comment

Ten conferees provided public comment, and written-only testimony was provided by representatives of two members of ethics commissions in other states.

An attorney and professor at the University of Kansas School of Law discussed disclosure requirements for campaign contributions and stated such disclosure requirements have not been a hindrance to his clients when contributing to campaigns.

A representative of People United for Privacy offered three changes to campaign finance law for the Committee to focus on:

- Clearly define the term “political action committee” (PAC);
- Increase the threshold for campaign contribution disclosure from \$50 to \$500; and
- Clarify the scope of donor exposure organizations that are not PACs if they make independent expenditures, because it is unclear what non-PAC entities are required to report under current law.

A professor of political science from Emporia State University discussed his concern that provisions of 2023 HB 2391 weaken transparency. He also emphasized that U.S. Supreme Court

precedence explicitly allows disclosure laws and regulations that promote transparency.

A representative of the Campaign Legal Center emphasized the importance of disclosure and transparency laws. The conferee stated these laws uphold First Amendment values and allow voters to effectively participate in elections, ensure representatives remain responsive to their constituents, deter corruption, and assist regulators in detecting campaign finance violations.

An attorney discussed an ethics investigation in Wisconsin where a former governor was the respondent in the investigation. The conferee described the investigation as an example of a state campaign finance regulatory organization that became mismanaged and was eventually disbanded. The conferee stated ethics enforcement should not be a political weapon and should not have a political bias.

A representative of Common Cause discussed research showing the public supports candidates who are transparent. The conferee also stated public trust in politics is at an all-time low, and a good way to rebuild trust is to shine light on campaign finance disclosures.

The Interim Dean at Washburn University School of Law stated money equals speech because it makes speech possible and is a way to send a message. The Interim Dean also stated there should not be limits on expenditures because it is speech, and contribution limits should be narrowly drawn to help build the trust of the voting public.

An attorney discussed his experience representing clients who were investigated by the Kansas Governmental Ethics Commission (KGEC). The conferee stated current statutes need to be changed to allow citizens to engage in political causes without the fear of subpoenas and investigations.

Another attorney discussed the differences between contributions to political parties and individual contributions. The conferee also discussed contributions in the name of another and provided examples of contributions that could be interpreted as such from the Republican and Democratic parties.

A final attorney discussed why campaign finance is regulated, why limits should be put on campaign contributions, and his experience as a practitioner who litigated in front of the KGEC. The conferee reviewed the changes made in 2023 House Sub. for SB 208 and noted there are additional statutes that need review because they have not been updated or enforced for many years or need review for vagueness. The conferee also offered two goals for the Committee to keep in mind when making additional changes to campaign finance and ethics laws:

- Identify key principles that should guide limited regulation of campaign speech in Kansas; and
- Flag particular vague statutes and areas of public policy that can be improved.

Overview of the Kansas Governmental Ethics Commission

The Executive Director of the KGEC provided information about investigations, the role and makeup of the KGEC, the impact of disclosures on speech, and KGEC's legislative recommendations for the 2024 Legislative Session.

The Executive Director addressed how an individual's name is cleared in an investigation. The KGEC will evaluate an individual's conduct and determine if there was a violation or if there might have been a violation but the KGEC will not seek to impose fines or penalties. In either situation, the individual will be sent a letter of warning or letter of caution with one of the following determinations:

- The individual is cleared;
- The individual may have violated the law and is advised not to do it again; or
- The individual has violated the law and is advised not to do it again.

The Executive Director stated it is important to have legislation that provides clear guidance and bright-line rules that will help encourage and

support public trust in the political process. The Executive Director also explained the structure of KGEC is designed to be independent, and the makeup of the Commission itself promotes that independence. The Governor appoints two members, legislative leadership appoints four members, and the Attorney General, Secretary of State, and the Chief Justice of the Kansas Supreme Court each appoint one member. Additionally, only five of nine members can be from the same political party. While serving on the Commission, a member cannot engage in political activity, such as fundraising or endorsements.

The Executive Director addressed *quid pro quo* corruption and how secret donations and large donations are often seen as given in expectation of particular results. He emphasized the importance of transparency and presented research from 23 states indicating that disclosure does not chill speech. He also shared an example from Seattle, Washington, where democracy vouchers are provided to the public at no cost, and the public commits the vouchers to their chosen candidates. The democracy vouchers and commitments are publicly available, and research found Seattle citizens were more likely to submit a public democracy voucher than they were to vote.

The Executive Director concluded by sharing the KGEC's legislative recommendations for the 2024 Legislative Session:

- Increase KGEC staff and funding;
- Clarify the definition of a PAC;
- Clarify the definition of the term “giving in the name of another” or “contribution in the name of another”;
- Address coordination by adopting the federal coordination definition and test;
- Redefine express advocacy to use the “only reasonable interpretation” test;
- Put limits on contributions to PACs; and
- Shorten “paid for by” attributions.

October 6, 2023

Presentation on Free Speech Best Practices

The Chairman and the President of the Institute for Free Speech (IFS) gave a joint presentation and provided information about how Kansas scores on IFS' Free Speech Index and how certain changes to Kansas law could affect such score.

The Chairman of IFS noted the primary way to protect free speech is to follow the *U.S. Constitution*, and he stated Kansas does that through its definitions of express advocacy, contributions, and expenditures. He recommended simplicity as the guiding principle; simple disclaimers help with compliance. He also stated contribution limits add complexity, and over-regulation hinders people from getting involved in politics and campaigns as candidates or volunteers.

The IFS Chairman discussed how major organizations may choose to support an individual candidate, but the individual members of the organizations may not be personally supporting such candidate. Therefore, there is no need to disclose all the individuals who are part of such organizations and connect them to individual candidates and campaigns. He also noted if the issue is identifying who the major donors are, then disclosing the small donors makes it more difficult.

The IFS President and Chairman provided the following observations and recommendations:

- The PAC threshold is unconstitutional because there is no dollar threshold for the registration requirement;
- The major purpose test for PACs is unconstitutional;
- The PAC definition is crucial to a good campaign finance law;
- The current disclosure requirements for independent expenditures by non-PACs is unclear;

- The disclosure thresholds should be increased;
- Contribution limits should be increased and indexed;
- Regulators should not use enforcement to provide clarity on a vague law;
- The Legislature should consider including a presumption of free speech in the law, such as: “The Commission shall use the most reasonable reading of the law in any enforcement action. To the extent a law is vague or ambiguous, the least speech-restrictive interpretation shall prevail”;
- The coordination law is unclear;
- Repeal grassroots advocacy reporting and avoid regulating grassroots advocacy;
- Consider an internet exception because it is unique, as it is a means to communicate with a large audience, often at very little cost; and
- Help political parties by not limiting individual contributions.

Overview and History of the KGEC

Research analysts from KLRD provided an overview of ethics commissions in all 50 states and the history of the KGEC. The analysts discussed how ethics commissions in other states are similar to and different from the KGEC in terms of structure, membership, and regulatory areas. The analysts also provided a brief history of the KGEC, which began in 1970 and has experienced changes in size, membership requirements, name, and funding sources throughout the years.

Limits on Campaign Contributions

A Principal Research Analyst from KLRD provided information regarding the legislative history of campaign contribution limits in Kansas. The current limit of \$2,000 to a candidate was set in 1981.

A Senior Research Analyst from KLRD provided research detailing the campaign contribution limits in each state. The analyst noted five states permit unlimited contributions, and Kansas is in the bottom half of states in terms of dollar limits on contributions.

Overview of 2023 House Sub. for SB 208

A Senior Assistant Revisor of Statutes from the Office of Revisor of Statutes provided an overview of the bill enacted during the 2023 Legislative Session, House Sub. for SB 208. The revisor discussed three major points:

- There is a new statute governing actions taken by the KGEC;
- There is a five-year statute of limitations on actions brought before the KGEC; and
- The KGEC is authorized to adopt new rules and regulations concerning the recusal of Commission members and staff.

The revisor explained the tiered systems for contributions and registration fees for PACs, changes to contributions not allowed to be made during the legislative session, changes to the list of expenditures that may be paid using campaign contributions, changes to the KGEC’s subpoena powers, and procedural changes to the KGEC.

The revisor also reviewed issues that were discussed by the Legislature but were not addressed in House Sub. for SB 208.

Corrupt Political Advertising

A Research Analyst from KLRD provided an overview of express advocacy, corrupt political advertising, and bills from the 2023 Legislative Session concerning express advocacy and corrupt political advertising.

The Executive Director of the KGEC also provided additional information about express advocacy and corrupt political advertising.

CONCLUSIONS AND RECOMMENDATIONS

The Committee appreciated and noted the quantity of testimony concerned with vagueness in the Campaign Finance Act. After discussion, the Committee made the following recommendations:

- To address concerns that defined terms in the Campaign Finance Act are too vague, the Committee recommends defining the term “coordination”; clarifying the

definition of the term “giving in the name of another” or “contribution in the name of another”; and clarifying the definition of the term “political committee” or “PAC” and clarifying the test for determining what is a PAC.

- To address concerns that contribution limits are too low, the Committee recommends considering increasing contribution limits.

Report of the Special Committee on Homelessness to the 2024 Kansas Legislature

CHAIRPERSON: Representative Francis Averkamp

VICE-CHAIRPERSON: Senator Beverly Gossage

OTHER MEMBERS: Senators Brenda Dietrich, Rick Kloos, Carolyn McGinn, and Mary Ware; and Representatives Allison Hougland, Leah Howell, Susan Humphries, Timothy Johnson, and Heather Meyer

STUDY TOPIC

The Committee is directed to:

- Receive testimony regarding:
 - The needs of the public, businesses, law enforcement and other first responders, and state and local government regarding needs, concerns, and ideas to address homelessness;
 - The effectiveness of past and current homelessness-focused services in the state, including the discussion of promising practices; and
 - Other states' and local reform efforts to address homelessness, including effective and ineffective measures undertaken; and
- Consider legislation based on the findings of the Special Committee.

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Special Committee on Homelessness

REPORT

Conclusions and Recommendations

The Special Committee on Homelessness discussion focused on testimony and panel discussions provided by various stakeholders addressing homelessness issues, including applicable court cases and legal restrictions; the individuals, living situations, demographics, and causes of homelessness; the effect of homelessness on various communities; and lessons learned from efforts to address homelessness in other cities and states. The Committee made observations based on the testimony received but makes no formal recommendations to the 2024 Legislature.

Proposed Legislation: None.

BACKGROUND

The Legislative Coordinating Council (LCC) appointed the Special Committee on Homelessness (Committee), composed of 11 members.

The Committee was directed by the LCC to receive testimony regarding the needs of the public, businesses, law enforcement and other first responders, and state and local government regarding needs, concerns, and ideas to address homelessness; the effectiveness of past and current homelessness-focused services in the state, including the discussion of promising practices; and other states' and local reform efforts to address homelessness, including effective and ineffective measures undertaken. The Committee was asked to consider legislation based on its findings.

COMMITTEE ACTIVITIES

The Committee met on November 9, 2023, in the Statehouse. The Committee heard testimony on multiple topics related to addressing homelessness.

Legal Environment: Court Cases and Legal Restrictions

An Assistant Attorney General from the Office of the Attorney General provided testimony regarding several court cases that have explored the issue of homelessness. He explained that while “homeless” is not a protected legal class, the housing status of an individual has been addressed by courts when related to a legitimate government interest, such as public health, safety, sanitation, or aesthetics.

The Assistant Attorney General discussed the findings in the following cases:

- *Sacramento Homeless Union v. County of Sacramento*, 617 F. Supp 3d 1179 (USD CA, 2022), which held that states and municipalities are not required to provide housing, food, or sleeping materials;
- *Callahan v. Carey*, 12 N.Y.3d 496, 909 N.E.2d 1229 (2009), a New York City consent decree from 1981 established the city's obligation to provide shelter to all homeless people who needed it “by reason of physical, mental, or social dysfunction.” The homeless population's “right to shelter” has not been applied beyond New York City. Kansas does not have a constitutional provision or state law establishing a right to shelter;

- *Robinson v. California*, 370 US 660 (1962) and *Powell v. Texas*, 392 US 514 (1968), centered on the issue that the status of being homeless cannot be criminalized. In *Robinson*, the Supreme Court found that a person’s mere addiction to narcotics, when not engaged in illegal conduct involving narcotics, cannot be criminalized. In *Powell*, the Supreme Court split on whether a homeless man could be punished for public intoxication. Under the Eighth Amendment to the *U.S. Constitution*, criminal punishment for involuntary conduct or status is prohibited; and
- *Lyall v. City of Denver*, 319 FRD 558 (USD Colorado 2017), concerned the sweep of encampments of homeless people and search and seizure of personal property by a government entity without due process. The city agreed to a settlement that required a notice prior to sweeps and a system for reclaiming property. Additionally, the Fourth and Fourteenth Amendments to the *U.S. Constitution* protect against unreasonable searches and seizures and the seizing of property without due process, respectively.

The Assistant Attorney General also cited a variety of issues related to restrictions on zoned property, narrowly applied nuisance laws, and First Amendment restrictions on protected speech involving the solicitation of donations.

The Executive Director and General Counsel of the International Municipal Lawyers Association provided further comments on legal decisions regarding homelessness, primarily focusing on U.S. Ninth Circuit cases. She noted *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) held the City of Boise violated the Eighth Amendment by criminalizing involuntary homelessness, a finding that was also applied to *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023) when the City of Grants Pass enforced anti-camping and park exclusion ordinances. She noted the U.S. Supreme Court may grant a petition for *certiorari* in the *Johnson* case but, if not granted, those decisions would stand. She discussed other litigation that may modify anti-

camping restrictions, noting these cases currently do not apply specifically to Kansas municipal zoning regulations.

The City Attorney for the City of Topeka provided testimony regarding the City’s recent discussions on an anti-camping ordinance approved by the Topeka City Council in September.

Questions focused on other federal judicial circuits addressing the issue of anti-camping ordinances presented in the *Martin v. Boise* case. The representative of the International Municipal Lawyers Association stated the Ninth Circuit has yet to define “adequate shelter.”

Homelessness: The Individuals, Causes, Living Situations, and Demographics

A representative of AIM Strategies provided testimony regarding the successful efforts of the Downtown Topeka Safe and Clean Task Force in reducing incidents between individuals experiencing homelessness and businesses in downtown Topeka, including vandalism, disruption of business, and debris resulting from homeless individuals camping in the downtown plaza. The representative shared the goals of the Task Force.

In response to Committee members’ questions, the AIM Strategies representative described the Task Force’s work with mental health providers and especially the Real-Time Crime Initiative of the Topeka Police Department (TPD) to help connect homeless individuals to services and reduce homelessness issues faced by the downtown businesses. The conferee noted the goals of the Task Force did not address the effect relocating individuals experiencing homelessness from the downtown area had on other areas of Topeka.

Panel discussion. The Committee heard a panel discussion on the causes, living situations, and demographics of individuals experiencing homelessness, described below.

The former Executive Director of the Topeka Rescue Mission and current Chief Executive Officer (CEO) of Compassion Strategies shared three key factors in reaching people who are

homeless: building relationships, creating opportunities for individuals, and assuring continuity with a structured approach.

The Executive Director of Watered Gardens and Founder/CEO of True Charity in Joplin, Missouri, acknowledged the complex layers of homelessness. He noted the services provided by his organizations move homeless individuals from a dependency model to one that encourages personal responsibility.

A representative of United Community Services of Johnson County presented statistics regarding homelessness in Kansas and noted that 2,397 Kansans were experiencing homelessness on one night in 2022. The representative stated the reported number is an undercount of the homeless population in Kansas; this was a point agreed to by other panelists. She described the Continuums of Care in Kansas, coalitions serving different geographic areas, and provided point-in-time numbers on homelessness in Johnson County, which has experienced a significant rise in unsheltered persons without an increase in available beds to house them. The representative discussed the causes of homelessness and provided insight on what types of individuals experience homelessness, tracing the incremental pressures on vulnerable households that push them out of housing.

A TPD Major and co-lead of the Topeka Homeless Initiative described work with city employees and community partners to find a solution for the city's homelessness crisis and noted the TPD assumes the responsibility for connecting homeless individuals to behavioral health services and possible shelter.

A TPD Sergeant and supervisor of the Behavioral Health Unit Crisis Intervention Homelessness and Mental Health Team (Homeless Outreach Team) for the City of Topeka noted the Homeless Outreach Team is the first such program in the state. The Homeless Outreach Team members go into homeless camps to create relationships and build rapport with homeless individuals in an effort to connect them to appropriate resources.

A representative of Project 2 Restore described the organization's work with community

resources to provide a home, medical services, financial recovery, and counseling for the homeless population, especially focusing on those rescued from human trafficking. The Program Director recounted the story of one individual and the complex process of bringing her to physical, mental, and spiritual health.

The TPD Sergeant described the assistance provided to homeless individuals by the Homeless Outreach Team in obtaining a city identification card for homeless individuals. He stated having a city identification card facilitates obtaining a temporary state identification card, a Kansas driver's license, and a Social Security card, and opens doors for access to multiple resources for homeless individuals.

The United Community Services of Johnson County representative noted there are varying definitions of homelessness. The housing continuum includes instances in which an individual has no place to live that is intended for human habitation or no place an individual considers their own. School districts use a broader definition, one that considers a family to be homeless if living with another household or family. Medical debt was noted as a major driver leading to homelessness.

Several panelists stressed housing is not the total answer for homelessness, stating supports are also needed.

Effects of Homelessness on Communities

Panelists for this portion of the meeting provided the Committee with their insight and concerns on how homelessness affects their communities. The panelists included the two representatives of the TPD previously noted; the Assistant City Manager for the City of Lawrence; and representatives of several Lawrence businesses (the president of Weaver's Department Store, the owner of Bowersock Mills and Power Company, and the owner of Papa Keno's Pizzeria).

The Weaver's Department Store representative emphasized the need for safety in the Lawrence business district and a desire to develop and enforce policies addressing homelessness. He commented on offensive and threatening behaviors of homeless individuals that he has witnessed near

his business. He stated the Lawrence Police Department (LPD) has been ineffective in addressing homelessness in the community.

The Bowersock Mills and Power Company representative recounted the threats to employees by individuals living in homeless encampments and environmental concerns with trash, needles, and other debris in the Kansas River near the location where the business operates. She said additional housing will not address the issues of mental health or drug addiction that are prevalent among the homeless population. Although there were, at the time of the meeting, 65 vacant beds at the Lawrence Community Shelter, she noted various reasons homeless individuals do not want to stay there and will refuse the shelter that is provided. In response to Committee members' questions, she described meeting with representatives of the City, Bert Nash Community Mental Health Center, and other behavioral health providers to address her concerns, and noted a need for coordination rather than silos of service. She noted the LPD is overwhelmed and finds it difficult to apply the laws uniformly to the homeless population.

The Papa Keno's Pizzeria representative also noted the threats to staff by homeless individuals dealing with drug addictions or mental health issues. He explained the city has limited resources and solutions, but stressed a need in the community for accessible and comprehensive mental health care and substance abuse treatment focused on rehabilitation and support. He also expressed the need for a centralized database to identify needed services, track progress, and help allocate and distribute resources for individuals experiencing homelessness. He noted plans to convert a hotel into a substance use disorder treatment facility. The facility would accept insurance and private pay to start and may accept Medicare and Medicaid payments at a later date. He explained there is a desire to establish a scholarship program for people who are uninsured and homeless to access the services provided at the facility. The services would be provided by qualified and licensed providers, where appropriate.

The Assistant City Manager for the City of Lawrence noted Lawrence is building a homelessness response system. He explained

present services are not scaled to deal with the city's homeless population because other Kansas towns and cities are sending their homeless populations to Lawrence. He listed the negative effects on a variety of service providers from this increasing population and recommended legislation that would prohibit any agency receiving state funding from transporting people who are facing homelessness to another jurisdiction without ensuring services are available and connecting them to those services. He also recommended increasing state investment, leadership, and coordination in the development of services and facilities to prevent homelessness and enable recovery.

In response to Committee members' questions, the Lawrence Assistant City Manager stated, following the *Martin v. Boise* decision, the City of Lawrence adopted an ordinance allowing camping on city property if insufficient beds are available for individuals facing homelessness. He noted the lack of services, shelters, and housing makes it difficult to meet the needs of homeless individuals in the community, and budget constraints limit what the City can do. He stated the Lawrence City Commission and the Douglas County Commission have approved a joint resolution committing to working in coordination to end chronic homelessness in the area.

The Assistant City Manager detailed the funds committed by the Lawrence City Commission in its 2024 budget to address homelessness. Efforts to expand access to services for the homeless population include meetings with the TPD regarding its Homeless Outreach Program, reviews of best practices, and the creation of a multidisciplinary outreach team beginning in 2024 to encourage access to services and recovery. Other efforts by the City to address the needs of the homeless population include a behavioral health sales tax to fund mental health services and rehabilitation; a county-led creation of a crisis stabilization center and supportive housing, providing a one-stop shop for wraparound services; and the ongoing development of a pallet shelter village with 50 small sheltering cabins purchased by the City to be operated by the Lawrence Community Shelter with financial support from the City.

A Committee member described the Housing First treatment modality, noting it requires the individual facing homelessness to enter a treatment program and employment services to move into housing. The Committee member stated the panelists' comments indicate they were advocating for a Housing First program.

Another Committee member expressed the need to combine compassion with accountability.

Lessons from Other Cities and States

The Committee heard testimony from individuals representing local and other state programs and a local government representative who shared information about their programs and lessons learned. Their presentations were followed by a panel discussion and questions from Committee members.

A Former Senior Policy Advisor with the U.S. Department of Housing and Urban Development (HUD), also a representative of both the Hope Street Coalition in San Diego, California, and The LA Alliance for Human Rights in Los Angeles, California, reviewed homelessness policies and practices. He commented on his experience in Los Angeles and provided HUD data on the unsheltered population compared with the number of available beds from 2007 through 2020. He also provided data on the percentage of individuals self-reporting challenges with physical health, behavioral health, substance abuse, or all three by sheltered or unsheltered status. He questioned federal data and recommended developing local data and focusing on treatment, not housing. He concluded that present policies and practices have fostered a constituency of dependency, and current government programs emphasizing housing have not reduced the homeless population but have actually increased it. In response to a Committee member's question, the representative noted the goal is to offer incentives for individuals to treat their addictions. Alternative or specialty courts could offer treatment instead of jail to address crime caused by mental health challenges.

A representative of the Social Impact Studio, West East Design Group, outlined the Haven for Hope model, which treats the root causes of homelessness by offering comprehensive services on a 22-acre campus. He explained the two

options offered for those admitted to the program: the Transformation Campus, for intensive integrated residential treatment, and the Courtyard, which offers a variety of services with fewer restrictions to homeless individuals. The representative noted both options are evidence-based using best practices. Peer staff is utilized and a continuum of care beyond the campus is provided. He commented that the adverse effects of trauma are a root cause of homelessness for 54 percent of the homeless population. Haven for Hope's budget, on average, is composed of 60 percent federal, state, and local government funds and 40 percent private funds. The representative provided data on Haven of Hope's local impact on youth and family homelessness in the San Antonio, Texas, community. He noted Haven of Hope places all support services, including child care, in one location. The representative noted the importance of public-private partnerships.

The representative of Watered Gardens and True Charity in Joplin, Missouri, commented that the increases in housing offered to homeless individuals has seemed to make the situation worse by increasing attitudes of entitlement and dependency. The representative said the key to success in treating homelessness is to build long-term relationships with homeless individuals.

In response to a Committee member's question regarding a map showing the True Charity Network in Wichita, the representative explained an organization in Wichita is using the True Charity Network tools. Regarding best evidence practices used, research is done with many providers to collect information on successful programs that measure outcomes. Case management and therapeutic services are not provided by trained providers; instead, the representative stated competent, passionate members build personal relationships with the homeless individuals in the community. He noted personal relationships are powerful in providing incentives for change among homeless individuals.

A Shawnee County Commissioner commented on the homelessness issues facing his community, including homeless individuals camping in county parks and resorting to crime to acquire a place to sleep and eat. The Commissioner noted the county has looked at a variety of options to address these issues. The City of Topeka has passed an

ordinance that specifies who can camp and where camping can occur. The Shawnee County Commission passed a resolution that requires a 72-hour notice to homeless individuals to move from a campsite, with provisions for 90-day impounding of personal property left behind and the disposal of unclaimed property. The Commissioner stated the jail is 45 to 50 percent occupied by individuals with mental illness who do not belong there. Some of these individuals in jail are awaiting trial and wait long periods of time for a competency evaluation. The Commissioner suggested an additional behavioral health facility or state hospital in northeast Kansas.

A representative of Lawrence Family Promise described his program that, for more than 15 years, has served 1,700 families in Lawrence by matching homeless families with children with local families, primarily through approximately 2,000 volunteers. The program incentivizes people to save money by matching their savings upon graduation from the 90-day program. He noted 4 out of 5 families graduate to permanent housing and, out of those graduating, 80 percent remain permanently housed after 2 years. The program receives no government funding.

Following the presentations and questions, a Committee member expressed concern regarding some programs that seem to ignore qualified professional services. Another Committee member expressed gratitude for holistic programs that include a spiritual component.

Update on Homelessness Programs and Resources

A Kansas Legislative Research Department (KLRD) research analyst provided an overview of the state's homeless programs: Kansas Housing Resources Corporation; the Emergency Solutions Grant (ESG) and its applications in Topeka, Wichita, and Johnson County; the Continuum of Care Program; the Housing Trust Fund; other programs administered by the Kansas Department for Aging and Disability Services (KDADS); and federal initiatives. Homelessness initiatives in other states and data from the 2022 Annual Homelessness Assessment Report to Congress were provided. The data indicated homelessness increased in 27 states and decreased in 23 states and the District of Columbia. Drawing from state data, the KLRD research analyst noted 4 states

accounted for more than 50 percent of the total of all people experiencing homelessness: California, New York, Florida, and Washington. An overview of statutes in states with the highest and lowest rates of unsheltered homeless population was provided.

The KLRD research analyst provided additional written-only information: a KDADS memorandum on housing services; a memorandum and fact sheets from the Kansas State Department of Education on the McKinney-Vento Act and American Rescue Plan Act funds for homeless children and youth; information from the Kansas Statewide Homeless Coalition with support from other entities on best practices and effective approaches to address housing insecurity and end homelessness; and comments on the effect of mental illness on homelessness from Representative Timothy Johnson.

Additional Program Testimony

A representative of the Manhattan Emergency Shelter, Inc., shared her experiences sheltering homeless individuals and families. The representative stated providing shelter is the first line of defense in dealing with homelessness. The shelter works with local government, community agencies, law enforcement, and the courts, and together they provide the continuum of care in the community. She noted the Drug Court in Manhattan refers individuals to the emergency shelter, which works with the court to ensure the treatment plans are followed.

In response to a questions from Committee members, the representative described how the community members and businesses help meet the needs of the emergency shelter. She noted there is no budget for food, but those needs are met by the community. She stated efforts are underway to have a rehabilitation facility, a detoxification facility, and an inpatient psychiatric facility in Manhattan. HUD Rapid Rehousing funds are used to move individuals and families quickly into homes. When no beds are available, help is sought from churches and the local community center to assist with housing, on a case-by-case basis. The representative noted the support received from the faith-based community and her efforts in building relationships with anyone who can help the shelter. The representative stated policies to address homelessness need to be made at the local level.

Written testimony was received after adjournment from a representative of the Cross-Lines Community Outreach in Wyandotte County.

CONCLUSIONS AND RECOMMENDATIONS

The Committee made no formal recommendations to the 2024 Legislature, but the Chairperson asked Committee members to comment on key points they had garnered from the presentations and panel discussions.

The Committee members' observations included the following:

- Mental illness is a one of the primary drivers for homelessness;
- Offering only housing for the homeless is inadequate, when about two-thirds of individuals facing homelessness need substance use disorder treatment or mental health services;
- The State can help fund drug, alcohol, and mental health treatment and facilitate access to photo identification cards for individuals facing homelessness, but the local communities need to work together to make the policy decisions that will work for their communities to address homelessness. Local control is the key to tailoring effective homeless programs;
- Putting money into the Local Ad Valorem Tax Reduction Fund and allowing local governments to use those funds for mental health and substance abuse treatment or lowering property taxes could help assist local governments in addressing homelessness;
- Public-private partnerships are able to provide comprehensive, rather than siloed, services;
- Safety is an important factor to consider when individuals facing homelessness are present near commercial locations and in homeless encampments, and those locations where children reside should be monitored closely;
- To address mental health and substance use issues, shelter, housing, and wrap-around services must be provided;
- Affordable housing must always be a consideration in meeting the needs of homeless families;
- Shelters are the first line of defense in addressing homelessness, and the State should consider what it can do to support the shelters;
- An effective police department is critical in addressing homelessness. Property rights need to be respected, and equal application of the law must be recognized;
- Expanding Medicaid could aid in increasing access to mental health and substance use services in the state;
- Conferees were helpful in humanizing the discussion of homelessness issues;
- Public agencies need to find ways to simplify processes to help churches, faith-based programs, and nonprofit initiatives already in place to address homelessness; and
- There is a need to develop both short-term and long-term goals to address homelessness.

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Report of the Special Committee on Intellectual and Developmental Disability Waiver to the 2024 Kansas Legislature

CHAIRPERSON: Senator Beverly Gossage

VICE-CHAIRPERSON: Representative Les Mason

OTHER MEMBERS: Senators Rick Billinger, Michael Fagg, Pat Pettey, and Ronald Ryckman; and Representatives Barbara Ballard, David Buehler, Will Carpenter, Bill Clifford, and Christina Haswood

STUDY TOPIC

The Committee is directed to:

- Review findings (required by 2023 law) from the Kansas Department for Aging and Disability Services (KDADS) and make recommendations to ensure the intellectual and developmental disability service reimbursement rates keep pace with inflation each year.

[*Note:* Provisions in 2023 HB 2184 [Section 89(u)] directed KDADS to make expenditures for the purpose of “reviewing the overall costs of providing services within the intellectual and developmental disability service system and making recommendations to the Legislature for a method to make regular rate adjustments for such services based on inflationary indexes.”]

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Special Committee on Intellectual and Developmental Disability Waiver

REPORT

Conclusions and Recommendations

The Special Committee on Intellectual and Developmental Disability Waiver recommends:

- The Kansas Department for Aging and Disability Services (KDADS) develop the methodology for the biennial rate study and satisfy the following requirements:
 - Examination of all services within the intellectual and developmental disability (I/DD) system, including those services not delivered via the Home and Community Based Services I/DD Waiver;
 - Examination of all service-related costs;
 - Incorporation of the appropriate inflationary indexes as part of its examination of service costs;
 - Adjustment of reimbursement rates considering all five elements that are included in KSA 39-1806(a)(3) based on inflation data; and
 - Recommendation for an increase to at least cover inflation-related increases experienced during the previous fiscal year;
- The Committee further requests KDADS:
 - Review reimbursement rates utilizing actual cost data, similar to the process for rebasing nursing facility rates;
 - Continue development of the Community Support Waiver, accelerating the timeline where possible;
 - Consider including individual budget authority in its upcoming renewal application for the existing comprehensive I/DD Waiver;
 - Explore the creation of a community support program to precede Centers for Medicare and Medicaid Services approval for the Community Support Waiver; and
 - Explore options to provide nonmedical transportation for individuals on the waiver and its waitlist, including reimbursement or development of a transportation system, and provide a cost estimate of such options.

Proposed Legislation: None.

BACKGROUND

Section 89(u) of 2023 HB 2184, an appropriations bill, directed the Kansas Department for Aging and Disability Services (KDADS) to make expenditures for the purpose of “reviewing the overall costs of providing services within the intellectual and developmental disability service system and making

recommendations to the Legislature for a method to make regular rate adjustments for such services based on inflationary indexes.”

The Chairperson of the House Social Services Budget Committee requested the Legislative Coordinating Council appoint a study committee to review and recommend options to address intellectual and developmental disability (I/DD)

waiver costs based on the recommendations from KDADS.

The Special Committee on Intellectual and Developmental Disability Waiver (Committee) was authorized to meet for two days and met for one day, August 7, 2023, at the Statehouse.

COMMITTEE ACTIVITIES

The Committee's primary focus during the meeting was the current method of reviewing I/DD waiver costs and reimbursement rates.

Presentations on I/DD Waiver Rates

A representative of KDADS provided an overview of the Home and Community Based Services (HCBS) waivers that provide Medicaid-reimbursed services to individuals with I/DD in the community instead of an institutional setting. The representative outlined the requirements to participate in the I/DD waiver program.

The representative also outlined the process by which the Kansas Department for Health and Environment contracts with the State's Medicaid managed care organizations (MCOs) and sets the reimbursement rate. The reimbursement rate is a per-member per-month capitated floor rate. Providers of I/DD services may negotiate with the MCOs to receive a higher reimbursement rate. The representative detailed the current tiered service rates for FY 2024, the I/DD waiver rate history, and the statutorily required biennial rate study, which was last completed in 2016.

Update on I/DD Waiver Waitlist Study

A representative of the Kansas University Center on Developmental Disabilities reviewed the status of the HCBS I/DD and Physical Disability waiver waitlist study. The representative detailed the two-fold aim of the project, which is to collect and analyze waitlist data and to collect information on needed supports to forecast future need.

The representative reported as of December 6, 2022, 4,831 individuals were on the I/DD waiver waitlist, with an average wait time of 5 years and a maximum wait time of 11 years. The representative shared data from other states with

I/DD waiver waitlists that responded to their survey.

The representative noted the average wait time on the I/DD waiver waitlist in other states is six years, and one other state has a longer waitlist than Kansas has. The representative also shared that caregivers of individuals on the I/DD Waiver waitlist do not receive services. The representative highlighted that individuals on the I/DD waitlist receive educational services while they are in school; however, those services differ from the services offered on the I/DD Waiver.

Update on Community Support Waiver

A representative of KDADS presented information on the proposed Community Support Waiver (CSW). The representative stated the CSW would provide supports that are less intensive than those offered on the current comprehensive I/DD waiver. The representative compared the proposed CSW services with those currently offered on the comprehensive I/DD waiver. The representative included cost estimates for the CSW, which ranged from \$72 million, including \$29 million from the State General Fund (SGF), to \$149 million, including \$40 million SGF, based on the number of individuals served by the CSW. The representative noted KDADS proposes adding individuals from the I/DD Waiver waitlist to the CSW over several years to develop provider capacity over time.

The representative noted KDADS is awaiting approval from the Centers for Medicare and Medicaid Services (CMS) to use Federal Medical Assistance Percentage (FMAP) savings to write the waiver application. The goal is to submit the application to CMS by October 2025 and offer services beginning in March 2026. The representative noted the I/DD Waiver waitlist may decrease as individuals requiring fewer services join the CSW instead of waiting for the comprehensive waiver.

FMAP Enhancement Projects

The KDADS representative provided a progress summary of FMAP Enhancement Projects as of August 3, 2023, noting the one-year increase in federal matching funds resulted in new, time-limited dollars that can be strategically invested in HCBS services in Kansas through

March 31, 2025. Projects include bonuses for direct care workers and development of the Comprehensive Support Waiver.

Presentation on I/DD Waiver Rates by Individuals, Providers, and Organizations

A representative of Kansas Behavior Supports outlined the applied behavioral analysis therapy services offered by the agency to Kansans. The representative listed the challenges faced in providing services, including unreimbursed transportation, ongoing training costs, unreimbursed case management, and the long wait time for both the Autism and I/DD waivers.

Representatives from InterHab addressed historical topics, including the 1995 Kansas Developmental Disabilities Reform Act, and funding challenges. The representatives provided recommendations to the Committee concerning the biennial rate study.

Representatives from AbilityPoint, Big Lakes Developmental Center, CLASS Ltd, COF Training Services, Cottonwood Incorporated, and Multi Community Diversified Services shared their concerns with the Committee. The concerns relating to the reimbursement rates included operations that could not be sustained due to a lack of regular rate reassessments, difficulty in planning and expanding services, and the impact of inflation offsetting recent rate increases.

A representative of the Kansas Council on Developmental Disabilities provided recommendations, which included providing more flexibility and choice for self-advocates and families by improving rates for care under self-direction and independent budget authority; independent budget authority so family caregivers can receive reimbursement; rate parity between services self-directed by individuals and provider-directed services; and wage increases for services providers.

A representative of the Self Advocate Coalition of Kansas emphasized the importance of independent budget authority for self-directed individuals.

Several private citizens shared their experiences as family members of individuals with I/DD and with the I/DD waiver system, including the impact of limited Social Security disability income, increased expenses, and special care required for individuals with I/DD. The representatives requested the option to receive services in group homes and day programs, and highlighted the importance of transportation, both medical and nonmedical.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends KDADS develop the methodology for the biennial rate study and satisfy the following requirements:

- Examination of all services within the I/DD system, including those services not delivered via the HCBS I/DD Waiver;
- Examination of all service-related costs;
- Incorporation of the appropriate inflationary indexes as part of its examination of service costs;
- Adjustment of reimbursement rates considering all five elements that are included in KSA 39-1806 based on inflation data; and
- Recommendation for an increase to at least cover inflation-related increases experienced during the previous fiscal year;

The Committee recommends KDADS:

- When conducting the biennial rate study, review reimbursement rates utilizing actual cost data, similar to the process for rebasing nursing facility rates;
- Continue development of the Community Support Waiver, accelerating the timeline where possible;
- Consider including individual budget authority in its upcoming renewal

application for the existing comprehensive I/DD Waiver;

- Explore the creation of a community support program to precede CMS approval for the Community Support Waiver; and

- Explore options to provide nonmedical transportation for individuals on the waiver and its waitlist, including reimbursement or development of a transportation system, and provide a cost estimate of such options.

Report of the Special Committee on Mental Health to the 2024 Kansas Legislature

CHAIRPERSON: Senator Beverly Gossage

VICE-CHAIRPERSON: Representative Brenda Landwehr

OTHER MEMBERS: Senators Molly Baumgardner, Cindy Holscher, Carolyn McGinn, and Mark Steffen; and Representatives Barbara Ballard, Doug Blex, Will Carpenter, Les Mason, and Silas Miller

STUDY TOPIC

The Committee is directed to review the following programs and topics:

- The K-12 Mental Health Intervention Team Program;
- Certified community behavioral health clinics;
- 988 and suicide prevention programs;
- Behavioral health workforce; and
- The potential for Wichita to serve as a location for behavioral health excellence as a result of ongoing efforts, including the new South Central Mental Health facility, and the potential for creation of mental health hubs across the state.

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Special Committee on Mental Health

REPORT

Conclusions and Recommendations

The Special Committee on Mental Health recommends the following additions and changes to agency reports to the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight (Bethell Committee):

- The Kansas Department of Health and Environment (KDHE) report to the Bethell Committee on the resources available to physicians who provide prenatal, perinatal, and postpartum medical care regarding mental health services and, in particular, depression.
- The Department for Children and Families (DCF) report to the Bethell Committee on the process to connect foster children to the Mental Health Intervention Teams (MHIT) in buildings in which foster children are enrolled, and to report the plan by DCF to ensure communication between the MHIT building liaisons and foster care contractors is maintained.
- The Kansas State Department of Education (KSDE) expand its data reporting to the Bethell Committee to include the number of buildings in a school district that have entered into a MHIT grant; the number of buildings in a school district that have additional retained mental health services to the MHIT grant; and, for buildings in the MHIT grant, the average length of stay for a student in the program; the number of students per building and grade level served by the program; and any additional data that may be provided on the program.
- KSDE expand its data reporting to the Bethell Committee to include the following data points: the number of schools that have a mental health program separate from the MHIT program; the total amount spent on mental health per district; what the mental health dollars are being spent on or for in the district; the number of students, by age group, that are participating in the mental health programs; and the issues being served by the mental health programs;
- The Kansas Department for Aging and Disability Services (KDADS) report to the Bethell Committee regarding what actions are being taken to increase the workforce and what means or methods are being undertaken to retain the workforce; and
- KDADS report to the Bethell Committee regarding data collected on announced versus unannounced site visits to psychiatric residential treatment facilities, the frequency of when both types of visits occur, and the data found in each type of visit as well as the differences found in each type of visit.

The Committee recommends KDADS continue to monitor and report to the 2024 Legislature regarding Recommendation 8.7, Competency Evaluation and Restoration, of the [2021 Special Committee on Kansas Mental Health Modernization and Reform](#), including what other states are doing.

The Committee expresses its support for the Community Support Waiver and asked that support is provided to KDHE and KDADS to expedite the approval process in any way.

Proposed Legislation: None.

BACKGROUND

The Special Committee on Mental Health (Committee) was created by the Legislative Coordinating Council (LCC) and granted three meeting days. The LCC directed the Committee to study the following topics:

- The K-12 Mental Health Intervention Team (MHIT) Program;
- Certified community behavioral health clinics (CCBHCs);
- 988 and suicide prevention programs;
- Behavioral health workforce; and
- The potential for Wichita to serve as a location for behavioral health excellence as a result of ongoing efforts, including the new South Central Mental Health facility, and the potential for creation of mental health hubs across the state.

COMMITTEE ACTIVITIES

The Committee met on August 23 and 24, 2023, to hear information on mental health topics, summarized in this report.

Mental Health Intervention Team Program

The Director of the Safe and Secure Schools Unit at the Kansas State Department of Education (KSDE) provided an overview of the MHIT program. The MHIT program's primary focus is on K-12 students and their families. An MHIT connects the students and their families to community mental health services and resources. The program utilizes liaisons who are placed in school buildings to assist building staff and students, as well as connect students and families to available community resources and services.

The Director stated the MHIT program began with a nine-district pilot program in 2018. The MHIT program and its funding are authorized by proviso in annual appropriations bills. In the 2022-2023 school year, the program served 66 school districts. In the 2023-2024 school year, the program is projected to serve 90 school districts and have 182 liaisons.

The Director provided six annual reports and the 2023-2024 grant award recommendations. The Director also noted a study of the MHIT program has been completed by Wichita State University.

Roundtable Discussion on the MHIT Program

The Committee held a roundtable discussion on August 23 to hear stakeholder perspectives on various aspects of the MHIT program. Attendees included representatives from GraceMed Health Clinic, Inc.; Community Health Center of Southeast Kansas; Association of Community Mental Health Centers of Kansas, Inc.; KSDE; Horizons Mental Health Center; Salina School District USD 305; Labette Center for Mental Health Services, Inc.; and Pratt School District USD 382.

Roundtable participants agreed that, overall, the MHIT program had made a positive difference in schools where it is in use. They additionally identified the liaison as a "traffic director," not a mental health provider. They stated a key factor for an effective liaison is a love for students. The standardized job description template provided by KSDE helps a school district select liaisons.

Roundtable participants identified several areas of the MHIT program where changes are not needed:

- They agreed the screening application is important for identifying effective providers and contractors; and
- They agreed the memorandum of understanding between a school district

and the provider should continue to be optional so a non-MHIT contractor can also be utilized, noting some schools or districts utilize multiple providers.

Roundtable participants identified several areas of the MHIT program where changes would be beneficial to the program:

- The liaison needs to be able to identify foster care children as they enter or transfer within a school district or transfer to a different building, because there is no such system currently in place;
- The importance of a data-integration system to facilitate and expand the program. It was noted the data must include all mental health providers in the school, not only the MHIT program providers; and
- The need for permanent statutory authority to ensure future funding.

Health Centers and Clinics

Federally Qualified Health Centers

The Coordinator from the Office of Primary Care and Rural Health in the Kansas Department of Health and Environment provided an overview of the services provided by federally qualified health centers (FQHCs). FQHCs are safety-net medical providers that offer comprehensive collaborative services in an outpatient clinical setting, irrespective of a patient's financial resources. FQHCs include a variety of rural and urban health centers that are funded in a variety of ways utilizing both state and federal appropriations on a three-year cycle as well as grants, fees, and donations. The State General Fund (SGF) appropriation for FY 2024 allocated \$13.3 million to 31 clinics.

The Coordinator stated certain clinics are designated as "Look-Alikes" (LALs). The LAL clinics provide the same services and meet all the program requirements but do not receive any federal funding.

FQHCs are certified and regulated by the federal Health Resources and Services Administration. FQHCs must meet federal eligibility requirements, but the health care directors determine what services are available at the clinic.

FQHC eligibility requirements are the following:

- Must be a domestic public or private nonprofit entity;
- Must provide health services to medically underserved populations, as defined in section 330 of the Public Health Service Act (42 U.S.C. §254b), regardless of ability to pay;
- Must ensure the required primary health care services be available and accessible in the service area via at least one permanent service delivery site that operates for a minimum of 40 hours per week;
- Must propose to serve a defined geographic area that is federally designated, in whole or in part, as a medically underserved area or medically underserved population;
- *New applicants only*: If the area is not currently federally designated, must provide documentation that a request for designation has been submitted and designation must be received prior to award; and
- *LALs only*: Cannot be receiving funding as a Health Center Program federal awardee and cannot be co-located with a Health Center Program federal awardee.

In [Kansas](#), there are 22 clinic systems representing 168 FQHCs and 7 FQHC LALs, which include school-based clinics and administrative sites.

Certified Community Behavioral Health Clinics

The Assistant Commissioner for Behavioral Health Services in the Kansas Department for Aging and Disability Services (KDADS) provided an overview of the services of CCBHCs. CCBHCs are specially designated clinics that provide a comprehensive range of mental health and substance use services. The Assistant Commissioner noted that a key element of CCBHCs is their integrated coordination to provide a comprehensive array of mental health services.

CCBHCs receive Medicaid reimbursement based on a Prospective Payment System (PPS) in which the rate is determined by dividing the annual allowable costs by the annual daily visits. The PPS rates were initially based on estimated costs. The Assistant Commissioner reported KDADS was evaluating actual cost reports to rebase the PPS rates. These new rates will be used for the next two to three years, and it was noted that PPS rates differ by facility.

CCBHCs provide nine core services, either directly or through formal partnerships:

- Crisis services;
- Screening, diagnosis, and risk assessment;
- Psychiatric rehabilitation services;
- Outpatient primary care screening and monitoring;
- Targeted case management;
- Peer, family support, and counselor services;
- Community-based mental health care for veterans;
- Person-centered and family-centered treatment planning; and
- Outpatient mental health and substance use services.

CCBHCs are required to use evidence-based practices, including assertive community treatment, supported employment (Individual Placement and Support Model), medication-assisted treatment, and cognitive behavioral therapy.

As a result of the prior Mental Health Task Forces, KDADS completed a state needs assessment. In 2021, enacted Senate Sub. for HB 2208 included a requirement for KDADS to establish a certification process to transition community mental health centers (CMHCs) to CCBHCs and complete the transition to the CCBHC model by state FY 2025.

The Assistant Commissioner shared that the final six CMHCs will be certified as CCBHCs by July 1, 2024. Additionally, Kansas was notified of a CCBHC demonstration grant of \$1.0 million available in July 2024. The Demonstration Grant will enable the State to access technical support and additional federal funds based on the Federal Medical Assistant Percentage used for the Children’s Health Insurance Program.

Dually Certified FQHC/CCBHC Facility

The Commissioner for Behavioral Health, KDADS, clarified that federal guidelines establish the criteria for both FQHCs and CCBHCs. The Commissioner noted that FQHCs have become CCBHCs in other states. An FQHC must meet the federal guidelines to provide CCBHC services. KDADS is the agency that will review whether a FQHC meets the guidelines to provide CCBHC services. The Commissioner reported Kansas has no dually certified facilities. If one were to be established, the dually certified facility would receive the FQHC PPS rate for primary care services and would receive a CCBHC rate for mental health services.

CCBHC Services in School Districts

The Commissioner clarified that a school district has flexibility to choose the CCBHC providing services in that school district.

Community Care Network

The Chief Executive Officer of Community Care Network of Kansas provided an overview of the state association of community-based primary

care clinics. The representative noted 32 member clinics provide primary care services to patients regardless of their ability to pay. The representative stated there are three types of member clinics: 19 FQHCs, 2 LALs, and 10 community-based clinics. The representative explained the key features of two provider types that meet federal guidelines:

- The FQHCs are federally funded with a PPS reimbursement for Medicare and Medicaid services, and they offer sliding scale payments for self-pay and insured patients; and
- The LALs meet all the requirements of the FQHCs but they do not receive federal funds.

The representative shared that, of the 174 Kansas FQHCs and LALs, 69 are school sites and provide both primary and mental health care, and 2 are part of MHIT programs in Atchison and Southeast Kansas.

Update on Implementation of CCBHCs

The Executive Director of the Association of Community Mental Health Centers of Kansas presented on the work of CMHCs in the state. The representative stated the 26 centers provide care for individuals with behavioral health problems in the least-restrictive environment, regardless of the individual's economic level. The representative noted the CMHCs provide mental health services to every county in Kansas. The representative noted the evolving nature of health care and commented on the significant addition of the CCBHC model and school-based mental health programs, such as the MHIT program.

The Director of Johnson County Mental Health Center cited the range of services offered at a CCBHC. The Director highlighted that a CCBHC is reimbursed at one rate regardless of the services received, which is a change from the fee-for-service model by which CMHCs were reimbursed before transitioning to the CCBHC model.

A representative of KDADS highlighted that an additional CMS certification is required when a CMHC is certified as a CCBHC.

Virtual Care

A representative of Avel eCare Virtual Crisis Care presented information regarding three decades of virtual crisis care through a subscription service. The representative illustrated Avel eCare's approach for crisis care, for school health, for emergency services, and for law enforcement.

Update on Recommendations of the 2020 and 2021 Special Committees on Kansas Mental Health Modernization and Reform

The Commissioner of Behavioral Health Services, KDADS, provided an overview of the current status of agencies' actions in response to the recommendations of the 2020 and 2021 Special Committees on Kansas Mental Health Modernization and Reform. The Commissioner commented on each of the 56 recommendations, provided a brief report on each recommendation, and provided background information on completed and pending recommendations.

988 and General Suicide Prevention

988 and Kansas Suicide Prevention Plan

The Commissioner of Behavioral Health Services, KDADS, provided an update on the National 988 Crisis and Suicide Prevention Lifeline, which is in its second year of implementation. The Commissioner stated Kansas has a network of four 988 Contact Centers to provide coverage throughout the state. The Commissioner outlined the [Kansas Suicide Prevention Plan \(2021–2025\)](#) and stated its four strategic directions are to:

- Promote health;
- Foster clinical and community prevention services;
- Foster treatment and support services; and
- Continue surveillance, research, and evaluation.

Zero Suicide in Health Systems Grant

A representative of KDHE stated KDHE has received the Zero Suicide in Health Systems grant, which is a five-year, \$700,000-per-year federal grant that targets adults 25 years and older. The representative described the partnerships KDHE has with multiple agencies and organizations to assist them with funding and expanding awareness by written and digital media, including the creation of an [online dashboard](#).

Youth Suicide Prevention

The Youth Suicide Prevention Coordinator from the Office of the Attorney General presented information on youth suicide prevention efforts, including the creation of the Youth Suicide Prevention Task Force and legislation that established the Coordinator’s position. The representative noted 54 percent of youth ages 10–17 communicated their intent of suicide before taking any action, and 71 percent of violent deaths among youth were suicides. The representative outlined the digital app called [“A Friend AsKS.”](#) which is used as a tool to reduce suicides.

Suicide in the Sunflower State

A representative of Kansas Health Institute reviewed research regarding adult suicide and provided both a national and state perspective regarding suicide rates. The representative stated national trends show a steady increase in suicides with firearms as the means. The representative shared a comparison of the suicide trend in Kansas’ youth with other states’ trends, and noted firearms are used in a significant percentage of male youth suicides. The representative also provided data on suicide by race, age, sex, area, population density, and state.

Maternal and Perinatal Mental Health Issues

Two representatives of the Kansas Section of the American College of Obstetricians and Gynecologists presented information on perinatal mental health; “perinatal” includes pregnancy through one year following the end of pregnancy. The representatives reported 85 percent of women will experience a pregnancy by age 44, and 20 percent of those women will experience a mood or anxiety disorder, causing deleterious impact on both the mother and the child, as well as a

negative ripple effect on society at an estimated cost of \$14.2 billion annually. The representatives offered recommendations:

- Improve access to care;
- Increase screening;
- Support reimbursement for social services; and
- Expand parental leave.

CONCLUSIONS AND RECOMMENDATIONS

The Committee discussed a variety of issues raised by conferees and agreed to the following recommendations for additions and changes to reports to the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight (Bethell Committee):

- A report from KDHE on the resources available to physicians who provide prenatal, perinatal, and postpartum medical care regarding mental health services and, in particular, depression.
- A report from the Department for Children and Families (DCF) on the process to connect foster children to MHITs in buildings in which foster children are enrolled, and to report the plan by DCF to ensure communication between the MHIT building liaisons and foster care contractors is maintained.
- KSDE expand its data reporting to the Bethell Committee to include the following data points: the number of buildings in a school district that have entered into a MHIT grant; the number of buildings in a school district that have additional retained mental health services to the MHIT grant; and, for buildings in the MHIT grant, the average length of stay for a student in the program; the number of students per building and grade level served by the program; and any additional data that may be provided on the program.

- KSDE expand its data reporting to the Bethell Committee to include the following data points: the number of schools that have a mental health program separate from the MHIT program; the total amount spent on mental health per district; what the mental health dollars are being spent on or for in the district; the number of students, by age group, that are participating in the mental health programs; and the issues being served by the mental health programs.
- KDADS report to the Bethell Committee regarding what actions are being taken to increase the workforce and what means or methods are being undertaken to retain the workforce.
- KDADS report to the Bethell Committee regarding data collected on announced

versus unannounced site visits to Psychiatric Residential Treatment Facilities (PRTFs), the frequency of when both types of visits occur, and the data found in each type of visit as well as the differences found in each type of visit.

The Committee recommends KDADS continue to monitor and report to the 2024 Legislature regarding Recommendation 8.7., Competency Evaluation and Restoration, of the [2021 Special Committee on Mental Health Modernization and Reform](#), including what other states are doing.

The Committee expresses its support for the Community Support Waiver and asks that support is provided to KDHE and KDADS to expedite the approval process in any way.

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Report of the Special Committee on Nursing Facility Reimbursement Rate Methodology to the 2024 Kansas Legislature

CHAIRPERSON: Representative Les Mason

VICE-CHAIRPERSON: Senator Beverly Gossage

OTHER MEMBERS: Senators Renee Erickson, Michael Fagg, Carolyn McGinn, and Jeff Pittman; and Representatives Ron Bryce, Will Carpenter, John Eplee, Kirk Haskins, and Jarrod Ousley

STUDY TOPIC

The Committee is directed to:

- Review the process for Medicaid reimbursement of nursing facilities and consider alternative methods to calculate reimbursement that support the longevity of Kansas nursing homes.

[*Note:* Provisions in 2023 HB 2184 [Section 35(d)] directed the Legislature to create an interim study committee to “take a holistic view of nursing facility reimbursement rate methodology, including cost center caps and an acuity-based add-on.”]

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Special Committee on Nursing Facility Reimbursement Rate Methodology

REPORT

Conclusions and Recommendations

The Special Committee on Nursing Facility Reimbursement Rate Methodology notes reimbursement rates for nursing facilities are not keeping pace with costs and that changes should be made to the methodology currently used to rebase rates. The Committee recognizes the important role played by the Medicaid add-on approved by the 2023 Legislature, incentive programs for nursing facilities, and the facility survey process, and requests further information on these topics.

The Committee submits the following recommendations:

- The Kansas Department for Aging and Disability Services (KDADS) explore and provide a report to the Legislature on the benefits and challenges of shifting the rebase process to include one year of cost reports rather than three years;
- The Legislature extend the Medicaid add-on for nursing facilities based on the number of Medicaid residents served for FY 2025;
- KDADS review the following and provide a report on these topics to the House Committee on Social Services Budget: ownership structures of nursing facilities in Kansas; how many are owned by Kansas individuals and businesses; the use of holding companies; the current cost-reporting process and structure; financial information reviewed when a nursing facility is sold; and the differences between for-profit and nonprofit nursing facilities, including quality of care. Further, the House Committee on Social Services Budget should consider requesting the Legislative Post Audit Committee to approve an audit by the Legislative Division of Post Audit on these topics;
- The Legislature review the facility survey process and compare the process in Kansas with processes in other states, including fine amounts, metrics, surveyor education, and the role the state agency can play in ensuring facilities are aware of and understand federal guidelines and requirements;
- KDADS conduct an internal review of the current incentive program structure for nursing facilities, including how much funding is currently available for incentive programs;
- The Legislature and KDADS explore the use of incentives, including the following: encouraging facilities that focus on behavioral health programs and services, supporting facilities owned by Kansas individuals and businesses, and encouraging energy efficient facilities. In addition, the Legislature should explore adding state funding to enhance the availability of incentives;

- KDADS provide the Legislature with information on options to apply the Critical Access Hospital Model to nursing facilities;
- KDADS provide a report to the Legislature on the nursing facility provider assessment and formula for distributing funds;
- KDADS explore the possibility of raising the personal needs allowance for Medicaid-funded nursing facility residents and report findings back to the Legislature;
- The Legislature explore methods to support nursing facilities in managing the proposed Centers for Medicare and Medicaid Services rule governing staff ratios, including staff incentives, and consider methods to partner with educational institutions to grow the nursing workforce;
- The Legislature review methods to reimburse treatment for dementia care, including adjusting the case mix index or creating an add-on incentive factor. In addition, the Legislature should explore the number of facilities specifically equipped to provide this level of care;
- The Kansas Legislative Research Department (KLRD) explore the licensing requirements for the nursing home administrator position in other states, including practicum requirements, and efforts other states have made to make these positions more accessible. KLRD should review which requirements are federally set and which requirements the State can adjust; and
- The Legislature explore the funding and structure required to extend Targeted Case Management services to additional Home and Community Based Services waivers, including the Frail Elderly, Physical Disability, and Brain Injury waivers.

Proposed Legislation: None.

BACKGROUND

In 2023, enacted HB 2184 Sec. 35(d) created the Special Committee on Nursing Facility Reimbursement Rate Methodology (Committee) to take a holistic view of the nursing facility reimbursement rate methodology, including cost center caps and an acuity-based add on.

The Legislative Coordinating Council authorized two meeting days for the Committee. The Committee met twice during the 2023 Interim, on September 21 and 22. The first meeting day was spent hearing testimony and the second meeting day was largely spent in discussion and creating recommendations.

COMMITTEE ACTIVITIES

The Committee's two meeting days focused on an overview of the reimbursement rate-setting methodology in other states and in Kansas, followed by testimony by stakeholders, including individuals, providers, and organizations.

September 21 Meeting

Information from Other States

At the September 21 meeting, a representative of the National Conference of State Legislatures (NCSL) provided an overview of reimbursement payments to nursing facilities for Medicaid residents and the rate-setting methodologies used by other states. The representative illustrated how, within the Medicaid program, funds flow from the federal level to states, and ultimately to vendors,

providers, and patients. The representative also described that Medicaid nursing facility payments can be state-directed as fee-for-service (FFS) payments, or the State may delegate payments by contracting with private entities through a managed long-term services and supports (MLTSS) model.

It was noted that 22 states rebase FFS costs annually and 12 states rebase FFS costs every 2 to 4 years. Of the states with MLTSS payment models, 14 have established minimum fee schedules for nursing facilities in managed care systems and 6 states require direct payments for nursing facilities.

Information on Kansas

The Director of Nursing Facility and Adult Care Home Programs for the Kansas Department for Aging and Disability Services (KDADS), reviewed the role of KDADS in setting reimbursement rates for long-term-care facilities, which includes establishing the initial rate for new facilities, reviewing, tracking cost report submissions and communicating about them, updating the Medicaid state plan with rates, and applying legislative action, such as the Medicaid add-on approved by the 2023 Legislature.

A Senior Manager from Myers and Stauffer, LC (Manager) outlined the methodology to determine Medicaid reimbursement rates for nursing facilities in Kansas and defined the various terms that are used when establishing rate calculations, such as:

- Case Mix Index (CMI), a numerical value indicating the acuity (level of care needed) of a nursing facility's residents;
- Patient-Driven Payment Model (PDPM), a payment system implemented by the Centers for Medicare and Medicaid Services (CMS) in 2019, to which Kansas will transition in FY 2025; and
- Resource Utilization Group (RUG), the current classification system used by Kansas, which will be replaced by PDPM.

The Manager explained that nursing homes are paid facility-specific per diem rates based on cost-report data submitted by each facility, various per diem add-ons (e.g., real and personal property fee, quality incentive factors, bed tax adjustment, and the legislatively created Medicaid add-on), and other factors. Additional factors impacting a nursing facility's Medicaid rate, such as the operating expenses, indirect health care costs (housekeeping and activities), direct health care costs (nursing and nursing supplies), and the real and personal property fee, were described.

The Manager noted that the FY 2024 average rate is \$276.36, and the Manager described the impact of the Kansas shift from a RUG classification system to PDPM on July 1, 2024. This change is expected to increase CMI values and increase reimbursement rates for facilities.

Presentations on Nursing Facility Reimbursement Rates by Individuals, Providers, and Organizations

The Committee heard presentations from representatives of four nursing facility advocacy groups: Kansas Health Care Association/Kansas Center for Assisted Living, LeadingAge Kansas, Kansas Adult Care Executives, and Kansas Advocates for Better Care.

The advocacy group representatives all stated that the daily Medicaid reimbursement rate does not fully cover the actual expenses associated with patient care, and they recommended altering the rate-setting methodology to use only one year of cost reports rather than three, as is done in the current process. Other recommendations made by advocates included:

- Continuing the Medicaid add-on payment approved by the 2023 Legislature and considering an additional add-on for patients with behavioral health needs and dementia;
- Reevaluating cost center caps to determine expense and revenue amounts for relevance within current operational activities;

- Increasing incentive rates to keep pace with the average reimbursement rate;
- Supporting nursing facilities with a pass-through payment to address staffing shortages and CMS staffing requirements;
- Exploring the use of a model similar to that of the critical access hospitals to support rural nursing facilities;
- Extending Targeted Case Management services to additional Home and Community Based Services (HCBS) waivers, including the Frail Elderly, Physical Disability, and Brain Injury waivers; and
- Increasing the real and personal property fee that is paid in lieu of an allowable cost for ownership mortgage payments.
- KDADS explore and provide a report to the Legislature on the benefits and challenges of shifting the rebase process to include one year of cost reports rather than three;
- The Legislature extend the Medicaid add-on for nursing facilities based on the number of Medicaid residents served for FY 2025;
- KDADS review the following and provide a report to the House Committee on Social Services Budget: ownership structures of nursing facilities in Kansas; how many are owned by Kansas individuals and businesses; the use of holding companies; the current cost-reporting process and structure; financial information reviewed when a nursing facility is sold; and the differences between for-profit and nonprofit nursing facilities, including quality of care. Further, the House Committee on Social Services Budget consider requesting the Legislative Post Audit Committee to approve an audit by the Legislative Division of Post Audit on the topic;
- The Legislature review the facility survey process and compare the process in Kansas with processes in other states, including fine amounts, metrics, surveyor education, and the role the state agency can play in ensuring facilities are aware of and understand federal guidelines and requirements;
- KDADS conduct an internal review of the current incentive program structure for nursing facilities, including how much funding is currently available for incentive programs;
- The Legislature and KDADS explore the use of incentives, including the following: encouraging facilities that focus on behavioral health programs and services, supporting facilities owned by Kansas individuals and businesses, and encouraging energy efficient facilities. In addition, the Legislature explore adding

The Executive Director of the Center for Health Information and Policy presented information that indicated a need for more transparency regarding the financial reporting by for-profit nursing homes, and he reviewed his research that nursing facility cost reporting does not accurately reflect a facility's profit. The representative recommended to the Committee that the audit authority for nursing homes be expanded to more accurately determine facility ownership.

CONCLUSIONS AND RECOMMENDATIONS

The Committee generally agreed that reimbursement rates for nursing facilities are not keeping pace with costs and that changes be made to the methodology currently used to rebase rates. The Committee recognized the important role played by the Medicaid add-on approved by the 2023 Legislature, incentive programs for nursing facilities, and the facility survey process, and it requested further information on these topics.

Following discussion, the Committee submits the following recommendations:

state funding to enhance the availability of incentives;

- KDADS provide the Legislature with information on options to apply the Critical Access Hospital Model to nursing facilities;
- KDADS provide a report to the Legislature on the nursing facility provider assessment and formula for distributing funds;
- KDADS explore the possibility of raising the personal needs allowance for Medicaid-funded nursing facility residents and report findings back to the Legislature;
- The Legislature explore methods to support nursing facilities in managing the proposed CMS rule governing staff ratios, including staff incentives, and consider methods to partner with educational institutions to grow the nursing workforce;
- The Legislature review methods to reimburse treatment for dementia care, including adjusting the CMI or creating an add-on incentive factor. In addition, the Legislature explore the number of facilities specifically equipped to provide this level of care;
- The Kansas Legislative Research Department (KLRD) explore the licensing requirements for the nursing home administrator position in other states, including practicum requirements, and efforts other states have made to make these positions more accessible. KLRD review which requirements are federally set and those that the State can adjust; and
- The Legislature explore the funding and structure required to extend targeted case management services to additional HCBS waivers, including the Frail Elderly, Physical Disability, and Brain Injury waivers.

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Report of the Special Committee on Restricted Driving Privileges to the 2024 Kansas Legislature

CHAIRPERSON: Senator Rick Wilborn

VICE-CHAIRPERSON: Representative Fred Patton

OTHER MEMBERS: Senators Elaine Bowers, Brenda Dietrich, Oletha Faust-Goudeau, and Mike Petersen; and Representatives Avery Anderson, Sydney Carlin, Shannon Francis, Lynn Melton, and Lance W. Neelly

STUDY TOPIC

The Committee is directed to:

- Consider policy options and changes to the law pertaining to eligibility for certain individuals for restricted driving privileges (including those proposed in 2023 SB 2), which will include:
 - Receiving testimony regarding restricted driving privileges from the Department of Revenue and other relevant state agencies, the Legislative Division of Post Audit, the Judicial Branch and municipal courts, law enforcement agencies, business owners and groups, automobile insurance companies, city and county officials, and any other relevant stakeholders.

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Special Committee on Restricted Driving Privileges

REPORT

Conclusions and Recommendations

The Committee made the following recommendations.

Recommendations for Legislative Review and Consideration

The Committee recommended the Legislature consider or review the following topics:

- Consider a change in the suspension process to allow for an initial period during which a person's driver's license would not be immediately suspended;
- Explore the possibility of providing for repayment plans and improved communication between the Kansas Department of Revenue and the courts;
- Review traffic citations that could be excluded from citations for which driver noncompliance could result in a driver's license suspension;
- Consider limiting reinstatement fees to a single administrative fee per reinstatement, rather than a reinstatement fee for each charge;
- Consider providing judicial discretion with regard to suspension and revocation; and
- Review the requirement that certain drivers maintain SR-22 insurance.

License Revocation for Failure to Comply with a Citation

The Committee recommends the Legislature, with regard to any individual whose license has been revoked solely for driving when such person's license was revoked for failure to comply with a traffic citation, provide for full restoration of driving privileges once the individual complies with all outstanding fines, fees, and court obligations.

License Restrictions

The Committee recommends the Legislature, with regard to license restrictions:

- Provide restricted driver's licenses for drivers making attempts to comply with citations and be accountable;
- Limit the number of opportunities an individual has to apply for restrictions;

- Reform law pertaining to failure to comply to begin with restrictions, with suspension subsequent to continued noncompliance; and
- Include driving children to and from child care in the permissible circumstances when restricted driving privileges are granted pursuant to KSA 8-2110.

Judicial Branch Involvement

The Committee recommends, with regard to involvement of the Judicial Branch:

- One of the standing legislative committees request the Judicial Council review traffic violations that could be excluded as grounds for suspension for failure to comply;
- The Legislature request a municipal courts association review policies relating to payment of traffic-related debt;
- The Office of Judicial Administration report progress to the Legislature at the beginning of the 2024 Legislative Session on the development of a universal form for petitioning courts for waiver or modification of traffic citation debts; and
- Kansas Legal Services be asked to share with the Judicial Council its form for petitioning a court to waive fines and fees.

Proposed Legislation: None.

BACKGROUND

The Special Committee on Restricted Driving Privileges (Committee) was created by the Legislative Coordinating Council to evaluate various policy options, including provisions proposed in 2023 SB 2, and to make recommendations for reform of laws relating to restricted driving privileges for certain drivers. The Committee was authorized to meet for two days.

As part of its evaluation, the Committee was authorized to receive testimony regarding restricted driving privileges from the Kansas Department of Revenue (KDOR) and other relevant state agencies, the Legislative Division of Post Audit, the Judicial Branch and municipal courts, law enforcement agencies, business owners and groups, automobile insurance companies, city and county officials, and any other relevant stakeholders.

During the 2023 Legislative Session, the Senate Committee on Transportation held a

hearing on SB 2, authorizing certain individuals with revoked driver's licenses to be eligible for restricted driving privileges, and subsequently recommended the bill be passed as amended. The bill was subsequently withdrawn from the Senate Calendar and referred to the Senate Committee on Judiciary, where an additional hearing was held on the bill. The bill did not advance from that committee, and a suggestion was made that an interim study of the topic could be appropriate in advance of the 2024 Legislative Session.

With regard to restricted driving privileges, KSA 8-2110 authorizes an individual to apply for restricted driving privileges in lieu of suspension for failure to comply with a traffic citation, which is failure to appear in court or otherwise comply with a citation, including failure to pay required fines. Restricted driving privileges permit driving under limited circumstances for up to one year, or until the terms of the traffic citation are fulfilled. Permitted travel includes driving to and from work, school, medical appointments, emergency care, court-required obligations, or in the course of employment-related duties.

COMMITTEE ACTIVITIES

The Committee met at the Statehouse on August 29 and October 10, 2023. At the August 29 meeting, the Committee reviewed information from various perspectives on driver's license suspension and revocation as presented by staff, state agency officials, and invited conferees, followed by discussion and requests for additional information from Committee staff to be provided at the subsequent meeting. At the October 10 meeting, the Committee reviewed follow-up information, held a panel discussion with previous conferees, and developed recommendations for its report.

August 29, 2023, Meeting

Staff Overview

Kansas Legislative Research Department (KLRD) staff provided an overview of key definitions and recent legislation regarding reform of restricted driving privileges, including relevant provisions of bills enacted since 2017 and bills introduced during the 2023 Session.

Office of Revisor of Statutes staff presented an overview of SB 2, around which much of the discussion throughout the day revolved.

Community Perspectives on License Suspension and Revocation

The Chairperson of the Sedgwick County Racial Profiling Advisory Board provided information on the community impact of driver's license suspension and revocation. The conferee highlighted economic impacts of this issue on individuals, noting license suspensions and revocations impose financial hardship on families and make it difficult to work and obtain housing, medical care, or day care services.

Another member of the Sedgwick County Racial Profiling Advisory Board provided additional testimony regarding the social and personal harms caused by current license suspension and revocation policies and indicated the need for reform of such policies.

The Executive Director of Kansas Legal Services, Inc. (KLS) provided an overview of the services provided by KLS with regard to license

restoration. The conferee recommended the Committee consider:

- Providing additional legislative clarity as to what constitutes manifest hardship;
- Establishing a historical cutoff of outstanding fees;
- Providing funding for license reinstatement clinics; and
- Improving data transparency from KDOR.

A retired Executive Director of KLS provided an account of one person's experience with license suspension and the the impact of mandatory SR-22 insurance required when convicted of driving on a suspended license. The conferee recommended the Committee:

- Review the requirement for anyone convicted of driving while suspended to maintain SR-22 insurance continuously for 12 months; and
- Consider expanding restricted driving privileges to individuals whose licenses are administratively suspended for driving without insurance.

The Sedgwick County Commissioner for District 5 provided information on the community impact of driver's license suspension and revocation. The conferee noted driver's license suspension often contributes to cycles of poverty; a disproportionate number of license suspensions in Kansas occur in Sedgwick County, accounting for one-third of total suspensions statewide; and Kansas has a disproportionate number of suspensions in comparison with other states. The conferee recommended the Committee consider:

- Making suspensions less punitive by removing mandatory sentencing;
- Removing the indefinite look-back of offenses by allowing offenses to be automatically removed from one's record eventually; and

- Providing restricted licenses for drivers making attempts to comply and be accountable.

An attorney with the League of Kansas Municipalities provided testimony regarding the priorities of the League in considering reforms of law pertaining to driving privileges, noting the organization is supportive of efforts to address cycles of indigency and recidivism but cautioning the Committee to ensure offenses jeopardizing road-user safety result in appropriate consequences.

Business and Insurer Perspectives on Driver's License Suspension and Revocation

The Senior Director of Government Affairs of the Kansas Chamber provided testimony in support of provisions of SB 2 and any efforts that would remove the barriers to employment and economic success.

An attorney and Chief Operating Officer of the Kansas Association of Insurance Agents provided testimony outlining the priorities of the organization, noting the association does not have a position on restricted license policy, such as that contained in SB 2, but did note allowing restricted driving privileges for a driver whose license is otherwise revoked would have an impact on the accessibility and cost of that driver's auto insurance. The conferee encouraged the Committee to consider policies that address the rising cost to obtain motor vehicle records, which is impacting the cost of insurance in Kansas.

A representative of the Kansas Association of Property and Casualty Insurance Companies provided written-only testimony indicating the association does not have relevant policy concerns with regard to restricted driving privileges, but did note a preference for policies to be considered to address the rising cost of motor vehicle records.

License Suspension and Revocation Procedures and Data

The manager of Driver Solutions, Division of Vehicles, KDOR, presented information on the administration of the restricted driver license program and the impact SB 2 would have on the

program, and also provided data that had been requested by the Committee.

The conferee indicated failure to comply with a traffic citation is the most common reason for driver's license suspension in Kansas. As of August 2023, the driver's licenses of 208,347 Kansas drivers were suspended. Of these, 123,913, or 59.5 percent, were due to failure to comply with a citation.

The conferee noted that in spite of the availability of the restricted driving privileges, relatively few drivers with suspensions for failure to comply take advantage of the program. In 2021, only 2,310 drivers applied for restricted driving privileges under KSA 8-2110, of which 1,978 were approved. The same year, 1,165 drivers completed the program. The conferee stated the reason for this under-utilization is not presently known.

Legal Perspectives on Driver's License Suspension and Revocation

A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association provided testimony regarding the concerns of the associations he represents with respect to reform of license suspension and revocation, and he made recommendations to the Committee. The conferee recommended the Committee consider:

- Limiting the number of opportunities an individual has to apply for restrictions;
- Making the requirement of courts to notify KDOR of failure to comply with a citation discretionary instead of mandatory;
- Changing language requiring payment of all fines, court costs, and penalties within 30 days of notice to payment of amounts as ordered by the court;
- Limiting reinstatement fees to a single administrative fee per reinstatement, rather than a reinstatement fee for each charge;

- Reviewing traffic violations that could be excluded as grounds for suspension for failure to comply; and
- Reforming law pertaining to failure to comply to begin with restrictions, with suspension subsequent to continued noncompliance.
- Minimally limiting reinstatement fees to only charges resulting in a conviction; and
- Removing mandatory minimum jail sentences for second and third convictions of driving while suspended, though providing for some sort of mandatory fine.

An attorney for KLS provided highlights of his experiences representing clients in the Suspended License Intervention Program in Wyandotte County. The conferee endorsed the recommendation of the previous conferee to provide for license restrictions prior to suspension for failure to comply with a citation.

The Deputy Special Counsel with the Kansas Judicial Branch provided testimony from an administrative perspective on behalf of the courts. The conferee recommended the Committee consider limiting reinstatement fees to a single administrative fee per reinstatement, rather than a reinstatement fee for each charge.

An Assistant District Attorney of the 18th Judicial District of Kansas discussed concerns about SB 2 and provided policy recommendations, indicating a preference for focusing on how to keep people from being in a revoked or perpetually suspended status rather than simply managing individuals whose driving privileges are already withdrawn. The conferee recommended the Committee consider:

- Clarifying language in SB 2 as to whether habitual violators are included;
- Including in SB 2 cross-references to relevant statutes, such as KSA 8-285 or KSA 8-287, to help clarify the target population;
- Removing the mandatory 90-day suspension for driving while suspended in KSA 8-262(b)(1);
- Limiting reinstatement fees to a single administrative fee per reinstatement, rather than a reinstatement fee for each charge;

The Executive Director of the Police Athletic League of Kansas City, Kansas, submitted written-only testimony providing information about a program of the organization to provide driver education to low-income adolescents.

Additional Testimony

A Wichita business consultant and former Wichita traffic commissioner testified about personal experiences with financial insecurity attributed to license suspension and traffic-related debts. The discussion highlighted negative consequences of the experience in his life and the lives of those around him and the negative impacts that state policy can have on the workforce and Kansas communities.

Committee Discussion and Requests for Additional Information

Committee members discussed some preliminary recommendations and requested additional information from staff to be provided at the following meeting.

Committee members requested the following information be provided:

- How other states notify drivers of license suspension;
- Which traffic citations could be excluded from suspension for failure to comply;
- How other states have implemented payment plans;
- How Kansas courts currently utilize payment plans;

- The differences between suspension and revocation in current law and administrative practice; and
- Additional data that would help provide clarification of the population of interest for this reform.

Committee members made the following preliminary recommendations for the Legislature to consider or review:

- Consider a change in the suspension process to allow for an initial period in which a person's driver's license would not be immediately suspended;
- Explore the possibility of providing for repayment plans and improved communication between KDOR and the courts;
- Review traffic citations that could be excluded from citations for which driver noncompliance could result in a driver's license suspension;
- Consider limiting reinstatement fees to a single administrative fee per reinstatement, rather than a reinstatement fee for each charge;
- Consider providing judicial discretion with regard to suspension and revocation; and
- Review the requirement that certain drivers maintain SR-22 insurance.

October 10, 2023, Meeting

Staff Review of Requested Information

KLRD staff reviewed recommendations that the Committee and conferees made during the previous meeting and provided information requested by the Committee. Topics reviewed included information on other states' processes for notifying drivers of suspension; other states' implementation of payment plans for traffic-related debts; Kansas courts' utilization of

payment plans; differences between suspension and revocation in current law and administrative practice; and license suspension and revocation data obtained from KDOR motor vehicle records and Judicial Branch district court case data.

Office of Revisor of Statutes staff provided a review of traffic citations, as defined in KSA 8-2106, that can result in a suspension of driving privileges due to failure to comply with a traffic citation.

Conferee Panel Discussion with Committee

Conferees from the previous meeting were present and answered follow-up questions from the Committee.

CONCLUSIONS AND RECOMMENDATIONS

The Committee made the following recommendations.

Recommendations for Legislative Review

The Committee recommended the Legislature consider or review the following topics:

- Consider a change in the suspension process to allow for an initial period during which a person's driver's license would not be immediately suspended;
- Explore the possibility of providing for repayment plans and improved communication between KDOR and the courts;
- Review traffic citations that could be excluded from citations for which driver noncompliance could result in a driver's license suspension;
- Consider limiting reinstatement fees to a single administrative fee per reinstatement, rather than a reinstatement fee for each charge;
- Consider providing judicial discretion with regard to suspension and revocation; and

- Review the requirement that certain drivers maintain SR-22 insurance.

License Revocation for Failure to Comply with a Citation

The Committee recommends the Legislature, with regard to any individual whose license has been revoked solely for driving when such person’s license was revoked for failure to comply with a traffic citation, provide for full restoration of driving privileges once the individual complies with all outstanding fines, fees, and court obligations.

License Restrictions

The Committee recommends the Legislature, with regard to license restrictions:

- Provide restricted driver’s licenses for drivers making attempts to comply with citations and be accountable;
- Limit the number of opportunities an individual has to apply for restrictions;
- Reform law pertaining to failure to comply to begin with restrictions, with suspension subsequent to continued noncompliance; and

- Include driving children to and from child care in the permissible circumstances when restricted driving privileges are granted pursuant to KSA 8-2110.

Judicial Branch Involvement

The Committee recommends, with regard to involvement of the Judicial Branch:

- One of the standing legislative committees request the Judicial Council conduct a review of traffic violations that could be excluded as grounds for suspension for failure to comply;
- The Legislature request a municipal courts association review policies relating to payment of traffic-related debt;
- The Office of Judicial Administration report progress to the Legislature at the beginning of the 2024 Legislative Session on the development of a universal form for petitioning courts for waiver or modification of traffic citation debts; and
- KLS be asked to share with the Judicial Council its form for petitioning a court to waive fines and fees.

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Report of the Special Committee on Taxation to the 2024 Kansas Legislature

CHAIRPERSON: Representative Adam Smith

VICE-CHAIRPERSON: Senator Caryn Tyson

OTHER MEMBERS: Senators Tom Holland, Rick Kloos, Virgil Peck, and Mike Petersen; and Representatives Mike Amyx, Brian Bergkamp, Tom Kessler, Tom Sawyer, and Barb Wasinger

STUDY TOPIC

The Committee is directed to study:

- The uniform application of entity-based sales tax exemptions, including the consideration of a fee-based application for exempt status;
- The extent of tax credits available in Kansas;
- The process by which local taxing jurisdictions, specifically counties, obtain sales tax authority; and
- Property valuation issues, including those related to the subject matter of 2023 SCR 1611 and additional items.

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Special Committee on Taxation

REPORT

Conclusions and Recommendations

The Committee recommends the 2024 Legislature:

- Evaluate ways to improve the equity of sales tax exemptions for not-for-profit entities, including considering exempting all purchases made by organizations exempt from income tax pursuant to section 501(c)(3) of the Internal Revenue Code;
- Introduce and consider legislation to simplify the process for local sales tax adoption with an emphasis on the control of the voters within the taxing district rather than by the Legislature. Included within this recommendation is making the countywide sales tax limitations identical to the city sales tax limitations;
- Consider a procedure requiring effectiveness evaluation criteria to be included in all current tax preference statutes and in all future tax preference legislation;
- Require, either by rule or statute, that all legislation providing for tax credits or other tax preferences be referred to the House Committee on Taxation or the Senate Committee on Assessment and Taxation and not solely to other standing committees of the Legislature;
- Consider repealing tax credits that have not been used in recent years;
- Examine the taxpayer transparency and confidentiality requirements of Kansas statutes to ensure the Legislature is able to effectively evaluate tax law while maintaining appropriate confidentiality for individual taxpayers.
- Consider various versions of property tax assessment limitations, including a possible hybrid of SCR 1611 and the Florida limitation approaches; consider bifurcating the property valuation limitation benefits between residential property and all other property; and focus on property tax relief for residential taxpayers; and
- Consider the mill levy component of property tax burdens, including possible reductions to the statewide school finance mill levy, implementation of tax levy limitations, and possible financing of the Local Ad Valorem Tax Reduction Fund.

Proposed Legislation: One bill. The Committee recommends the introduction of legislation to simplify the process for local sales tax adoptions, with an emphasis on the control of voters within the taxing district.

BACKGROUND

The Special Committee on Taxation (Committee) was created by the Legislative Coordinating Council to study entity-based sales tax exemptions, the extent of tax credits in Kansas, the authorization of local sales taxes, and property valuation issues, especially those associated with 2023 Senate Concurrent Resolution 1611. The Committee was authorized to meet for two days.

COMMITTEE ACTIVITIES

The Committee met at the Statehouse on October 9 and November 13, 2023. At the October 9 meeting, the Committee reviewed information relating to entity-based sales tax exemptions, local sales tax authority, and SCR 1611. At the November 13 meeting, the Committee reviewed further information relating to local sales tax authority and property valuation issues, and also reviewed information concerning tax credits in Kansas and evaluating the effectiveness of tax credits.

October 9, 2023, Meeting

Property Valuation Growth and SCR 1611

Staff from the Kansas Legislative Research Department (KLRD) provided an overview of the process by which the property tax valuation growth cap in SCR 1611 would operate if this constitutional amendment proposal were approved by Kansas voters. [Note: SCR 1611 was approved by the Senate in 2023 but not by the House.] The presentation described the application of the exemptions from the cap included within the proposal and noted additional issues that would need to be resolved by legislation. The proposal included hypothetical examples for various classes of property and counties within the state based on actual valuation growth rates.

Staff from the Office of Revisor of Statutes provided information on the constitutional requirements for property tax in Kansas. The presentation noted the uniformity and equality requirements of the *Kansas Constitution*, certain federal constitutional concerns, and the application of SCR 1611 to the existing constitutional framework.

A representative of the Tax Foundation presented information to the Committee on the various forms of property tax constraints and the approaches used by other states. The presentation noted that limitations can be generally classified as assessment limits, levy limits, or revenue limits. SCR 1611 proposes a form of an assessment limit. The presentation noted potential adverse impacts associated with assessment limits and recommended Kansas consider utilizing a levy limitation as a property tax control.

The Director of Property Valuation, Department of Revenue (Department), presented information concerning the administrative impact of SCR 1611 on the State and detailed information on the growth rates of taxable value of property by property class and county.

A representative of the Kansas County Appraisers Association presented information regarding the recent growth in real estate values that prompted the desire for SCR 1611, and described the impact of SCR 1611 on county appraisers. The presentation included an analysis of the strengths and weaknesses of the proposal, recommendations for improving the proposal, and alternatives to the proposal.

Local Sales Tax Authorization Process

Staff from KLRD reviewed the history of local sales tax authority in Kansas and information regarding the extent of the utilization of local sales taxes.

Representatives from two counties that recently adopted local sales taxes provided information on the process used by local governments in evaluating the need for local sales taxes and adopting local sales taxes.

A Department representative provided information on the state-level process of implementing local sales taxes and recommendations for improvements to the process.

Entity-based Sales Tax Exemptions

Staff from KLRD and the Department provided information on the history of sales tax exemptions in Kansas, especially those for not-for-profit entities. The information provided by the

Department included details regarding the number of exempt entities by exemption and the estimated fiscal impact of the exemptions to the State.

Staff from KLRD discussed a proposal to repeal all entity-based sales tax exemptions, including those for not-for-profit entities, and replacing the repealed exemptions with an exemption system that would allow entities to apply for and receive an exemption for a set period of time in exchange for a fee that would be determined based upon the revenues received by the entity. The discussion included numerous policy choices that would have to be considered in enacting such a system.

November 13, 2023, Meeting

Local Sales Tax Authority

Representatives of the Kansas Association of Counties and the League of Kansas Municipalities presented information regarding local sales tax authority and the process for local sales tax adoption. The representative of the Kansas Association of Counties indicated the current process of specific statutory authorization for dedicated sales taxes and special county sales tax authority is a slow process for counties and an inefficient process for the Legislature. The representative of the League of Kansas Municipalities indicated very few cities' sales tax rates are at their maximum statutory authority, so the policy is less impactful for cities, but indicated the organization likely would support many changes to streamline the policy as a matter of local control.

Tax Credit Effectiveness and Evaluation

A Department representative provided updated information on the fiscal impact of tax credits in Kansas, specifically highlighting recently enacted credits.

Staff from the Legislative Division of Post Audit (LPA) provided information on recently completed LPA audits of tax credits and certain tax incentive programs, and made recommendations regarding including criteria for evaluating the effectiveness of tax credits in future legislation providing for tax credits.

Consensus Revenue Estimates

Staff from KLRD presented the most recent economic and revenue forecasts of the Consensus Revenue Estimating Group, made on November 9, 2023. The presentation noted the forecast calls for modest economic growth throughout the next two years and noted that revenue is expected to be relatively flat or even decline over that period as a result of the continuing implementation of law resulting in revenue reductions, including the food sales tax rate reductions, corporation income tax reductions, and investment tax credits associated with the Attracting Powerful Economic Expansion (APEX) legislation.

Property Valuation Issues

Staff from KLRD provided an overview of the valuation growth limitation system utilized by the state of Florida: a cap on the increase in annual property assessment of the lower of inflation or 3 percent for homestead properties, and a cap of 10 percent for all other properties. The homestead cap includes portability provisions allowing taxpayers to retain all or a portion of their benefit of the tax policy when moving from one Florida homestead to another within a certain amount of time.

A Department representative provided detailed follow-up information regarding property valuation, including histories of property class growth rates by counties, the tax-shifting effects of altering the constitutional assessment ratio for residential property, and information regarding the impact of utilizing an average of market value across multiple years in lieu of only the current year market value for determining the taxable value of residential property.

CONCLUSIONS AND RECOMMENDATIONS

The Committee held preliminary discussion of possible recommendations at the conclusion of its October 9 meeting, with further discussion and final agreement on recommendations at the conclusion of its November 13 meeting.

The Committee recommends the 2024 Legislature:

- Evaluate ways to improve the equity of sales tax exemptions for not-for-profit

entities, including considering exempting all purchases made by organizations exempt from income tax pursuant to section 501(c)(3) of the Internal Revenue Code;

- Introduce and consider legislation to simplify the process for local sales tax adoption with an emphasis on the control of the voters within the taxing district rather than by the Legislature. Included within this recommendation is making the countywide sales tax limitations identical to the city sales tax limitations;
- Consider a procedure requiring effectiveness evaluation criteria to be included in all current tax preference statutes and in all future tax preference legislation;
- Require, either by rule or statute, that all legislation providing for tax credits or other tax preferences be referred to the House Committee on Taxation or the Senate Committee on Assessment and Taxation and not solely to other standing committees of the Legislature;
- Consider repealing tax credits that have not been used in recent years;
- Examine the taxpayer transparency and confidentiality requirements of Kansas statutes to ensure the Legislature is able to effectively evaluate tax law while maintaining appropriate confidentiality for individual taxpayers.
- Consider various versions of property tax assessment limitations, including a possible hybrid of SCR 1611 and the Florida limitation approaches; consider bifurcating the property valuation limitation benefits between residential property and all other property; and focus on property tax relief for residential taxpayers; and
- Consider the mill levy component of property tax burdens, including possible reductions to the statewide school finance mill levy, implementation of tax levy limitations, and possible financing of the Local Ad Valorem Tax Reduction Fund.

Report of the J. Russell (Russ) Jennings Joint Committee on Corrections and Juvenile Justice Oversight to the 2024 Kansas Legislature

CHAIRPERSON: Representative Stephen Owens

VICE-CHAIRPERSON: Senator Kellie Warren

RANKING MINORITY MEMBER: Representative Dennis “Boog” Highberger

OTHER MEMBERS: Senators Elaine Bowers, Ethan Corson, Renee Erickson, Oletha Faust-Goudeau, Beverly Gossage, and Kristen O’Shea; and Representatives Sydney Carlin, Kyle Hoffman, Jo Ella Hoye, John Resman, and Eric Smith

CHARGE

KSA 2023 Supp. 46-2801 directs the J. Russell (Russ) Jennings Joint Committee on Corrections and Juvenile Justice Oversight to monitor inmate and juvenile offender populations, including implementation of the 2016 juvenile justice reforms and work of the Juvenile Justice Oversight Committee; and to review and study the programs, activities, plans, and operations of the Kansas Department of Corrections.

Additionally, the Committee studied the following:

- The interactions of components included in 2023 HB 2021 (*e.g.*, evidence-based program expenditures and agency collaboration in juvenile offender and child in need of care cases);
- The Current finding for the Kansas Law Enforcement Training Center;
- The current length, terms, and use of probation; and
- Other topics that could arise.

January 2024

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J. Russell (Russ) Jennings Joint Committee on Corrections and Juvenile Justice Oversight

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee makes several conclusions and recommendations as follows:

The Committee recommends continuation of enhanced pay for correctional officers and requests a review be conducted to make such pay permanent.

The Committee supports the Kansas Bureau of Investigation's budget enhancement requests for fiscal year (FY) 2025.

The Committee supports the Kansas Highway Patrol's budget enhancement requests for FY 2025.

The Committee recommends a comprehensive review of the funding mechanism for Community Corrections.

The Committee recommends the Kansas Department of Wildlife and Parks explore conducting a joint project with Kansas Department of Corrections (KDOC) and the Division of Tourism at the Department of Commerce to assist with maintenance and repair of public amenities at state parks.

The Committee recommends the House Committee on Corrections and Juvenile Justice and the Senate Committee on Judiciary receive an update on the implementation of 2023 HB 2021 from all relevant stakeholders.

The Committee requests the Specialty Court Funding Advisory Committee explore using state funding to establish matching grant opportunities supporting specialty court programs.

The Committee requests the Secretary for Children and Families report on the progress of the juvenile crisis intervention centers to certain committees by February 1, 2024.

The Committee recommends the Legislature appropriate funding to KDOC for an energy audit concerning utilities utilization at correctional facilities and other agency facilities owned by the state for FY 2025.

The Committee requests the Judicial Branch and the Department for Children and Families consider sending an information-gathering group to Williamson County, Texas, to study Trust-based Relational Intervention techniques.

The Committee recommends future consideration be given to consolidating community corrections and parole supervision at KDOC with court services probation supervision.

[*Note:* Full recommendations may be found on page 10 of this report.]

Proposed Legislation: Two bills.

- The Committee requests the filing of a bill that would define incremental extensions to overall case length limits for juvenile offenders referenced in 2023 HB 2021 to mean no more than 90 days.
- The Committee requests the filing of a bill that would transfer funding for the operation of the Kansas Law Enforcement Training Center from fee fund revenues to the State General Fund (SGF) and direct that revenue from such fee funds be deposited in the SGF beginning in FY 2025.

BACKGROUND

The 1997 Legislature created the Joint Committee on Corrections and Juvenile Justice Oversight to provide legislative oversight of the Kansas Department of Corrections (KDOC) and the Juvenile Justice Authority. Pursuant to Executive Reorganization Order No. 42, on July 1, 2013, the jurisdiction, powers, functions, and duties of the Juvenile Justice Authority and the Commissioner of Juvenile Justice were transferred to KDOC and the Secretary of Corrections.

Statewide, there are eight adult correctional facilities: El Dorado Correctional Facility, Ellsworth Correctional Facility, Hutchinson Correctional Facility, Lansing Correctional Facility, Larned State Correctional Facility, Norton Correctional Facility, Topeka Correctional Facility, and Winfield Correctional Facility. KDOC also operates parole offices throughout the state and is responsible for the administration of funding and oversight of local community corrections programs.

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

During the 2023 Session, the Legislature passed HB 2114, which, as enacted, renamed the Committee, added monitoring requirements concerning juvenile justice, and removed outdated language.

The Committee's duties, as outlined in KSA 2023 Supp. 46-2801, are to monitor the inmate population and review and study KDOC's programs, activities, and plans regarding its statutorily prescribed duties, including: the implementation of expansion projects; the operation of correctional food service and other programs for inmates; community corrections; parole; and the condition and operation of the correctional institutions and other facilities under KDOC's control and supervision. The Committee is also charged to review and study the adult correctional programs, activities, and facilities of counties, cities, and other local governmental entities, including the programs and activities of private entities operating community correctional programs and facilities, and the condition and operation of jails and other local governmental facilities for the incarceration of adult offenders.

With regard to juvenile offenders, the Committee is directed to monitor the implementation of juvenile justice reform and the work of the Juvenile Justice Oversight Committee (JJOC). Further, the Committee is charged to review and study the juvenile offender programs and activities and facilities of counties, cities, school districts, and other local governmental entities; programs and activities of private entities operating community juvenile programs and facilities; and the condition and operation of local governmental residential or custodial facilities for the care, treatment, or training of juvenile offenders.

In addition to its statutory duties, the 2023 Legislative Coordinating Council (LCC) charged the Committee to study:

- The implementation of 2023 HB 2021 and its impact on stakeholders;
- Kansas Law Enforcement Training Center (KLETC) funding;
- Probation length, terms, and use; and
- Other topics as they arise.

The Committee requested four meeting days and received approval for three meeting days from the LCC, including one day of travel to observe community corrections in the field.

COMMITTEE ACTIVITIES

The Committee met October 2, 3, and 4, 2023, at the Statehouse. The Committee also toured the Topeka Correctional Facility on October 3, 2023.

October 2 Meeting

Overview – Juvenile Justice Reform and 2023 HB 2021

An Assistant Revisor of Statutes, Office of Revisor of Statutes, provided a general overview of juvenile justice reform, starting with 2016 SB 367, which established the Revised Kansas Juvenile Justice Code (Juvenile Code), and other significant bills enacted since 2016.

Specifically, the Assistant Revisor provided a summary of 2023 HB 2021, which amends the Juvenile Code. The Assistant Revisor explained the bill revises the criteria to be admitted to a juvenile crisis intervention center (JCIC) from being a mental health crisis to a behavioral health crisis. The Assistant Revisor further explained the bill provides that the court can incrementally extend the overall case length limit for a juvenile offender to complete evidenced-based programming when failure to complete that program is due to repeated intentional effort to delay by the juvenile. Finally, the Assistant Revisor stated the bill allows moneys from the Evidence-based Programs Account (EBPA) to be spent on programming for youth who have been

administered a risk and needs assessment as provided for in the bill.

Stakeholder Update on 2023 HB 2021

The Committee heard updates on the implementation of 2023 HB 2021 from the Chairperson of the JJOC, the Legislative Chair of the Kansas Associations of Court Services Officers, the Sedgwick County District Attorney, and the Deputy Director of Kansas Appleseed. The overall consensus of the conferees was that more time is needed to collect meaningful data, the creation of data exchange between agencies is a positive outcome, and the risk-needs assessment is a positive outcome. The following points were additionally made:

- The Chairperson of the JJOC expressed the JJOC’s concerns with parts of the bill, including the expansion of juvenile justice practices to include child in need of care (CINC) cases, which is contrary to best practices; the missing definition of “incrementally” in context of how long a judge can extend probation; and the confinement of children exhibiting low-level risk behavior leading to disconnecting youth from positive social structure;
- The Sedgwick County District Attorney stated that while the risk and needs assessment will be a useful tool and fills a need, a defense attorney may have concerns with their client disclosing details before court proceedings;
- The Deputy Director of Kansas Appleseed supported developing and opening additional JCICs and more psychiatric residential treatment facilities to get kids the services they need. The Deputy Director further stated eliminating case length limits and the use of detention for technical violations is against best practices, and the unknown processes to implement and be administered risk and needs assessments deserve to be treated cautiously;

- The Deputy Director further stated the focus needs to be on positive interventions and healing of kids; and
- The Deputy Director challenged the Committee to ensure the collected data points are useful, the data is being collected effectively, and the data is being made available to policymakers and the public to read and understand.

The Committee asked questions of the conferees, and the ensuing discussion centered on preventative services, the details of the risk and needs assessment, and the details of JCICs.

Regarding preventative services, members asked for clarification on how to implement the services and guidance on how to balance such services without infringing on children’s rights.

Juvenile Justice Oversight Committee

The Chairperson of the JJOC presented an overview of the JJOC, highlighted its work in 2023, and explained the JJOC’s role in awarding funds from the EBPA. The ensuing discussion explored the complexity of the standard of “evidenced-based,” the importance of continual collection and review of data, and how to facilitate the award funding process.

Presentation on Trust-based Relational Intervention

The Committee heard a presentation on Trust-based Relational Intervention (TBRI) from a Sedgwick County District Court Judge and a retired Chief Judge who formerly oversaw a juvenile court in Louisiana. The Sedgwick County judge expounded on the importance of understanding and addressing trauma when working with children with adverse childhood experiences, and the Louisiana judge described the practical aspects of a TBRI approach based on in his work in Louisiana. The subsequent discussion requested recommendations from the judges, and the Committee recommended an information-gathering group visit Williamson County, Texas, where staff members in a particular detention facility are trained in TBRI.

Presentation on Juvenile Offender Housing

A Deputy Division Director of the Council of State Governments presented information regarding best practices in juvenile housing based on the organization’s research conducted in several states.

Next, the Deputy Secretary for Children and Families and the Chairperson of JJOC presented on current Kansas practices. A representative of Kansas Community Corrections also presented on the challenges of housing juveniles who do not qualify for detention but cannot go home and, therefore, become a CINC case. The Committee’s discussion and questions sought clarification on the steps involved in housing such juveniles.

Presentation on Juvenile Sentencing for Murder

An Assistant Revisor of Statutes, Office of Revisor of Statutes, provided an overview of the sentencing guidelines in juvenile offender cases. A private citizen also provided testimony of a personal experience with the justice system. Finally, the Sedgwick County District Attorney explained the prosecution perspective of high-level juvenile offender cases.

October 3 Meeting

Presentation on Community Corrections

The Director of Reno County Community Corrections presented on behalf of Kansas Community Corrections. The Director provided an overview of the supervision structure in Kansas and clarified the differences between community corrections and parole. He also emphasized the important role community corrections plays in keeping people out of prison and, ultimately, saving Kansas money.

Further, the Director discussed the unique funding structure of community corrections. He stated community corrections programs receive some grants and appropriations through KDOC; however, each office works with an advisory board and county commission to develop the budget within those appropriations.

The Committee asked questions about the data presented, the funding structure, and why different entities perform the same supervision duties rather

than one single entity. On the final topic, the Director stated he would be interested in having the single entity option explored, and that Georgia is implementing a similar system.

Presentation on Court Services

The Director of Trial Courts, Office of Judicial Administration (OJA), outlined the statutory duties of Court Services Officers (CSO) in the judicial districts in Kansas. She expounded on the training CSOs receive and the case management system utilized. When asked about combining supervision into one entity, the Director stated that it would be a big shift and OJA would appreciate the opportunity to weigh in.

Overview of Kansas Department of Corrections

The Secretary of Corrections provided information on various KDOC operations and issues.

Workforce Retention

The Secretary expressed staffing is generally improving thanks to increased competitiveness in the labor market due to increased wages from pay differentials and the increase in base pay. The Secretary also explained the challenges KDOC still faces in recruiting and retaining a qualified workforce.

Adult Facility Population

The Secretary explained the population in adult facilities is sharply increasing, seeing a recent rise of 15.85 percent from FY 2022 to FY 2023, and the population is projected to exceed bed capacity within the next 10 years. The Secretary further explained the impact that both the conditions of KDOC's facilities and KDOC staffing have on facility bed capacity, stating the facilities are in need of updates to improve both factors.

Updates on Initiatives

The Secretary updated the Committee on the Pell Grant-eligible programs for the prison population; the Lansing Career Campus, which has completed its pre-campaign study indicating significant interest; employment opportunities for residents; completed facility repairs and

explanation of requests for more funding for future repairs and system improvements; the newly opened Winfield Geriatric/Cognitive Care Unit; technology changes and improvements; and quality of life improvements for residents.

Juvenile Justice Updates

Regarding the implementation of 2023 HB 2021, the Secretary provided a list of KDOC's expanded responsibilities as a result of the bill and the status of each responsibility. The Secretary also provided an update on initiatives at the Kansas Juvenile Correctional Complex and the data trends for the juvenile population.

Reentry

The Secretary shared statistics concerning recidivism of the prison population and strategies for successful reentry for this same population. The Secretary highlighted the benefits of Cognitive-behavioral Therapy and using a coaching model as opposed to a referee model. He stated the needs KDOC has in this regard are increased access to educational opportunities, expanding workforce development opportunities, educating employers on the benefits of hiring "2nd chance" employees, and maintaining the environment of the facilities.

Parole and Community Corrections Supervision

The Secretary clarified that while overall staffing is improving, the status of parole officer and community corrections officer staffing has seen little improvement. This presents a challenge for implementing the necessary supports for people reentering society.

The Committee asked clarifying questions and specifically highlighted the importance of both the differential pay in stabilizing the KDOC workforce and the work of parole and community corrections officers.

After the meeting adjourned, a number of members of the Committee met at the Topeka Correctional Facility for a tour.

October 4 Meeting

Kansas Bureau of Investigation

The Director of the Kansas Bureau of Investigation (KBI) presented on KBI's role as a partner to local law enforcement. The Director also identified ways the agency can improve its ability to serve as a partner.

An Executive Officer of KBI updated the Committee on trends, techniques, and the needs of the agency. The Executive Officer detailed KBI's proactive strategy moving forward, focusing on response planning, crime prevention, criminal identification, and risk assessment.

The Committee's questions and discussion following the presentation sought guidance for supporting KBI in managing the fentanyl crisis facing Kansas and identifying KBI's specific appropriations requests.

Kansas Law Enforcement Training Center

The Executive Director of the KLETC presented an overview of KLETC. The Executive Director highlighted the training KLETC provides, the establishment of the Center for Public Safety Leadership, the status of the Kansas Law Enforcement Accreditation Program, and the funding mechanisms for KLETC, which is fee-funded and grant-funded.

The Committee discussed KLETC's training in northeast Kansas, the type of individuals enrolling in basic training, concerns for their academic and physical preparedness, and the possibility of restructuring KLETC's funding structure from being fully fee-funded to receiving State General Fund (SGF) moneys and sending collected fees to the SGF.

Specialty Court Funding Advisory Committee

The Chairperson of the Specialty Court Funding Advisory Committee (SCFAC) presented an update on the work and findings of the SCFAC, which was established by 2022 Senate Sub. for HB 2361 (KSA 20-173). He stated the SCFAC is exploring the varied funding streams of specialty courts and aims to establish a comprehensive funding strategy for all specialty courts. Additionally, the Chairperson expressed interest in

the SCFAC exploring grant-matching opportunities as a resource for additional funding.

The Committee sought clarification on whether the SCFAC is required to make a report by a certain date (there is no reporting requirement in statute) and how much county funding is provided to the specialty court over which the Chairperson presides.

Kansas Sentencing Commission

The Executive Director of the Kansas Sentencing Commission presented the Commission's annual report, prison population projections, and policy recommendations. Following the presentation, the Committee asked for the population data to be further broken down to separate fentanyl-related convictions from general drug convictions.

Kansas Highway Patrol

The Superintendent of the Kansas Highway Patrol (KHP) presented 2022 and 2023 statistics, the troop structure of KHP, and KHP's budget enhancement requests for FY 2025. Following the presentation, the Committee's questions and discussion revolved around clarification of the budget enhancement requests and the necessity of those requests.

CONCLUSIONS AND RECOMMENDATIONS

At the end of its October 4 meeting, the Committee made the following recommendations:

- The Committee recommends continuation of enhanced pay for correctional officers and requests a review be conducted to make such pay permanent;
- The Committee supports the KBI's budget enhancement requests for FY 2025. These requests include \$2.5 million from the SGF for Career Progression Plan adjustments, \$6.9 million SGF and 30.0 FTE positions for the Fight Against Fentanyl initiative, \$1.1 million SGF for information technology, \$1.8 million SGF and 11.0 FTE positions to establish a Southeast Child Victim Task Force,

\$850,000 SGF and 4.0 FTE positions for a Kansas Criminal Justice Information System Support Center, and \$3.1 million SGF to support construction of the Pittsburg Regional Crime Center and Laboratory;

- The Committee supports the KHP's budget enhancement requests for FY 2025. These requests include funding for upgrades to the Training Academy campus in Salina, funding for construction of a new communications and dispatch center in Salina, approximately \$300,000 for shift differential pay among state troopers, \$3.0 million to purchase the previously leased Troop B Headquarters facility in Topeka, and \$2.0 million to provide a State match for a federal grant supporting procurement of body-worn cameras;
- The Committee recommends a comprehensive review of the funding mechanism for community corrections services and programs be conducted by a legislative committee identified by the LCC;
- The Committee recommends the Kansas Department of Wildlife and Parks explore conducting a joint project with KDOC and the Division of Tourism at the Department of Commerce that would utilize residents at correctional facilities to assist with maintenance and repair of public amenities at state parks;
- The Committee recommends the House Committee on Corrections and Juvenile Justice and the Senate Committee on Judiciary receive an update on the implementation of 2023 HB 2021 from all relevant stakeholders;
- The Committee requests the Specialty Court Funding Advisory Committee (KSA 20-173) in the Judicial Branch explore using state funding to establish matching grant opportunities supporting specialty court programs;

- The Committee requests the Secretary for Children and Families report on the progress of the juvenile crisis intervention center (KSA 65-536) since the passage of 2023 HB 2021 to the House Committee on Appropriations, Senate Committee on Ways and Means, House Committee on Corrections and Juvenile Justice, Senate Committee on Judiciary, House Committee on Health and Human Services, and Senate Committee on Public Health and Welfare by February 1, 2024;
- The Committee recommends the Legislature appropriate funding to KDOC for an energy audit concerning utilities utilization at correctional facilities and other agency facilities owned by the State for FY 2025. A report on the audit must be submitted to the Committee during the 2025 Legislative Interim or earlier, if feasible;
- The Committee requests that the Judicial Branch and the Department for Children and Families consider the option of sending an information gathering group to Williamson County, Texas, to study Trust-based Relational Intervention techniques for possible implementation in Kansas; and
- The Committee recommends future consideration be given to consolidating community corrections and parole supervision at KDOC with probation supervision provided by court services in the Judicial Branch into a single supervision agency.

Proposed Legislation

The Committee requests the filing of the following bills during the 2024 Legislative Session:

- Define incremental extensions to overall case length limits for juvenile offenders referenced in 2023 HB 2021 to mean no more than 90 days; and

- Transfer funding for the operation of the KLETC from fee fund revenues to the

SGF and direct that revenue from such fee funds be deposited in the SGF.

Report of the Joint Committee on Child Welfare System Oversight to the 2024 Kansas Legislature

CHAIRPERSON: Senator Beverly Gossage

VICE-CHAIRPERSON: Representative Susan Concannon

RANKING MINORITY MEMBER: Senator Oletha Faust-Goudeau

OTHER MEMBERS: Senators Molly Baumgardner, Renee Erickson, Cindy Holscher, and Kristen O'Shea; and Representatives Cyndi Howerton, Susan Humphries, Timothy Johnson, Jarrod Ousley, Susan Ruiz, and Jeff Underhill

CHARGE

Review the Child Welfare System

Pursuant to KSA 2022 Supp. 46-3901, the Committee is directed to review:

- Data on child maltreatment and demographic trends impacting the child welfare system;
- The duties, responsibilities, and contributions of the Kansas Department for Children and Families (DCF), the Kansas Department for Aging and Disability Services (KDADS), the Kansas Department of Health and Environment (KDHE), the Department of Corrections, law enforcement, and the Judicial Branch that compose and impact the child welfare system;
- The programs, services, and benefits offered directly or through grants or contracts by DCF, KDADS, KDHE, and the Judicial Branch that impact children and families at risk of becoming involved or who are involved in the child welfare system;

- Trends, performance outcomes, activities, and improvement plans related to the federal Child and Family Services Reviews;
- Reports from child welfare-related groups;
- Implementation of the 2019 Child Welfare System Task Force report recommendations;
- Reports on concerns received from the DCF Ombudsman or customer service department or similar office;
- Data and trends on family foster home licenses issued pursuant to KSA 65-516(b);
- The exception to the State Child Death Review Board confidentiality for city or county entities with the express purpose of providing local review of child deaths (KSA 2022 Supp 22a-243); and
- Any other topic the Committee deems appropriate.

Joint Committee on Child Welfare System Oversight

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Child Welfare System Oversight (Committee) makes the following recommendations to the 2024 Legislature:

- The concept of the Support, Opportunity, Unity, and Legal Relationships (SOUL) Family Legal Permanency Option be supported, and a bill regarding this topic be introduced;
- A bill amending the fiduciary responsibilities of guardians *ad litem* be explored by legislative staff, taking into consideration the contents of HB 2381 from the 2023 Legislative Session;
- Legislative staff review and report back to the Committee regarding the rights of biological parents once a child-in-need-of-care petition has been filed;
- Two members of the Committee develop a standardized rubric to be utilized by child welfare case management and family services providers in reporting outcomes to the Committee;
- The following information be reported on by the Department for Children and Families at a future Committee meeting: 1) what the State is doing regarding fetal alcohol spectrum disorder screenings currently; 2) how the needs of children in homeless encampments are being addressed; 3) what policies are in place among utility companies to avoid terminating utility services when children are present in the home; and 4) what grant funding is available in the state for nonprofit organizations to support children with disabilities; and
- The House Committee on Child Welfare and Foster Care review HB 2299 from the 2023 Legislative Session.

Proposed Legislation: None.

BACKGROUND

HB 2158, enacted in 2021 and codified at KSA 46-3901, established the Joint Committee on Child Welfare System Oversight (Committee), composed of 13 members, and charged the Committee to review:

- Data on child maltreatment and demographic trends impacting the child welfare system;
- The duties, responsibilities, and contributions of the Kansas Department for Children and Families (DCF), the Kansas Department for Aging and Disability Services (KDADS), the Kansas

Department of Health and Environment (KDHE), the Department of Corrections, law enforcement, and the Judicial Branch that comprise and impact the child welfare system;

- The programs, services, and benefits offered directly or through grants or contracts by DCF, KDADS, KDHE, and the Judicial Branch that impact children and families at risk of becoming involved or who are involved in the child welfare system;
- Trends, performance outcomes, activities, and improvement plans related to the federal Child and Family Services Reviews;
- Reports from child welfare-related groups;
- Implementation of the 2019 Child Welfare System Task Force report recommendations;
- Reports on concerns received from the DCF Ombudsman or customer service department or similar office;
- Data and trends on family foster home licenses pursuant to KSA 65-516(b);
- The exception to the State Child Death Review Board confidentiality for city or county entities with the express purpose of providing local review of child deaths (KSA 2022 Supp 22a-243); and
- Any other topic the Committee deems appropriate.

COMMITTEE ACTIVITIES

The Committee met once during the 2023 Legislative Session, on March 31. The Legislative Coordinating Council approved four more meeting days during the 2023 Interim. The Committee met three times: June 29, August 22, and October 4.

March 31 Meeting

Child Welfare System Presentations from Individuals, Providers, and Organizations

Five private citizens provided testimony regarding their experiences with the child welfare system:

- An adoptive and foster parent stated there is a need to recognize and treat the trauma that is perpetuated by the foster care system in Kansas;
- An adoptive and foster parent described the many issues encountered while trying to adopt two brothers and expressed frustration over the lack of oversight of guardians *ad litem* (GALs);
- A victim of domestic violence described the support provided to her and her children by the Kansas Children's Service League;
- A foster parent expressed concern about the lack of professional licensing requirements of case workers; and
- An adoptive and foster parent described her challenges in caring for foster children with special needs and expressed appreciation for the Kansas Division of the Child Advocate (KDCA).

A representative of the Sisters of Charity of Leavenworth stated each legislative policy should take into account how it will impact children and families in Kansas and asked the Committee to be cautious in adopting policies advocated by organizations with no ties to Kansas.

A foster care worker stated the child welfare system has been negatively impacted by an increased number of high-need children who have no other option than to be placed into foster care.

Leading for Results Study on Placement Instability

A representative of the Capacity Building Center for States provided an overview of the findings of a study conducted on foster youth

placement instability in Kansas, provided data on national trends regarding placement instability, and summarized promising initiatives undertaken by various states related to improving stability in the child welfare system.

DCF Update

The Secretary for Children and Families (Secretary) provided an update on programs and services offered by DCF, including the implementation of ten family resource centers across the state, adding services performed by children’s behavioral interventionists as a Medicaid-covered service, expanding an intensive mental health program called Multisystemic Therapy statewide, and offering a new level of care for foster children called Therapeutic Family Foster Homes.

The Secretary also noted DCF has added a full-time recruiter position to each child placement agency to enhance foster parent recruitment efforts, and stated DCF was in the early stages of the request for proposal (RFP) process with respect to updating the Comprehensive Child Welfare Information System (CCWIS). The Secretary provided an overview of the Support, Opportunity, Unity, and Legal Relationships (SOUL) program, a partnership with Annie E. Casey Foundation that creates a new permanency option for older youth. She stated work group meetings will be held during the summer and fall to determine what statutory changes were needed to make the program successful in Kansas.

Kansas Division of the Child Advocate Update

The Child Advocate stated the KDCA had begun implementing its case management system and was in the process of making contact with every unified school district, community mental health center, and county health department in the state. The Child Advocate also said KDCA had received 48 formal complaints involving 77 children in the previous three months, and described the most common types of complaints.

Case Management and Family Preservation Provider Updates

Cornerstones of Care. A representative of Cornerstones of Care provided information regarding the history and structure of the

organization, performance outcomes, and average caseload sizes.

A representative of DCCCA described the Sobriety Treatment and Recovery Team (START) model it utilizes to help families dealing with substance abuse.

A representative of KVC Kansas (KVC) outlined opportunities for improvement within the child welfare system and provided information regarding caseload sizes. She stated staff safety, especially for case managers, continues to be a concern.

A representative of Saint Francis Ministries (SFM) detailed two of the organization’s prevention programs: Seeking Safety, and Family Centered Treatment. He also noted, while SFM continues to find ways to incentivize individuals to become foster parents, the number of inquiries is decreasing.

A representative of TFI Family Services (TFI) provided information regarding its evidence-based Parent-Child Interaction Therapy program, its psychiatric residential treatment facility (PRTF), and data on caseloads and worker safety. She also urged the Committee to support the passage of HB 2377, introduced in the 2023 Legislative Session, directing the Office of Vital Statistics to provide birth or death certificates to DCF and exempt DCF from fees for such certificates.

June 29 Meeting

Child Welfare System Presentations from Individuals, Providers, and Organizations

A Committee member introduced the Assistant Fire Chief for the City of Ottawa and invited him to speak on the city Fire Department’s efforts to implement the state’s first newborn safety device program. The Committee member then presented the Assistant Fire Chief with a monetary contribution to the program.

Testimony was presented by six private citizens who described various experiences with the child welfare system:

- A former foster parent recounted how the children she fostered struggled during the time they lived with her. She was

encouraged to contact the children’s GAL. She stated the GAL did not adequately meet the needs of her foster children and nobody seemed to care about the GAL’s poor performance;

- A community-based mental health provider described her efforts to garner support from case management providers for a grant proposal concerning trauma-informed services;
- A sister of an individual who passed away while receiving services from SFM described various negative interactions with SFM while her brother was alive and following her brother’s death;
- The mother of the individual described above asserted her son died as a result of the negligence of SFM;
- A foster parent expressed frustration with retaliatory behavior displayed by case management providers with respect to foster parents who attempt to hold providers accountable; and
- A foster and adoptive parent described the issues she has experienced in fostering and adopting children with disabilities and expressed support for enacting legislation to add an Office of Child Advocate to the statutes.

A representative of FosterAdopt Connect explained the services provided by the organization, highlighting its Community Cafe program, launched in 2022. The Cafe hires young adults with experiences in the foster care system and provides training and support as they embark on their adult lives.

Two representatives of Foster Village Lawrence provided an overview of the services offered by the organization. The organization focuses on providing material resources for a child in the first days of a foster care placement.

2023 Child Welfare Legislative Update

An Assistant Revisor from the Office of the Revisor of Statutes provided an update on legislative activity related to child welfare from the 2023 Legislative Session.

DCF Update

The Secretary provided data on the number of children in foster care, the number of finalized adoptions, and Family First Prevention Services referral outcomes and expanded services that have been made available through Family First.

The Secretary addressed the foster care placement instability findings from the Capacity Building Center for States, and stated the agency has taken steps to incorporate policies piloted in the state of Iowa that have been successful in addressing the causes of placement instability as found by the study.

The Secretary reported that various stakeholders continue to study what statutory changes are needed to implement the SOUL Family Legal Permanency Option in the state.

The Secretary provided status updates on the RFPs being sought to update and improve the CCWIS, as well as the new contracts for case management and family preservation providers.

The Secretary provided an update on FY 2024 foster care budget adjustments and appropriations and reported on the agency’s efforts to implement various policies related to child welfare enacted in the 2023 Legislative Session.

National Child Welfare Workforce Institute Collaborative Presentation

The Director of the National Child Welfare Workforce Initiative (NCWWI) explained the Breakthrough Series Collaborative, an 18-month project to cultivate and support a sustainable child welfare workforce in 8 public and 5 tribal program sites, including Northwest Kansas and Northeast Kansas. She also described common workforce challenges as reported by 4,000 child welfare workers who responded to the Collaborative’s survey.

The Director of the Northeast Regional Service Center for DCF provided information on how the center is working to address workforce issues by addressing the secondary trauma experienced by child welfare system workers.

KDCA Update

The Child Advocate reviewed KDCA statistics for the second quarter of 2023.

A case analyst presented the findings of the former foster parent survey requested by the Committee at an earlier meeting. Four recurring issues were identified: inadequate training for specific family needs, inadequate communication regarding a foster youth's needs and behaviors, failure of providers to listen to the family's opinions, and inadequate support from caseworkers in navigating challenging aspects of foster parenting.

Case Management and Family Preservation Provider Update

A representative of Cornerstones of Care provided an overview of services provided by the organization, caseload statistics, innovations in workforce training, and statistics on the educational backgrounds of the organization's employees.

A representative of DCCCA explained the types of family preservation services the organization offers, provided an overview of the START program, and reported statistics on the number of families being served by the organization's various programs.

A representative of KVC described the organization's goals, provided statistics on permanency and caseload, and noted efforts being made to reduce overnight office stays and the number of youth who run away from care.

A representative of SFM explained how the organization is working to reduce caseloads and improve recruitment and retention efforts.

A representative of TFI explained the case management and family preservation services provided by the organization and reviewed statistics on the numbers of families and children

served. She also provided overviews of the organization's PRTF and its qualified residential treatment program.

The Chairperson requested each representative respond to questions on these topics: how many foster children the organization is serving, how many individuals are receiving family preservation services, how many people the organization employs, the representatives' greatest concern involving the child welfare system, any social media policies the organization may have, and what retention efforts are being made with respect to employees in supervisory roles.

August 22 Meeting

Child Welfare System Presentations from Individuals, Providers, and Organizations

Five private citizens testified to the Committee:

- A foster and adoptive parent expressed frustration that an interested party cannot appeal a placement decision and stated legislation should be enacted to allow appeals in certain cases;
- An individual expressed his opinion that descheduling cannabis would help mitigate the need for children to enter the child welfare system;
- A clinical social worker warned against personal bias of caseworkers and noted examples of complaints against families that were unwarranted and caused needless trauma for everyone involved;
- A former foster parent described her attempts to hold the GAL appointed to her foster children accountable and stated she would like to see stronger guidelines be established for GALs; and
- A foster parent recounted concerns about the placement recommendation made by a GAL appointed to her foster child and expressed frustration that there was no oversight of the GAL's involvement in the case.

KDCA Update

The Child Advocate provided hypothetical examples illustrating the steps investigators take when complaints are received by KDCA. She encouraged the Committee to utilize resources such as progress reports from the *McIntyre v. Howard* settlement agreement and the federal Child and Family Service Report to help guide further policy changes. The Child Advocate noted KDCA has begun to see caseworkers utilizing the “four key questions” approach when making removal decisions.

Case Management and Family Preservation Provider Updates

A representative of Cornerstones of Care presented testimony regarding organizational structure and statistics, the policies and procedures in place to ensure the *McIntyre v. Howard* settlement agreement requirements are met, efforts to better track and improve outcomes for youth in congregate care, efforts to eliminate office overnight stays, various teams and positions within the organization created to ensure the needs of youth are met, and various performance outcomes of the organization.

A representative of DCCCA stated the organization has focused on foster home retention over the past decade, which has resulted in a higher-than-average retention rate for foster homes sponsored by the organization. She also explained the organization is able to provide many services not traditionally provided to foster families, including services for individuals experiencing a serious emotional disturbance, respite care, and services to children placed in the custody of law enforcement pending a court decision.

A representative of KVC provided a “foster care report card,” noting key data points across the child welfare system in the state. She also provided data on performance outcomes within KVC, including permanency, overnight office stays, caseloads, runaway youth, and workforce retention. She stated KVC’s recommendations to improve the child welfare system in Kansas will always be based on prevention.

A representative of SFM provided a comparison of data on out-of-home placements nationwide versus in Kansas, showing higher per

capita rates for foster homes and foster children in Kansas than the nationwide average, and posed the question of what makes the child welfare system unique in Kansas that may have resulted in this disproportionality.

A representative of TFI noted that the removal of a child from a home often creates additional problems for a family, even though the intent is to protect the child. He also noted coordinating care in communities with limited resources is a challenge, but case management providers should develop relationships with other providers wherever they can to help the families they serve. The representative noted the systemic challenge in caring for children with complex needs and those who exhibit behaviors that are difficult to manage.

DCF Update

The Secretary stated the number of children in foster care has declined in FY 2023, noting the number of children entering foster care has decreased faster than has the overall number of youth in care.

The Secretary provided an update on the CCWIS RFP, stating DCF had received bids from 11 vendors, and encouraged bidders to propose implementation plans to be as timely as possible. She also stated the foster care case management provider contracts would be awarded in December 2023, with new contracts to begin July 1, 2024.

The Secretary provided an overview of the federal Child and Family Service Report process and provided highlights of the Kansas report, received on August 2, 2023. She stated the next step of the process is creating DCF’s performance improvement plan by October 16, 2023.

The Secretary also stated the second progress report required by the *McIntyre v. Howard* settlement agreement was released August 14, 2023, and she reviewed key findings. While the report showed that the State has not shown enough progress overall, improvements were made in placement stability and licensing capacity standards. Challenges noted in the report included failure to meet youth mental health needs and failure to place. The Secretary noted several policies in progress to address the deficiencies outlined in the report, including making behavioral

interventionist services a Medicaid-covered service and providing evidence-based practices for functional family therapy beginning in fall 2023.

The Secretary suggested too many children are entering into care for reasons other than safety, and there is a need to strengthen and clarify statutory language to distinguish poverty from neglect. She also suggested family treatment courts, a partnership with the Kansas Judicial Branch, may reduce the length of time in care by providing substance use treatment services at no cost to parents.

October 4 Meeting

Child Welfare System Presentations from Individuals, Providers, and Organizations

The President of the Kansas Fetal Alcohol Spectrum Disorder (FASD) Support Network and Chief Executive Officer (CEO) of Dream Acres FASD Community provided statistics on FASD in Kansas and explained that the disorder is commonly seen throughout the child welfare system but is often misdiagnosed or not diagnosed at all. She stated child welfare professionals do not receive adequate education and training with respect to FASD.

Five private citizens provided testimony regarding their experiences with the child welfare system:

- A mother recounted her experience with SFM after her teenage daughter was placed into state custody because of violent and unpredictable behavior at home. She stated while in SFM's care, her daughter did not receive her medications or therapy, and consequently, her mental health deteriorated;
- An individual expressed his opinion that cannabis should not be considered a controlled substance in Kansas, and removing cannabis from that list would decrease foster care placements;
- A sister of a child who died while in the care of SFM recounted negative interactions with employees of SFM following her brother's death;

- A mother of a child who died while in the care of SFM expressed disappointment that she had not been contacted by anyone on the Committee since the previous time she testified; and
- A foster parent filed a complaint against her foster child's GAL and provided the decision of the disciplinary board, which ruled that a GAL's compliance with Supreme Court Rule 110A was outside of the court's jurisdiction and dismissed the complaint. She urged the passage of 2023 Senate Sub. for HB 2070.

DCF Update

The Secretary provided statistics on the number of children in foster care as of September 2023 and noted the number had decreased by 21 percent since 2019. She noted children in Kansas stay in foster care longer than the national average.

The Secretary provided statistics on Family First referrals and noted the agency was able to expand the Multisystemic Therapy program, an intensive mental health program, statewide due to Family First funding.

The Secretary explained the memorandum of understanding DCF has with KDHE in cases in which a child comes into state custody without a birth certificate or medical records confirming where a child was born.

The Director of the Kansas City Regional Service Center for DCF provided an overview of how the "four key questions" related to how removing dangers to a child in the home rather than removing the child from the home is being implemented in this region.

Prior to discussing potential recommendations, the Chairperson requested the Secretary provide a quick update on the CCWIS RFP. The Secretary stated the agency had received 17 bids, and agency teams were reviewing the technical aspects of the bids before considering the fiscal impact of the bids. She stated the agency expected to have more details on various bids by the end of the calendar year.

Presentation on KidsTLC

The President and CEO of KidsTLC, Inc. provided an overview of the organization's services, including psychiatric treatment, integrative autism services, outpatient services, and preventative services. She also provided an overview of the organization's parent support training groups.

Case Management and Family Preservation Provider Update

A representative of Cornerstones of Care provided performance outcomes of the organization since the previous Committee meeting. He also explained how the organization is partnering with FosterAdopt Connect to utilize its Extreme Family Finding program for older foster youth.

A representative of DCCCA explained one of the services the organization provides: serious emotional disturbance respite services. She stated the organization began providing this service in 2009 for children who are not in the custody of DCF as a preventative measure. She provided data on how often these services have been used by families in the previous nine months.

A representative of KVC provided key performance outcomes of the organization, including the requirements of the *McIntyre v. Howard* settlement agreement, since the previous Committee meeting.

A representative of SFM suggested that the Committee should introduce and advance legislation that supports families with children who may enter care, such as providing access to affordable mental and physical health services, substance abuse treatment, and early childhood interventions.

A representative of TFI provided statistics on the number of children and families served in various programs offered by the organization as of the previous time the Committee met.

Presentation on Representation of Children in Abuse and Neglect Proceedings

A Principal Research Analyst from the Kansas Legislative Research Department presented

information on the appointment, duties, qualifications, training, and oversight of persons authorized to represent children in abuse and neglect proceedings in Kansas and other states.

A representative of the Center for the Rights of Abused Children provided testimony on various state models for appointing persons to represent children in abuse and neglect proceedings and suggested that Kansas move to a model in which every child in state custody has a client-directed attorney from the moment of State involvement.

Overview of the Kansas SOUL Family Legal Permanency Option

Several stakeholders who have worked to bring the SOUL Family Legal Permanency Option for older foster youth to fruition in the state presented testimony on the benefits of the option:

- The Secretary expressed excitement over the prospect of bringing the SOUL option to Kansas;
- A representative of the Center for Systems Innovation, Annie E. Casey Foundation, provided an overview of the origin of SOUL;
- A representative of ChildFocus Partners, a national organization supporting child welfare policy solutions, described key components of SOUL and how it compares with other legal permanency options in the state;
- A representative of the SOUL Implementation Team shared her personal experience with the permanency option and explained why she supports the option;
- A representative of the SOUL Legal and Policy Work Group explained she supports the SOUL option because it allows foster youth to choose their family;
- The CEO of the Children's Alliance of Kansas stated the Committee should support SOUL because it prioritizes safety,

permanency, and well-being for young adults in the child welfare system;

- The President of Kansas Action for Children stated his organization supports SOUL because it was created by foster youth with lived experience. The organization believes SOUL will increase the number of trusted and supportive adults in foster youths' lives, while allowing them to maintain close and healthy relationships with siblings and birth family members; and
- A representative of Kansas Appleseed stated her organization supports SOUL because it will help the state to meet requirements of the *McIntyre v. Howard* settlement agreement.

Discussion of Confidential Information Related to an Alleged Child in Need of Care

The Committee recessed the open meeting for a closed executive session to discuss confidential information related to an alleged child in need of care. Only Committee members and the Secretary, Deputy Secretary, and Northeast Region Child Protective Services Administrator of DCF were present for the discussion.

CARE Network Provider Program Update

A representative of the Child Abuse Review and Evaluation (CARE) Network provided an update of the operations of the CARE Network, added to the statutes with enactment of 2023 HB 2024. She stated between June 1, 2023, and August 31, 2023, DCF transmitted a total of 803 referrals to the Network. She stated there were 22 providers across the state and she expected the Network to grow to 33 providers within the next month.

KDCA Update

The Child Advocate presented information on complaints received by KDCA in the third quarter of 2023. She stated one of the priorities identified by KDCA is studying the number of youth who remain in care longer than average. She

encouraged the Committee to consider more after-care services for youth who age out of the system or otherwise exit care.

CONCLUSIONS AND RECOMMENDATIONS

Committee members discussed a number of potential recommendations to the 2024 Legislature. The Committee agreed to the following recommendations by voice vote:

- The concept of the SOUL Family Legal Permanency Option be supported, and a bill regarding this topic be introduced;
- A bill amending the fiduciary responsibilities of guardians *ad litem* be explored by legislative staff, taking into consideration the contents of HB 2381 from the 2023 Legislative Session;
- Legislative staff review and report back to the Committee regarding the rights of biological parents once a child-in-need-of-care petition has been filed;
- Two members of the Committee develop a standardized rubric to be utilized by child welfare case management and family services providers in reporting outcomes to the Committee;
- The following information be reported on by DCF at a future Committee meeting: 1) what the state is doing regarding fetal alcohol spectrum disorder screenings currently; 2) how the needs of children in homeless encampments are being addressed; 3) what policies are in place among utility companies to avoid terminating utility services when children are present in the home; and 4) what grant funding is available in the state for nonprofit organizations to support children with disabilities;
- The House Committee on Child Welfare and Foster Care review HB 2299 from the 2023 Legislative Session.

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Report of the Joint Committee on Fiduciary Financial Institutions Oversight to the 2024 Kansas Legislature

CHAIRPERSON: Representative Nick Hoheisel

VICE-CHAIRPERSON: Senator Jeff Longbine

OTHER MEMBERS: Senators Michael Fagg, Ty Masterson, and Jeff Pittman; and Representatives Dan Osman, Stephen Owens, Laura Williams, and Rui Xu

CHARGE

Monitor and Make Recommendations on Fiduciary Financial Institutions in Kansas

Pursuant to KSA 46-4001, the Committee is directed to monitor, review, and make recommendations regarding fiduciary financial institutions' operations in the state of Kansas and the fiduciary financial institutions pilot program, and to receive a report from the Office of the State Bank Commissioner.

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Joint Committee on Fiduciary Financial Institutions Oversight

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Fiduciary Financial Institutions Oversight submits the following comments and recommendations:

- **Advisory group.** The Committee acknowledges the unique regulatory framework established to monitor Technology-enabled Fiduciary Financial Institutions (TEFFIs) in Kansas. With experience gained from the pilot program, examination cycle, and dialogue among the Committee, the Office of the State Bank Commissioner, the Beneficial Fiduciary Financial, LLC, and the Kansas Department of Commerce, the Committee expresses support for the creation of an advisory council that would add an additional perspective on future regulations and TEFFI activities, alternative assets industry features and standards, and the promotion and marketing activities to help secure potential future investments in Kansas and its communities. The advisory council should also include among its advisors experts familiar with federal regulation and oversight and academia familiar with the industry.

The Committee encourages the formation of this advisory *ad hoc* group and dialogue with both the relevant standing committees of the Legislature and this committee.

The Committee directs its report to the standing committees of the Kansas Legislature charged with the oversight of financial institutions (Senate Committee on Financial Institutions and Insurance and the House Committee on Financial Institutions and Pensions).

Proposed Legislation: None.

BACKGROUND

The Joint Committee on Fiduciary Financial Institutions Oversight was established by the enactment of 2021 Senate Sub. for HB 2074, Section 29, codified at KSA 46-4001. This nine-member committee is required to:

- Monitor, review, and make recommendations regarding fiduciary financial institutions' operations in the state of Kansas;
- Monitor, review, and make recommendations regarding the FidFin Fiduciary Institution Pilot Program (pilot program); and
- Receive a report from the Office of the State Bank Commissioner (OSBC). [*Note:* The bill also required the OSBC to submit an initial report prior to December 31, 2021, that provided an update on the implementation of the Technology-enabled Fiduciary Financial Institutions (TEFFI) Act and pilot program. The bill required this report to include

recommendations from the OSBC for any legislation necessary to implement provisions of the TEFPI Act.

The Legislative Coordinating Council authorized the Committee to meet for one day during the 2023 Interim.

COMMITTEE ACTIVITIES

The Committee met on November 7, 2023, to review 2023 law and legislation regarding fiduciary financial institutions and the oversight assigned to the Committee and receive updates on fiduciary financial institutions' operations and activities in the state. Testimony was provided by representatives of the technology-enabled fiduciary financial institution (often referred to as a "TEFFI") recognized by the 2021 law (the Beneficent Company Group, LP [Beneficent or BFF in this report], the regulatory authority authorized by the 2021 law (the State Bank Commissioner [Commissioner] and representatives of the OSBC), and a representative of the Kansas Department of Commerce (Department).

Overview of Fiduciary Financial Institutions' Legislation and Law—2023 Session

Committee staff from the Office of Revisor of Statutes provided a summary and background information for legislation considered or passed by the 2023 Legislature related to fiduciary financial institutions and also highlighted a concurrent resolution related to the scope of the Committee. The Senior Assistant Revisor of Statutes indicated six bills were considered, and the following bill was advanced to the Governor for consideration (approved):

- **SB 44** – Enacting the Kansas Financial Institutions Information Security Act. This bill includes TEFPIs, along with other financial institutions, as a "covered entity" to which the act applies. The bill requires covered entities to set forth standards for developing, implementing, and maintaining reasonable safeguards to protect the security, confidentiality, and

integrity of customer information pursuant to federal regulations.

Effective date: Publication in the *Kansas Register* (April 27, 2023).

The revisor also reviewed the following relevant bills receiving legislative consideration during the 2023 Session [current status indicated]:

- **SB 51** – Authorizing the State Bank Commissioner to accept state and national criminal history record checks from private entities (Senate Committee bill, introduced at request of the OSBC). The bill would amend provisions of the TEFPI Act to add the Commissioner to the entities permitted to require fingerprinting of the officers, directors, or organizers of a TEFPI. (current law states that only the State Banking Board is allowed to require fingerprinting.) The bill would also provide that the Board or the Commissioner shall not authorize receipt of a state and national criminal history record check from a private entity unless the Kansas Bureau of Investigation (KBI) or Federal Bureau of Investigation (FBI) is unable to supply such record check. It would also provide that the Board or the Commissioner shall not disclose or use a criminal history record check, except as provided for in the TEFPI Act. [Note: The Senate Financial Institutions and Insurance Committee (Senate Committee) recommended the bill be passed on February 14, 2023; the bill was withdrawn from the Senate Calendar, referred to the Senate Committee on Ways and Means; finally, it was re-referred to the Senate Committee on April 4, 2023.]
- **SB 204** – Replacing the definition of "charitable beneficiaries" with "qualified charities" in the Technology-enabled Fiduciary Financial Institutions [TEFFI Act] (bill title, as amended by Senate Committee). The bill would replace the definition of "charitable beneficiaries" with "qualified charities" in the TEFPI Act. The Senate Committee amendments expanded the definition of "qualified

charities” for purposes of the income tax credit for charitable distributions of fidfin institutions by including one or more Kansas nonprofit corporations, regardless of their federal income tax treatment. [Note: The Senate Committee recommended the bill be passed, as amended on February 15, 2023; the bill was withdrawn from the Senate Calendar, referred to the Senate Committee on Ways and Means; it was then referred to the Committee of the Whole on March 1, 2023. On April 4, 2023, the bill was re-referred to the Senate Committee.]

- *HB 2133* – Providing that fiduciary financial institutions shall be overseen, supervised, and examined by the OSBC as a chartered trust company, allowing a fiduciary financial institution to refer to itself as a trust company in legal or regulatory filings or disclosures to existing or prospective customers or investors, and authorizing a fiduciary financial institution to exercise fiduciary powers and full trust powers and to engage as a trust company under state and federal laws (bill title, as amended by the Senate Committee). The bill, as introduced, pertained to a surcharge on the use of payments with credit or debit cards. As amended, the bill only pertained to fiduciary financial institutions, adding language to the TEFFI Act to provide that a TEFFI shall be overseen, supervised, and examined by the OSBC as a chartered trust company and shall be designated, recognized, and referenced as a chartered trust company by the OSBC. The bill would also add language that a TEFFI is a trust company for all purposes under federal and state law and that a TEFFI shall not be restricted from publishing or promulgating itself as a trust company in legal or regulatory filings or disclosures to existing or prospective customers or investors. The bill would add language to grant TEFFIs the power to exercise fidfin powers and full trust powers and to engage as a trust company in trust business in any manner that assists in the performance of engaging in fidfin transactions and to receive, retain, and manage alternative asset custody

accounts in accordance with the TEFFI Act. [Note: The Senate Committee recommended the bill be passed, as amended on April 5, 2023. The bill remains on the Senate Calendar.]

Other introduced bills and resolution. The revisor noted two additional bills, which have been referred to the Senate Committee: SB 199 (authorizing the Board to deny, suspend, or revoke a charter of a fiduciary financial institution in certain circumstances, requiring fiduciary financial institutions to purchase a surety bond, and establishing a civil money penalty for violations of the TEFFI Act); SB 302 (suspending fidfin transactions, custodial services, and trust business of TEFFIs until the Legislature expressly consents to and approves such activities by an act of the Legislature, and requiring the Legislature to conduct a forensic audit of TEFFIs); and HCR 5014 (directing the Joint Committee on Fiduciary Financial Institutions Oversight to study and draft legislation relating to environmental, social, and governance standards). The Senate bills have been referred to the Senate Committee; the HCR was referred to the House Committee on Financial Institutions and Pensions.

Update on Fiduciary Financial Institutions’ Operations in the State of Kansas

Prior to the reports from the regulatory agency and the regulated fiduciary financial institution, the Committee chairperson acknowledged that since the Committee’s December 2022 meeting, Beneficient has become a publicly traded company. It was noted that certain information would be subject to disclosure/ non-disclosure requirements by the federal Securities and Exchange Commission and may not be able to be fully discussed within this committee.

[Note: In the December 2022 meeting, BFF officials addressed a Go Public opportunity with Avalon Acquisition, Inc., a publicly listed, special purpose acquisition company.]

Office of the State Bank Commissioner

The Commissioner provided a report on the regulatory activities conducted by the OSBC regarding the sole TEFFI chartered and existing in Kansas, Beneficient Fiduciary Financial, LLC,

Hesston, Kansas (now known as BFF, LLC). The Commissioner was joined by the Deputy Bank Commissioner and OSBC General Counsel.

Update on Regulatory Activities

Charter; TEFFI Act. The Commissioner acknowledged the first meeting of this oversight committee and its recommended action, which resulted in BFF receiving a charter as of December 31, 2021. He further stated the Legislature, not the OSBC nor the State Banking Board, granted the charter during the 2022 Legislative Session (enactment of SB 337, which allowed the charter to be retroactive to the December 2021 date). The Commissioner noted subsequent amendments to the TEFFI Act in the 2022 Session (HB 2489) and the Act's codification within the Kansas Banking Code (Chapter 9, Article 23).

Examination and oversight. The Commissioner noted, unlike other financial institutions and entities regulated by the OSBC that have a federal regulatory counterpart, the agency serves as the sole regulator for TEFFIs. The Commissioner indicated the OSBC has completed three examinations of BFF since its charter became effective. The first two examinations have been reported to this Committee (these examinations focused on the Information Technology systems and compliance with the Bank Secrecy Act and Anti-Money Laundering laws [BSA/ AML]). A third examination was conducted during 2023 and included a review of BFF's administrative and operational practices and procedures, as well as a review of selected FidFin transactions. This examination, the Commissioner continued, evaluated potential areas of risks pertaining to BFF's business model and the State of Kansas. OSBC examiners apprised BFF's board and management of apparent statutory or regulatory violations and unsound fiduciary practices and procedures except as allowed by the TEFFI Act. The Commissioner further noted the 2021 law established a pilot program, with a sole participating TEFFI (economic growth zone [EGZ] designated in Harvey County). He observed that no other state has authorized TEFFIs and no other applications are pending in Kansas, so the OSBC is unable to make any other statement regarding market or worthiness for TEFFIs. [Note: Information generated by the OSBC in an investigation or examination is deemed

confidential information, pursuant to KSA 9-1712(a); such information, including the report and its findings, cannot be disclosed or made public by BFF, its directors, officers, or employees.]

Regulatory concerns: Safety and Soundness Examination. The Commissioner noted his ongoing concerns with some of the regulatory components contained in the TEFFI Act. Those concerns, some deepening, exist for any entrant into the TEFFI marketplace as the TEFFI legislation is not specific for just BFF, but rather legislation that will govern any future TEFFI should there be interest from other entities. The Commissioner stated it is still impossible to conduct a meaningful Safety and Soundness examination, highlighting the CAMELS rating system used for state-regulated banks that follows international industry standards and assigns ratings in compliance with a uniform ratings system. The Commissioner also noted examinations on regulated trust companies and trust departments assign ratings (*e.g.*, Management Operations, Internal Controls and Audits, Earnings, and Compliance and Asset Management), which are components of a uniform trust rating system. The Commissioner further stated the TEFFI Act specifically disallows an examination to consider earnings as a component and assigns any goodwill asset as a capital component, departures from the Uniform Financial Institutions Rating System, the Uniform Interagency Trust Rating System, and Generally Accepted Accounting Principles (GAAP). For a TEFFI, due to its business model, a significant asset category is the Fidfin transaction created by a TEFFI, which is a debt instrument. The Commissioner explained that in most cases, and as confirmed in testimony by BFF, no structured repayment of principal or interest nor any firm maturity debt is created for these debt instruments; consequently, under the rating system's guidelines, this type of instrument would be considered at least a "substandard asset" with a likelihood of it being rated "doubtful" or "loss," at which point it would be charged off the books. The Commissioner stated the Legislature should revisit these departures if a worthwhile Safety and Soundness examination is sought.

Other regulatory concerns. The Commissioner addressed the continuing challenge in securing certain background checks, noting the

original TEFFI Act failed to meet the requirements established by the FBI that permitted complete background checks on organizers of a TEFFI. The shortfall, he continued, is related to fingerprinting. The OSBC is working with the KBI to introduce legislation in the 2024 Session that will amend this act and other similar state laws to comply with FBI standards. Another concern cited related to recent transaction announcements by BFF, which have been funded with consideration other than cash, raising questions about the viability for BFF being able to fund itself in the future. Other concerns outlined by the Commissioner included negative press reports involving BFF's parent company (Beneficient), federal regulatory actions taken against Beneficient, the "freefall" of Beneficient's publicly traded stock, and public statements by Beneficient as well as its accounting firm regarding the company. The Commissioner noted the OSBC only regulates BFF, not its parent or any other subsidiary.

Discussion

The Committee and representatives of the OSBC discussed progress on legislation intended to address fingerprinting and background checks; the Commissioner confirmed ongoing work with other state agencies and his belief the legislation would be ready for consideration in the 2024 Session. The Commissioner responded to questions regarding Safety and Soundness examinations, its purpose, and the process the OSBC used to gain information and monitor TEFFI(s). The Commissioner indicated, at present, the agency has engaged several third parties, in areas including legal and accounting, as well as federal agencies (e.g., FBI and after Beneficient became publicly-traded, the U.S. Securities and Exchange Commission [SEC]). Discussion also focused on broader regulation of the alternative assets industry and other frameworks that could be used to oversee this industry and marketing and promotion activities to bring similar entities to Kansas.

Beneficient Company Group, LP [BFF, LLC]

The BFF President and Chief Fiduciary Officer (President); Managing Director and Co-Head, Fiduciary Financial Institutions; Senior Vice-President, Fiduciary Financial Institutions; and a legal representative from Crossroads Legal

Solutions provided an overview of recent Beneficient and BFF activities, an update on BFF operations, reporting on Economic Growth Zone (EGZ) milestones and achievement, and a request for a TEFFI advisory board.

Operations Report and Activities

Overview and comment. The President began by noting a number of important developments that have occurred in the last year. BFF's parent company, Beneficient, achieved its objectives of becoming a publicly traded company, which was an important element of BEN's business model, but also is important to BFF's ability to deliver products and services to its customers. The conferee also acknowledged the comments from the Committee chairperson and Commissioner regarding Beneficient's transition from a private to a publicly traded company and limitations placed on information (e.g., company stock, pending plans, and initiatives) he and other conferees could provide. The President further stated BFF is committed to providing information regarding TEFFI operations and the industry, as well as responding to questions and concerns that will allow the Committee to fulfill its oversight obligation. Another development highlighted is BFF's completion of its examination cycle with the OSBC; the President commended the OSBC and its examination team for a professional and responsive review process and the efforts by the OSBC to determine standards and expectations for oversight of the TEFFI industry and its unique business aspects. He noted that, with the conclusion of this examination cycle, the overall framework developed by the Legislature and this committee is working. He also indicated BFF is encouraged by the Strategic Economic Expansion and Development (SEED) program and the grants being awarded to Kansas communities through the Kansas Department of Commerce. The President also noted the potential economic impact for Kansas with additional TEFFIs present in the market and encouraged marketing and recruitment of this unique regulatory framework to the industry as a whole, through the use of moneys in the Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund (Fund) and creation of an advisory board composed of industry professionals to help advise the Committee on participation, education, and broader regulatory matters. The President concluded his overview by acknowledging some

of the OSBC concerns, stating that any emerging companies that are pioneering a new industry and products and services are subject to challenges and headwinds; the organization as a whole is committed to delivering to the industry, being safe and sound, and providing to rural communities across the state.

The BFF President addressed the concerns and questions regarding a formal Safety and Soundness examination, stating BFF is not adverse to this type of standard. The challenge is the TEFFI operates in a different lane of financial services and application of more traditional standards does not fit the unique nature of the industry. BFF, he continued, is committed to participating in dialogue with the OSBC to identify appropriate standards to best address a Safety and Soundness review. The President noted the annual assessment paid by BFF to the OSBC could be used, in part, to outsource some of this consideration and customization of standards to appropriate third-party consultants. He also noted the role of federal regulators and legal compliance placed on BFF's parent company and other associated entities (e.g., SEC regulation and FINRA [Financial Industry Regulatory Authority]).

Operations. The Managing Director began his remarks by commenting on the examination process and the acute differences in the regulatory language for TEFFIs versus other financial institutions. The next step in this process, with completion of the pilot program and examination cycle, will be a review of proposed regulations and any legislative changes needed to bring the industry forward. It was noted that BFF and the OSBC continue to have discussions on examinations, and there is full access to key staff to assist with regulatory questions.

[*Note:* BFF representatives submitted two reports for the Committee's reference and record: Beneficent Fiduciary Financial, LLC Management Report – an asset & distribution statutory allocation reporting of the of Kansas Department of Commerce and Beneficent Heartland Foundation, Inc. activities; and Legislative Report for Kansas TEFFI Charitable Activity – including audited consolidated financial statements for the Kansas TEFFI Economic Growth Trust and the Beneficent Heartland

Foundation, Inc. – for the Fiscal Year, ended March 31, 2023.]

Economic impact, community projects. The Senior Vice President addressed the economic impact the TEFFI Act has had on the State of Kansas. He explained the TEFFI Act requires a statutorily established distribution, or allocation, of 2.5 percent of each TEFFI fee or surcharge (on fidfin transactions originated during the calendar year) to be set aside and held in the Beneficent Heartland Foundation ([BHF]; the designated “qualified charity” under the Act) to be allocated each year between the Department and BHF. The conferee stated that to-date there has been a total of \$16.6 million in assets assigned with \$5.8 million going to cash, \$2.7 million going to the Department's SEED program, and the balance of \$8.1 million going to Harvey County for the EGZ. Projects in Harvey county include the revitalization of the former grocery store building, relocation of a church from Main Street to another larger location to provide room for church activities and youth services, and the relocation of another business into a newly renovated store location to give the business an opportunity for increased sales and foot traffic (all locations in Hesston). Addressing the project for a new grocery store (anticipated construction start within next two years), the conferee noted the land assemblage has been finished and noted this project has added nine full-time executive-level employees, with the additional potential to create economic benefits to the community from businesses, equipment sales, sales taxes, income taxes, and moneys generated by contractors, laborers, and other consumers.

Advisory council. A representative of Crossroads Legal Solutions, outside legal counsel for Beneficent, next addressed the Committee, expressing appreciation for the work of the OSBC and concerns raised by the Commissioner, including the fingerprinting issues present for many state agencies and regulatory efforts for not only BFF, but any subsequent TEFFIs. The General Counsel also indicated BFF did not have any requests for legislative action. The BFF representative requested the Committee give consideration to next steps for the TEFFI industry.

Noting the dialogue on the regulation of the alternative assets management industry largely falls, presently, to the OSBC, BFF, the

Department, and this Committee, the General Counsel asked the Committee to consider a recommendation relating to the creation of an outside advisory committee of leading experts in the industry, to study and advise where we (*e.g.*, the Committee, regulators, and regulated entities) go from here and overall opportunities for growth; make recommendations on the oversight level; recommendations on the alternative assets industry; and, specifically, look at liquidity within the alternative assets industry. The conferee further indicated the group would not require a statutory charge, nor would members receive compensation or be appointed legislators. This advisory group would then be able to provide a broader perspective, separate from BFF's, to the Committee at future meetings.

Discussion

The Committee and BFF representatives discussed the relationship of BFF to its parent company (general discussion regarding market conditions) and the importance of the technology-enabled platform. The CFO responded this platform is key for BFF's customers to effectively conduct transactions. Another topic addressed was the current distribution of charitable assets and other permissible uses. The Committee and conferees also discussed notifications that could occur should there be a breach or other cyber incident.

Kansas Department of Commerce

The Director of Legislative Affairs for the Department addressed requirements in the TEFFI Act that established the Fund, which is administered by the agency. The Act requires Fund expenditures to be used for economic development projects in the EGZ in Kansas; promoting and facilitating the development and growth of trust banks, fidfin activities, and custodial services in Kansas; and location of trust bank office space in an EGZ.

SEED. After receiving funding, the Department developed the SEED grant program, specifically designed to award grants that support the economic revitalization of Kansas communities with population under 5,000 people through investments in quality-of-life initiatives. During the first round of awards, 109 applications

were received with a total of \$4.7 million requested. The first funding to the Department was \$2.7 million. With those funds, the Department awarded grants to 61 applicants in December 2022.

A second round of SEED funding was announced by the Department in August 2023, with a deadline for applications of October 27, 2023. Eligibility criteria remained largely the same excepting the reduction in the maximum award per grantee from \$50,000 to \$25,000. The Department conferee indicated the agency had received 68 applications (requesting a total \$1.6 million) to be addressed by available funding of \$270,000. It was noted award announcements were anticipated in December 2023. [*Note:* According to a December 21, 2023, Department press release, 13 recipients were selected to receive nearly \$275,000 for investment across those small communities.]

Discussion

The Committee and the Department conferee discussed routine reporting, including project metrics, to the Legislature after completion of the first round of SEED grant projects (*i.e.*, 12 months from award receipt) to ascertain more information about the projects' awards, costs, and completion. The Committee and conferee also discussed efforts to secure future TEFFIs and target funding to those potential locations/ communities, as well as the use of the Fund for marketing and promotional purposes.

CONCLUSIONS AND RECOMMENDATIONS

Following the presentations and updates, the Committee submits the following comments and recommendations reflecting its discussion:

- **Advisory group.** The Committee encourages the formation of an *ad hoc* group and dialogue with both the relevant standing committees of the Legislature and this committee.

The Committee directs its report to the relevant standing committees of the Kansas Legislature for additional review during the 2024 Session.

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Report of the Joint Committee on Information Technology to the 2024 Kansas Legislature

CHAIRPERSON: Representative Kyle Hoffman

VICE-CHAIRPERSON: Senator Mike Petersen

RANKING MINORITY MEMBER: Representative Pam Curtis

OTHER MEMBERS: Senators Tom Holland, Rick Kloos, Jeff Pittman, and Caryn Tyson; and Representatives Kirk Haskins, Carl Turner, and Barb Wasinger

CHARGE

Review, Monitor, and Report on Technology Plans and Expenditures

The Committee is directed to:

- 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, legislative agencies, and Regents 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 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 and make special reports to other legislative committees as deemed appropriate.

December 2023

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Joint Committee on Information Technology

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Information Technology Committee submits the following recommendations and considerations to the 2024 Legislature:

- The Office of Information Technology Services continue to work with the Kansas National Guard, the Legislature, and their staff to develop legislation to more easily enable the collaboration between the State, National Guard, and local entities when responding to cybersecurity threats and incidents;
- The Committee strongly urges the Legislative Post Audit Committee to direct the Legislative Division of Post Audit (LPA) to resume providing more-in-depth information technology (IT) Security Audit Reports, instead of recently approved more-limited audits of an increased number of agencies. The Committee believes these audits are crucial to improving the State's IT Security Posture;
- The Legislative Post Audit Committee engage with the Kansas Office of Information Services to determine and evaluate additional IT security audit criteria;
- Appropriate legislative committees consider providing additional funding and resources to LPA to allow for additional IT security audits and network security checks;
- Future meetings of the Committee include, as part of its agenda, the review of past IT security audits that were considered unfavorable by LPA;
- The Judicial and Legislative branches submit a three-year IT plan to the Committee for presentation with the Executive Branch's three-year IT plan. The Committee would prefer the plans to be compiled into a single, statewide, three-year IT plan;
- The Kansas Information Technology Office work with the Committee to identify state agencies with IT projects with an unsatisfactory status in the most recent quarterly IT projects report, and ensure appropriate chief information officers are present during future Committee meetings to provide more detail to Committee members about the projects and status;
- Encourage the Kansas State Department of Education to continue to engage with the Cybersecurity and Infrastructure Security Agency and school districts to assist with updating, patching, and maintaining IT systems;
- Allow the Committee to meet regularly during the Legislative Session by setting a designated meeting time and approve additional interim meeting days to allow the Committee to more effectively advise and consult on State IT projects, per KSA 75-7902;
- Encourage the adoption and utilization of the "dot gov" domain by local units of government, and encourage the use of the State and Local Cybersecurity Grant Program to obtain such a domain;

- Encourage the Office of Revisor of Statutes to work with Kansas Legislative Office of Information Services to develop legislation pertaining to the use of generative artificial intelligence, and encourage the House Committee on Legislative Modernization to further discuss this topic and consider the proposed legislation;
- The Kansas Information Security Office (KISO) provide a report on the impact of the provisions in 2023 HB 2019 pertaining to the requirement to report to the KISO cybersecurity incidents within 12 hours of discovery by public entities and vendors utilizing public data;
- Encourage legislative leadership to align the rules regarding the policy and practice of video recording traditionally non-recorded votes; and
- The Legislative Coordinating Council address the retention policy for video recordings of committee meetings.

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 State Board of Regents institutions;
- Review information technology (IT) project plan summaries, prior to the release of a request for project proposal, that are determined to have a significant business risk as established per Information Technology Executive Council policy. In instances when requested by Committee members, conduct a meeting to advise and consult on such projects prior to the release of a request for proposal. This process is provided for in KSA 75-7209;
- Review proposed new acquisitions, including implementation plans, project budget estimates, and three-year strategic 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 and 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 annually submit to the Committee all IT project budget estimates and revisions, all three-year plans, and all deviations from the state IT architecture. The Committee 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 2023 Legislative Session on March 15, 2023. The Committee also met during the 2023 Interim, as authorized by the LCC, on July 31, August 23, October 18, November 1, and November 15.

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

At the March 15, 2023, meeting, the Committee elected Representative Hoffman as Chairperson, Senator Peterson as Vice-chairperson, and Representative Curtis as Ranking Minority Member for the 2023 calendar year.

Executive Branch Quarterly IT Project Reports

At the March 15, 2023, meeting, the Chief Information Technology Architect (CITA) reviewed the Quarter 4, 2022, (October-December) IT project reports. The CITA reported that in Quarter 4, 2022, there were 23 active projects, 25 approved projects, and 10 planned projects. At the time of the report, eight projects were in “alert” status. Projects are placed in “alert” status if they exceed 20 percent variance of 1 or more project performance metrics (schedule, deliverables, tasks, resources, or financial plan).

The following eight projects were in “alert” status during Quarter 4, 2022:

- The Department for Children and Families (DCF) Child Support Services Re-

platforming project was experiencing schedule delays due to issues with the vendor’s project management team and data migration challenges;

- The Kansas Bureau of Investigation (KBI) Automated Biometric Identification System (ABIS) project was behind schedule due to a shift in agency priorities for project resources. The project will be recast;
- The Kansas Department of Transportation (KDOT) Construction Management System Replacement Implementation Effort II was behind schedule due to system performance issues. The project will be recast;
- KDOT Equipment Management/Capital Inventory System project is experiencing project resource issues, and most issues should be resolved Quarter 1, 2023;
- Kansas Department of Wildlife and Parks (KDWP) SmartCop Record Management System was behind on tasks but should be on schedule in Quarter 1, 2023, and meet the original timeline;
- The Kansas Highway Patrol (KHP) Criminal Justice Information System (CJIS) Software Upgrade project was behind schedule due to data migration challenges. The project will be recast;
- The Kansas State University IT Data Center Relocation project was awaiting equipment that had been delayed due to data migration issues. The project scope change was expected; and
- The Office of Information Technology Services (OITS) ServiceNow IT Business Management Software Implementation project expanded the scope of the project to ensure the software is compatible for future use by other agencies and does not utilize excessive custom modules. The project will be recast.

No projects were reported as being in “caution” status. Projects are placed in “caution” status if they exceed a 10-19 percent variance of one or more project performance metrics (schedule, deliverables, tasks, resources, or financial plan).

At the July 31, 2023, meeting, the CITA reviewed the Quarter 1, 2023, (January-March) IT projects report. The CITA reported that in Quarter 1, 2023, there were 28 active projects, 27 approved projects, 10 planned projects, 1 canceled project, and 9 completed projects. At the time of the report, five projects were in “alert” status for Quarter 1, 2023:

- The Kansas Department for Aging and Disability Services (KDADS) State Hospital and Substance Use Disability Electronic Health Records project was behind due to having to adjust the projects baseline to address weaknesses in wireless coverage;
- The DCF Child Support Services Re-platforming project was behind schedule due to requirements and resource issues;
- The KHP Criminal Justice Information System Update project was behind schedule;
- The KDOT Equipment Management/Capital Inventory System project was behind on deliverables but still on schedule for overall completion; and
- The KDWP SmartCop Record Management System was behind on deliverables but still on schedule for overall completion.

At the time of the report, the two projects in “caution” status were the following:

- Fort Hays State University Workday Financial Aid Module project, due to being behind on deliverables, though it remained on schedule for overall completion; and

- Pittsburg State University Student Financial Aid System project, due to being behind on deliverables, though it remained on schedule for overall completion.

At the August 23, 2023, meeting, the CITA reviewed the Quarter 2, 2023, (April-June) IT projects report. The CITA reported that in Quarter 2, 2023, there were 34 active projects, 25 approved projects, 14 planned projects, and 4 complete projects. At the time of the report, four projects were in “alert” status for Quarter 2, 2023:

- The KDADS State Hospital and Substance Use Disability Electronic Health Records project was behind due to tasks not accounted for in the original timeline;
- The DCF Child Support Services Re-platforming project was behind due to changes in federal requirements for the de-identification of test data and staffing issues due to the varied nature of skills needed for the project;
- The KDOT Equipment Management/Capital Inventory System was behind on tasks due to a resourcing issue but was still on schedule for overall completion; and
- The KDWP SmartCop Record Management System project was behind on tasks due to data integration issues, but was anticipated to be back on schedule in Quarter 4, 2023.

The one project in “caution” status was the Pittsburg State University Student Financial Aid System project, which was behind on deliverables.

At the November 15, 2023, meeting, the CITA reviewed the Quarter 3, 2023, (July-September) IT projects report. The CITA reported that in Quarter 3, 2023, there were 35 active projects, 22 approved projects, 8 planned projects, and 0 complete projects. At the time of the report, 8 projects were in “alert” status for Quarter 3, 2023:

- The DCF Child Support Services Re-platforming project was behind due to

issues regarding disaster recovery. The project will be recast;

- The KDADS State Hospital and Substance Use Disability Electronic Health Records project was behind due to continuing to address network infrastructure issues. The project will be recast;
- The Kansas Children’s Cabinet and Trust Fund Early Childhood Care and Education Workforce Registry project was behind on both deliverables and tasks;
- The KBI ABIS II project was behind on both deliverables and timing;
- The OITS Enterprise Licensing Platform project was behind due to tasks involving database migration and diversion;
- The KDOT Bridge Office Management System and Set-Aside Upgrade project was behind due to its dependency on another system that was recently upgraded;
- The KDOT Reinforced Concrete Box System Update project was behind on tasks and timing; and
- The KDWP SmartCop Record Management System project was behind due to the agency’s decision to postpone training until after hunting season.

At the time of the report, the following two projects were in “caution” status:

- The Kansas Department of Health and Environment Bureau of Waste Management Data Management System project was behind on both deliverables and tasks; and
- The KDOT Equipment Management System/Capital Inventory System Replacement project was behind on timeline and deliverables.

Other Executive Branch IT Update

At the July 31, 2023, meeting, the Executive Branch CITO provided an overview of IT governance in Kansas, as well as an overview of OITS and the Kansas Information Security Office (KISO). The CITO also provided an update on the State and Local Cybersecurity Grant program.

IT Project Review Process Updates

At the August 23, 2023, meeting, the CITA provided the Committee with an update on the new business risk assessment model that went into effect on July 1, 2023, that determines if proposed IT projects are required to be approved and monitored by the Kansas Information Technology Office and if the Committee is required to advise and consult on the project prior to seeking a request for proposal. The CITA provided the Committee with two example projects, one reportable and one not reportable, and showed a step-by-step walk-through of how the new process evaluates new IT projects.

Branch Cybersecurity Initiatives and Outreach

At the October 18, 2023, meeting, the Executive Branch CITO provided the Committee an update on the 2023 Kansas Public Sector Cybersecurity Summit that occurred in Wichita on September 20, 2023. He also provided an overview of the funding sources for the OITS and specifically addressed the budget enhancement provided by the 2023 Legislature, which was used to hire additional cybersecurity staff and provide cybersecurity services and tools to state agencies at no cost.

Other Executive Branch IT Presentations

An update was also provided at the August 23, 2023, meeting on the new enterprise licensing system that is being developed to assist licensing agencies.

At the November 15, 2023, meeting, the Executive Branch CITO presented the Committee with an overview of the recently released three-year IT plans report.

Judicial Branch Update

At the July 31, 2023, meeting, the Deputy Director of Information Services for the Office of

Judicial Administration provided an update on the Court Case Management System. She stated that the system is currently live in 103 counties, with the most recent additions being Douglas, Shawnee, and Wyandotte counties. Two counties and the State Appellate court are the only entities left to transition to the new system. The Deputy Director stated that Sedgwick County is scheduled to transition on August 7, 2023, with the others transitioning by the end of 2024.

Cybersecurity Incident

At the October 18, 2023, meeting, the Special Counsel to the Chief Justice provided the Committee with an update on the status of court operations following a cybersecurity incident on October 12, 2023. The conferee stated that all state court systems, with the exception of Johnson County, were impacted. Furthermore, the court system was unable to utilize electronic filings or payments, and so all court business was required to be done on paper or by fax. The conferee was unable to go into further details in open session but noted that IT experts were working to determine the reason for and extent of the issue since its occurrence on October 12.

An additional update was provided by the Executive Branch CITO, who noted the Judicial Branch does not report to their office but that their office has provided support and have embedded a IT security officer within the agency to assist after the incident occurred. He further noted that the Judicial Branch did comply with new state statute, which required the notification of KISO upon the discovery of a cybersecurity incident.

Further information was provided by both the Special Counsel to the Chief Justice and the Executive Branch CITO to the Committee during executive session.

At the November 1, 2023, meeting, the Committee received an update from the Office of Judicial Administration on the cybersecurity incident during executive session.

Legislative Branch Update

Legislative Branch IT Staff Introductions and Updates

At the July 31, 2023, meeting, the Legislative Branch CITO provided the Committee with an update on recent hires made to fill positions within the Kansas Legislative Office of Information Services (KLOIS). The CITO noted that some filled positions are new positions created to support the ongoing KLISS Modernization Project.

Further updates were provided by KLOIS staff regarding status updates on technical and application services. Current technical service projects include ongoing maintenance to and updating of the Kansas Virtual Statehouse, datacenter upgrades, implementation of new software to aid with IT requests, and possible upgrades to the legislative website. Application service projects included updates to the KLISS Lawmaking system, the KLISS Decision Support system, and the KLISS Modernization Project.

The CITO also provided the Committee with an overview and update on the KLISS Modernization Project. The CITO noted that the current focus is on the Lawmaking module of the new system, but attention would also be given to the Legislative Research system, budget and appropriation systems, chamber automation system, committee system, legislative portals for members, and various reporting tools.

KLISS Modernization Update

At the August 23, 2023, meeting, KLOIS staff and a representative of Propylon provided an online demonstration of the South Carolina bill drafting system and request management system. The conferees stated that the new system being built for the Office of Revisor of Statutes (Revisor) would be similar to the demonstration.

At the November 15, 2023, meeting, the Legislative Branch CITO provided the Committee with an update on the KLISS Modernization Project, indicating user acceptance training was underway for some of the system's modules, and the tool is on track to be deployed for the 2025 Legislative Session.

IT Audits

At the July 31, 2023, meeting, Legislative Division of Post Audit (LPA) staff provided IT security audit presentations in executive session for the University of Kansas Medical Center.

LPA also provided a monitoring report for Quarter 1, 2023, on the KBI Automated Biometric Information System IT Project. Additionally, LPA presented the three-year IT Security Report and the Public IT Audit Report to the Committee.

At the August 23, 2023, meeting, LPA staff provided a presentation on the Child Support Performance Audit.

At the October 18, 2023, meeting, LPA staff provided a monitoring report for Quarter 2, 2023, on the KBI Automated Biometric Information System IT Project.

Other Presentations

Cybersecurity Resources

At the July 31, 2023, meeting, the Committee heard a presentation from a representative of the Federal Cybersecurity and Infrastructure Security Agency. The representative noted that the agency is housed within the U.S. Department of Homeland Security and its mission is to provide assistance to state and local governments and business and industry regarding cybersecurity in the following areas:

- K-12 schools;
- Water and wastewater;
- Health systems;
- Cyber supply chain and 5G;
- Election security;
- Soft-target security;
- Federal cybersecurity; and
- Industrial control.

The conferee discussed the organization of the agency, noting Kansas is in Region 7, along with Iowa, Missouri, and Nebraska. The headquarters for Region 7 are in Kansas City, Missouri. Additionally, the conferee provided an overview of the services offered by the agency and the

current risk of cyber threats to individuals, businesses, and governments.

At the October 18, 2023, meeting, the Committee received a presentation in executive session from a representative of the Kansas Intelligence Fusion Center.

At the November 1, 2023, meeting, the Committee received a presentation from KLOIS staff regarding current practices and future plans for maintaining the cybersecurity of the Legislative Branch. Further discussion between KLOIS staff and the Committee occurred in executive session.

Artificial Intelligence

At the August 23, 2023, meeting, the Executive Branch CITO presented the Executive Branch Generative Artificial Intelligence (generative AI) policy to the Committee. The CITO provided an overview of what generative AI is and how it is being implemented by the private sector in order to increase and improve employee productivity. The CITO further noted the concerns of generative AI with regard to intellectual property rights, manipulated or inaccurate responses, non-consensual use of Kansans' information, and the lack of data control. In response, an executive branch policy has been established regarding generative AI with the following elements:

- Establishes guard rails around generative AI;
- Serves as an introduction to the technology and associated risks;
- Prohibits the use of generative AI without human intervention;
- Requires all vendors to disclose the use of generative AI in their products; and
- Prohibits vendors' use of Kansas confidential and restricted use information to train generative AI models.

At the November 1, 2023, meeting, the Committee received a presentation by KLOIS staff

on generative AI. The presentation discussed what generative AI is and how it works, and provided demonstrations of how it can be used to create both text and visual responses to input requests and questions.

At the November 15, 2023, meeting, a representative of the National Association of State Chief Information Officers presented to the Committee about the general perspective of state chief information officers regarding generative AI.

Agency IT Presentation

At the August 23, 2023, meeting, the Committee heard presentations from agency chief information officers (CIOs) on the following active projects:

- The DCF Child Support Services Re-Platforming Project;
- The DCF Comprehensive Child Welfare Information System Project;
- The KDADS State Hospital and Substance Use Disability Electronic Health Records project; and
- The DCF Technical Application Project for SNAP Success.

The agency CIOs provided the Committee with a general overview of the projects, discussed ongoing challenges with the projects, and provided the anticipated completion date for each project.

Election Security

At the October 18, 2023, meeting, the Committee heard a presentation from the State Election Director with the Office of the Secretary of State regarding election security. The conferee provided an overview of how election security works in Kansas, specifically addressing elements of security regarding the use of IT during the voting process.

K-12 Student Data Collection

At the November 15, 2023, meeting, the Committee received a presentation from the IT Director for the Kansas State Department of

Education (KSDE) on the topic of student data collection. The conferee discussed what data KSDE collects and why the data is collected, and further discussed the current system used by KSDE and school districts for this purpose and the new system that will be replacing it.

CONCLUSIONS AND RECOMMENDATIONS

At its November 15, 2023, meeting, Committee members discussed their conclusions and recommendations for the 2024 Legislature and agreed to the following:

- The OITS continue to work with the Kansas National Guard, the Legislature, and their staff to develop legislation to more easily enable the collaboration between the State, National Guard, and local entities when responding to cybersecurity threats and incidents;
- The Committee strongly urges the Legislative Post Audit Committee to direct the LPA to resume providing more-in-depth IT Security Audit Reports, instead of recently approved more-limited audits of an increased number of agencies. The Committee believes these audits are crucial to improving the State's IT Security Posture;
- The Legislative Post Audit Committee engage with the Kansas Office of Information Services to determine and evaluate additional IT security audit criteria;
- Appropriate legislative committees consider providing additional funding and resources to LPA to allow for additional IT security audits and network security checks;
- Future meetings of the Committee include, as part of its agenda, the review of past IT security audits that were considered unfavorable by LPA;
- The Judicial and Legislative branches submit a three-year IT plan to the

Committee for presentation with the Executive Branch's three-year IT plan. The Committee prefers the reports to be compiled into a single, statewide, three-year IT plan;

- The Kansas Information Technology Office work with the Committee to identify state agencies with IT projects with an unsatisfactory status in the most recent quarterly IT projects report and ensure appropriate chief information officers are present during future Committee meetings to provide more detail to Committee members about the projects and status;
- Encourage the KSDE to continue to engage with the Cybersecurity and Infrastructure Security Agency and school districts to assist with updating, patching, and maintaining IT systems;
- Allow the Committee to meet regularly during the Legislative Session by setting a designated meeting time and approve additional interim meeting days to allow the Committee to more effectively advise and consult on State IT projects, per KSA 75-7902;
- Encourage the adoption and utilization of the "dot gov" domain by local units of government, and encourage the use of the State and Local Cybersecurity Grant Program to obtain such a domain;
- Encourage the Office of Revisor of Statutes to work with KLOIS to develop legislation pertaining to the use of generative AI, and encourage the House Committee on Legislative Modernization to further discuss this topic and consider the proposed legislation;
- The KISO provide a report on the impact of the provisions in 2023 HB 2019 pertaining to the requirement to report to the KISO cybersecurity incidents within 12 hours of discovery by public entities and vendors utilizing public data;
- Encourage legislative leadership to align the rules regarding the policy and practice of video recording traditionally non-recorded votes; and
- The Legislative Coordinating Council address retention policy for video recordings of committee meetings.

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Report of the Joint Committee on Kansas Security to the 2024 Kansas Legislature

CHAIRPERSON: Representative Eric Smith

VICE-CHAIRPERSON: Senator Mike Petersen

OTHER MEMBERS: Senators Rick Kloos, Virgil Peck, Jeff Pittman, and Mary Ware; and Representatives Michael Dodson, Jarrod Ousley, Pat Proctor, and Virgil Weigel

CHARGE

Review Various Security Matters

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

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Joint Committee on Kansas Security

ANNUAL REPORT

Conclusions and Recommendations

- The Joint Committee on Kansas Security (Committee) recommends the House Committee on Appropriations and Senate Committee on Ways and Means consider transferring \$170,000 from the State General Fund (SGF) to the Emergency Response Fund at the Office of the State Fire Marshal to replenish moneys expended in the response to a white powder threat letter incident in June 2023. These expenditures derive from the simultaneous activation of eight of the nine regional Hazardous Materials Response Teams.
- The Committee supports continued use of SGF moneys by the Kansas Information Security Office (KISO) to provide state agencies with cybersecurity services rather than charging agencies for such services. Further, the Committee recommends the use of SGF moneys for the KISO to expanded.
- The Committee requests the Legislative Coordinating Council arrange for the Capitol Police to provide active shooter response training, as well as other relevant emergency response training, to legislators and legislative staff early in the 2024 Legislative Session.

Proposed Legislation: None

BACKGROUND

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

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

- Measures for the improvement of security for the state.

The statute also directs the Committee to review and monitor federal moneys received by the State for the purposes of homeland security and other security matters.

COMMITTEE ACTIVITIES

The Legislative Coordinating Council approved two meeting days (including travel) for the Committee during the 2023 Interim. The Committee met at the Coffey County Library in Burlington and toured the Wolf Creek Nuclear Generating Station and facilities of a private entity on October 12, 2023, and met at the Statehouse on October 13, 2023.

Some of the presentations to the Committee were conducted in closed session under provisions

of KSA 75-4319(b)(12)(C), an exception to the Kansas Open Meetings Act regarding meetings to discuss security of public bodies, facilities, and information systems. Legislative staff were not present in the closed sessions.

October 12, 2023, Meeting

At the October 12, 2023, meeting, the Committee heard information on capital projects at the Adjutant General's Department concerning National Guard facilities and emergency management services. The Committee also received an update on Executive Order (EO) 23-03, which directs continuity of operations plans (COOP) among Executive Branch agencies.

Adjutant General's Department Capital Projects

The Director of Public Works, Kansas National Guard, reviewed capital projects at the Adjutant General's Department. The agency maintains nearly 3.0 million square feet of building space in communities across the state. Major projects include:

- Construction of the Joint Forces Headquarters on federal property at Forbes Field in Topeka, which will house the Office of the Adjutant General and command staff of the Kansas Air and Army National Guard;
- Construction of a new armory in Hays to replace a facility located in a flood plain. This project includes the purchase of land north of I-70 and facility construction;
- Remodeling of the State Defense Building in Topeka, which houses the Kansas Division of Emergency Management (KDEM) and the State Emergency Operations Center;
- Energy resiliency projects at National Guard facilities in Salina and Topeka that involve installation of canopy-mounted solar arrays over parking lots;
- Restoration of the Kansas City Armory to repair damage from flooding incurred in 2022 due to plumbing failures;

- Plans for construction of the 130th Field Artillery Brigade Headquarters, which will be a National Guard Readiness Center constructed on federal property at Fort Riley; and
- Recent acquisition of the Trembly White Readiness Center in Kansas City, which became available at no cost to the State due to it being vacated by a U.S. Army Reserve unit. The building requires interior upgrades and exterior repairs.

Executive Order 23-03, Continuity of Operations Planning

The Deputy Director of KDEM provided background on COOP planning for state agencies in Kansas to ensure the provision of uninterrupted essential services before, during, and after an incident that disrupts normal operations. The Deputy Director listed four phases of COOP: readiness and preparedness, activation and relocation, operations, and reconstitution.

The Deputy Director noted that a State Agency COOP Committee was established in 2007 under the authority of the Commission on Emergency Planning and Response (CEPR), pursuant to KSA 65-5722, primarily in response to the 2007 Greensburg tornado. The Committee conducts quarterly planning meetings and annual exercises. The Deputy Director noted lessons were learned from major incidents, and planning and operations are adjusted accordingly.

The Director of Planning and Mitigation, KDEM, discussed implementation of EO 23-03, signed by the Governor on July 21, 2023. The EO directs Executive Branch agencies to develop or update their COOPs by December 31, 2023; directs KDEM to provide technical assistance and serve as repository for plans; and requires an annual report to the CEPR and includes additional requirements for the plans. Technical assistance includes the provision of common planning software and training workshops. The plans are to cover topics including essential functions, delegations of authority, continuity of communications, and human resources.

The effort involves 65 state agencies, excluding the State Board of Regents and state universities. Submission of the plans will occur in two phases, with Phase I focusing on cabinet agencies and Phase II addressing non-cabinet agencies. As of October 2023, KDEM had approved plans for 11 agencies. The Director of Planning and Mitigation also noted the Kansas Supreme Court ordered COOPs for state district courts.

October 13, 2023, Meeting

At the October 13, 2023, meeting, the Committee heard information on Kansas Highway Patrol staffing and operations, security measures at the reconstructed Docking State Office Building (Docking Building), Kansas Information Security Office operations, generative artificial intelligence (AI) policy, crime statistics, activities of the Kansas Bureau of Investigation (KBI), hazardous materials incident response, funding for encrypted communications equipment, and response to the white powder threat letter incident in June 2023.

In closed sessions, the Committee heard information on Capital Complex security, the cyber threat landscape, and threats to infrastructure.

Kansas Highway Patrol Staffing and Operations

Operations

The Superintendent of the Kansas Highway Patrol (KHP) discussed recent agency operations. He stated that 116 pounds of fentanyl were seized in 2022 and noted that ingesting just 2 milligrams of the substance can be fatal. Additionally in 2022, 34 illegal firearms were seized and 1,254 arrests were made for driving under the influence of alcohol or drugs. Trends based on six months of data for 2023 indicate decreases in fentanyl seizures, felony arrests, and issuance of speeding citations.

As the only law enforcement agency in Kansas with aircraft, KHP provides support to other jurisdictions throughout the state. Aircraft hangars and crews are located in Topeka, Wichita, and Hays. The agency recently acquired a new Cessna Caravan airplane, which is being outfitted with high-resolution surveillance cameras. Receipt of a

new executive jet and two law enforcement helicopters will occur in the near future.

The Superintendent also reviewed the roles of each of the agency's troops and expenditures of American Rescue Plan Act moneys for law enforcement agency communications equipment.

Trooper Staffing

The Superintendent stated 462 sworn officer positions are currently filled, which is 15 below the ten-year high in FY 2019. The agency expects to graduate 30 troopers in 2023, which is an increase attributed to a condensed on-boarding process for recruits. The agency projects graduating 50 troopers in 2024.

Docking Building Security

The Deputy Secretary of Operations and Director of Facilities and Property Management, Department of Administration, provided an update on reconstruction of the Docking Building, its impacts on the Capital Police, and integration of security into the structure.

Completion of the Docking Building reconstruction is estimated for June 2025. The Deputy Secretary stated the three-level structure will include state agency offices, conferencing space, and an outdoor plaza. Security features will include:

- A secure area for Capitol Police parking and arrest intakes;
- Reuse of limestone components for a perimeter barrier to vehicles;
- An entry control point with turnstiles and metal detecting scanners;
- Open floor plan that affords enhanced sight lines for security personnel; and
- Security stations on the upper level conferencing area.

Prior to demolition of the old Docking Building, Capital Police units were temporarily relocated to nearby state offices and leased space

to maintain continuous services during reconstruction. These units will be moved back to the Docking Building upon completion of the new structure.

Kansas Information Security Office

The Executive Branch Chief Information Technology Officer (CITO) provided an overview on Kansas Information Security Office (KISO) operations, recent budget enhancements, AI policy, and cybersecurity collaboration with local entities.

KISO Operations

The KISO was established in 2018 to advise agencies on cybersecurity matters and was funded exclusively through fees charged to agencies. The CITO stated the office currently has a budget of \$11.0 million, including \$5.8 million from the State General Fund (SGF), and provides cybersecurity services to all Executive Branch agencies.

The CITO reviewed the organization of the KISO into the following areas:

- Cybersecurity Operations with staff who design, implement, and manage technical tools; monitor systems for anomalies; and investigate threats. These staff are first responders to cyber threats and share intelligence with state agencies and local entities;
- Information Assurance includes information security officers assigned to state agencies to build information security programs, advise agency leadership, and ensure compliance with KISO practices; and
- Cyber Collaboration and Cyber Preparedness staff facilitate outreach to local governments to build statewide information technology resilience, conduct training and tabletop exercises, and administer federal grant funding to local entities. This function was added in 2022.

Budget Enhancements

The 2023 Legislature approved the addition of \$5.8 million SGF to offset the elimination of charges to state agencies for cybersecurity services. The CITO stated these SGF moneys also allowed for the hiring of information security officers assigned to state agencies and procurement of multiple cybersecurity technology tools for agencies at no cost. These tools enable the KISO to maintain a centralized assessment of cybersecurity concerns.

Generative AI Policy

The CITO published a Generative AI Policy that applies to all Executive Branch agencies, with an effective date of July 31, 2023. He noted that generative AI, which produces text, images, or other media using generative models, is increasingly available. While this technology can increase employee productivity, it creates concerns regarding intellectual property rights, production of false responses, and use of Kansas data without consent.

The CITO clarified that the policy establishes guard rails around use of generative AI. The policy prohibits AI use without human intervention and requires vendors to disclose the presence of AI. Further, the policy prohibits use of Kansas data to train generative AI models, unless authorized.

Crime Statistics and KBI Activities

The KBI's Executive Officer presented crime statistics showing, by year, numbers of crimes by category and the ten-year average numbers in crimes in the categories of violent crimes overall (murder, sexual assault, robbery, and aggravated assault) and property crimes overall (burglary, larceny/theft, motor vehicle theft, and arson).

He noted that although there were fewer violent crimes, rapes, murders, robberies, and aggravated assaults in 2022 than in 2021, the number of violent crimes in those categories remained 9.2 percent above the ten-year average for the state. The number of murders and aggravated assaults in 2022 remain significantly above the 2019 pre-COVID ten-year averages. The decline in robbery is attributed to increased work-from-home practices.

[*Note:* The KBI subsequently submitted amended testimony to the Committee indicating that violent crime numbers in Kansas in 2022 increased by 2.1 percent from 2021 rather than decreased, as stated above. Submission of the amended testimony is due to an error identified with crime data submitted by one of the state's largest local law enforcement agencies.]

The Executive Officer stated the KBI Field Investigations Division investigates approximately 300 violent crime cases per year through the work of 38 Special Agents located in 105 counties. These include investigations initiated by KBI and cases in which the agency provides limited assistance to local entities. The agency desires to increase the investigative assistance provided to local law enforcement agencies, recognizing that 50.0 percent of such local agencies in Kansas operate with fewer than five officers.

Crimes Against Children

The Executive Officer reported crimes against children are a priority area for the agency. According to National Center for Missing and Exploited Children (NCMEC), reports of online enticement targeting children in 2022 increased by 112.6 percent from 2021. These engagements take place on social media and gaming platforms and lead to extortion of children and buying and trading of explicit images.

To address this, Child Victim Task Forces with special agents were established to investigate reports of online child exploitation in the northeast and western regions of the state. More than 200 tips from NCMEC from across Kansas are waiting to be assigned for investigation. Due to this, the KBI planned to request funding to establish a third task force covering the southeast region.

Illegal Substances

The Executive Officer reported that the federal High Intensity Drug Trafficking Areas program ranks fentanyl as the greatest drug threat in its Midwest region, which comprises Kansas, Iowa, Missouri, Nebraska, North Dakota, and South Dakota. Methamphetamine and marijuana continue to be widely available in Kansas, and compose the majority of submissions to the KBI laboratory. Authorities note 71 drug trafficking

organizations operate in Kansas, primarily dealing in fentanyl.

To address this, the Joint Fentanyl Impact Team was established in Kansas in 2022 to identify and disrupt fentanyl trafficking. The team includes representatives from the KBI, KHP, and the U.S. Department of Homeland Security utilizing K-9 teams at inter-modal transport sites. Since March 2023, KBI had seized 58,000 fentanyl pills.

The Executive Officer discussed the emerging illegal use of xylazine, a sedative for veterinary use, as an additive to fentanyl.

Cybercrimes

The Executive Officer stated that the Internet Crime Complaint Center (IC3), administered by the FBI, has received more than 6.5 million cybercrime complaints nationally since its inception in 2000. The 2,399 complaints from Kansas reported to the IC3 in 2022 combined meant an estimated monetary loss of \$58.0 million due to internet-related crimes.

In FY 2020, the KBI established its Cyber Crime Unit, with six special agents. The Executive Officer reported the unit had received 652 tips to date in FY 2023, with business email compromises and computer intrusion cases being the most frequent. The KBI initiated 24 criminal investigations and the Executive Officer noted such investigations are particularly manpower- and time-intensive.

In response to questions, the Executive Officer commented on the rape kit backlog (reporting it largely resolved), suitability of staffing levels for the Child Victim Unit and Cyber Crime Unit, and safety procedures for legislators.

Hazardous Material Incident Response

The State Fire Marshal provided an overview of the Hazardous Material Response program coordinated by the Office of the State Fire Marshal (OSFM) and discussed the impacts of the white powder threat letter incident to this program.

The program ensures hazardous materials, including those associated with weapons of mass

destruction, toxic industrial chemicals, radiological spills, fires, and explosions, are handled safely with minimal exposure to citizens and with minimal threat to lives and property. Examples of incident types include:

- Overturned cargo trucks with leaking chemical payloads;
- Train derailments; and
- Floods affecting petroleum refineries.

The program is composed of nine regional Hazardous Material Response Teams located across the state and staffed by local firefighters. OSFM provides compensation for calls, coordinates training, and provides specialized equipment and vehicles. The program responded to 837 hazardous material incidents in FY 2022. The State Fire Marshal noted equipment needed by the teams to monitor for hazardous substances is costly and must be replaced every few years due to advances in technology.

The State Fire Marshal noted standing agreements with the Wolf Creek Nuclear Generating Station and National Bio and Agro-Defense Facility that require Response Team assistance in the event of an incident.

Federal ARPA Funding for Law Enforcement Communications Equipment

On December 21, 2021, the State Finance Council allocated discretionary funding from the federal American Rescue Plan Act (ARPA) for a State Efficiency and Modernization program, which included a total \$15.7 million for the KHP and KBI to update communications equipment.

The Superintendent of the KHP noted emerging federal requirements to encrypt radio communications when transmitting criminal justice information. Of the \$15.0 million in ARPA funding awarded to KHP, a total of \$14.3 million had been expended as of September 30, 2023, to purchase communications equipment with encryption capabilities that are interoperable with equipment of other state agencies and local public safety entities. This equipment includes handheld and vehicle-mounted radio and dispatch systems.

The KBI Executive Officer stated the agency was awarded \$771,200 in ARPA funding to purchase vehicle-mounted radios. He reported the agency was selecting a vendor capable of providing and installing communications equipment that meets federal requirements.

White Powder Threat Letter Incident

The white powder threat letter incident in June 2023 involved the mailing of threatening letters containing an unknown white powder to more than 100 state legislators in Kansas and other states. The response in Kansas was led by the KBI until the matter was identified as a multi-state incident, at which time the Federal Bureau of Investigation (FBI) assumed lead. The response involved multiple state and local agencies, including KHP and OSFM. The incident remains under federal investigation, which limited comments by conferees.

KBI Response

The Executive Officer stated the KBI led the response for the initial 96 hours before handing off the matter to the FBI. The KBI used approximately \$575,000 in resources during that initial period, assigning nearly all special agents and devoting nearly all laboratory services to the effort during that time period. The Executive Officer expressed concerns regarding the agency's capacity to respond to a similar event in the future should it occur simultaneously with other incidents.

KHP Response

The Superintendent stated most letters were sent to the home addresses of legislators, which was handled by local law enforcement and the KBI. KHP's involvement was limited to the receipt of some letters at the Capitol. The Superintendent confirmed that in the event of suspicious mail delivery to the Capital Complex, the Capitol Police will implement hazardous device protocols and notify local law enforcement.

OSFM Response

The State Fire Marshal described the incident's impacts on the Hazardous Material Response program coordinated by the OSFM. These impacts included:

- Simultaneous activation of eight of the nine Hazardous Material Response Teams, which was the first activation of such magnitude in program history;
- Response Teams fielded hundreds of calls related to the incident within one week; and
- The response required the unforeseen expenditure of \$170,000 from the OSFM's Emergency Response Fund.

The State Fire Marshal requested the Committee recommend that the 2024 Legislature replenish the Emergency Response Fund with SGF moneys due to the extraordinary nature of the incident.

CONCLUSIONS AND RECOMMENDATIONS

After discussion on topics including enhanced KBI investigative services to support local law enforcement agencies in rural areas, funding mechanisms for the provision of cybersecurity services among state agencies, safety procedures for the Legislative Branch, and expenditures in

response to the white powder threat letter incident, the Committee agreed to the following:

- The Committee recommends the House Committee on Appropriations and the Senate Committee on Ways and Means consider transferring \$170,000 from the SGF to the Emergency Response Fund at the Office of State Fire Marshal to replenish moneys expended in response to the white powder threat letter incident in June 2023. These expenditures derive from the simultaneous activation of eight of the nine regional Hazardous Materials Response Teams;
- The Committee supports continued use of SGF moneys by the KISO to provide state agencies with cybersecurity services rather than charging agencies for such services. Further, the Committee recommends the use of SGF moneys for the KISO to expanded; and
- The Committee requests the Legislative Coordinating Council arrange for the Capitol Police to provide active shooter response training, as well as other relevant emergency response training, to legislators and legislative staff early in the 2024 Legislative Session.

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Report of the Joint Committee on Pensions, Investments and Benefits to the 2024 Kansas Legislature

CHAIRPERSON: Representative Nick Hoheisel

VICE-CHAIRPERSON: Senator Jeff Longbine

OTHER MEMBERS: Senators Brenda Dietrich, Michael Fagg, Cindy Holscher, and Pat Pettey; and Representatives Bill Clifford, Cindy Neighbor, Tobias Schlingensiepen, Sean Tarwater, Carl Turner, Laura Williams, and Rui Xu

CHARGE

Monitor, Review, and Make Recommendations Regarding the Retirement System

KSA 2022 Supp. 46-2201 directs the Committee to monitor, review, and make recommendations regarding investment policies and objectives formulated by the Kansas Public Employees Retirement System (KPERs) Board of Trustees; review and make recommendations relating to benefits for KPERs members; consider and make recommendations relating to the confirmation of members of the KPERs Board; review and make recommendations relating to the inclusion of city and county correctional officers as eligible members of the Kansas Police and Firemen's Retirement System; and review reports regarding working after retirement exceptions (KSA 74-4914 and 74-4937). In addition to its statutory duties, the Committee will consider these pensions matters:

- Environmental, social, and governance (ESG) criteria, ESG implementation and enforcement activities in other states, and states' investment boycott provisions associated with foreign adversaries;
- Possible options relating to KPERs Tier 3 plan design and its overall benefit value; and
- Other pensions legislation considered by the 2023 Legislature.

December 2023

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Joint Committee on Pensions, Investments and Benefits

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Pensions, Investments and Benefits submits the following comments and recommendations:

- **Joint Select Committee.** The Committee recommends that legislative leadership establish a joint Select Committee to evaluate KPERS (the Kansas Public Employees Retirement System) Tier 3 and whether it is adequately meeting the needs of employees and employers. The Committee also acknowledges a forthcoming report from the Legislative Division of Post Audit on this topic. [*Note:* The Committee’s report to the 2023 Legislature included a similar recommendation]
- **Alternative investment cap removal.** The Committee recommends passage of legislation addressing the statutory alternative investment cap for the KPERS Trust Fund (presently limited to 15.0 percent of the total investment assets of the Fund) and delegate the selection of the overall cap to the KPERS Board of Trustees. The Committee also recommends pending legislation be amended to make the change in Board authority effective on publication of the *Kansas Register*. [*Note:* Two bills have been introduced on this topic, including the bill pre-filed by the Committee in the 2023 Session (SB 23).]
- **Working After Retirement study.** The Committee recommends the appropriate standing Committees (House Committee on Financial Institutions and Pensions, Senate Committee on Financial Institutions and Insurance) review working after retirement rules, including the statutorily prescribed waiting lists of 60 and 180 days; the employer contribution rate for the first \$25,000 of the retiree’s salary (FY 2023, rate of 14.33 percent) and the 30.0 percent employer contribution rate for earnings over the \$25,000 threshold; and the current 630-hour annual minimum for covered employees (school employers) and 1,000 hours of annual work (non-school employers).
- **Cost-of-Living Adjustments review.** The Committee recommends the appropriate standing Committees (House Committee on Financial Institutions and Pensions, Senate Committee on Financial Institutions and Insurance) review Cost-of-Living Adjustments (“COLAs”), including input from stakeholders and the fiscal impact of implementing a COLA.
- **Extraordinary KPERS payment.** The Committee recommends the House Committee on Appropriations and Senate Committee on Ways and Means review using some of the projected State General Fund surplus ending balance to make additional contributions toward the reduction of KPERS unfunded actuarial liability.

Proposed Legislation: None.

BACKGROUND

The Joint Committee on Pensions, Investments and Benefits was created in 1992 and is authorized by KSA 2023 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.

COMMITTEE ACTIVITIES

The Legislative Coordinating Council authorized two meetings days for the Committee during the 2023 Interim. The Committee met on November 2 and November 3, 2023, to receive reports and updates and hold discussion on the KPERS 2022 actuarial valuation, KPERS budget and pension administration system modernization, pensions obligation bond proceeds, membership and retirement trends, investment performance, and implementation of 2023 legislation and law (Working after retirement, alternative investments cap removal, the Deferred Retirement Option Program [DROP], Kansas Police and Firemen's [KP&F] affiliation, and Environmental, Social and Governance investment policy/ foreign adversary investments). In addition to review and discussion on these matters, the Committee invited comment from public retirees and held a discussion on KPERS Tier 3 adequacy, with comment from concerned parties and information from KPERS representatives on alternatives to or modifications for consideration.

Review of KPERS Law and Legislation

A Senior Assistant Revisor, Office of Revisor of Statutes, reviewed relevant legislation pertaining to KPERS, including two bills enacted in law in 2023, eight bills with legislative consideration, and other KPERS bills introduced during the 2023 Legislative Session.

KPERS Bills Enacted into Law

HB 2196 authorized the affiliation of certain persons employed by the Kansas Department of Wildlife and Parks into the KP&F Retirement System on July 1, 2023. The bill also expanded the defined membership of the DROP to include any member of KP&F who is eligible to participate in DROP and extended the DROP sunset date from January 1, 2025, to January 1, 2031.

HB 2100 created the Kansas Public Investments and Contracts Protection Act and amended law governing the Kansas Public Employees Retirement Fund (Trust Fund) and investment standards to prohibit state agencies and other political subdivisions from giving preferential treatment to or discriminating against companies based on environmental, social, or governance (ESG) criteria in the procuring or letting of contracts; require fiduciaries of the Retirement System to act solely in the interest of participants and beneficiaries of the System; restrict state agencies from adopting ESG criteria or requiring any person or business to operate in accordance with such criteria; provide for enforcement of this act by the Attorney General; and indemnify KPERS with respect to actions taken in compliance with this act.

KPERS Bills with Legislative Consideration

HB 2025 would authorize a self-funded cost-of-living adjustment retirement benefit option for certain KPERS members.

HB 2102 would appropriate \$250.0 million from the State General Fund (SGF) to the Office of the State Treasurer for the repurchase of some, or all, of the outstanding portion of Kansas Development Finance Authority Series 2021K bonds.

HB 2103 and **SB 23** would remove the 15.0 percent alternative investment limit for the KPERS

Trust Fund and require the Board to establish an alternative investment percentage limit.

HB 2195, as amended by House Committee, would increase the amount of retirant compensation subject to the statutory employer contribution rate to the first \$50,000 of compensation earned by a retirant in a calendar year. The bill would also require participating employers to pay only the statutory employer contribution rate on all compensation of a retirant employed in a covered position through December 31, 2024. [*Note:* The bill, as introduced, would increase the threshold to \$30,000 per calendar year.]

HB 2272 would establish a KPERS working-after-retirement exemption for retirants employed by a Community Developmental Disability Organization (CDDO) in a licensed professional nurse, licensed practical nurse, or direct support position.

SB 172 would increase the KPERS lump-sum death benefit from \$4,000 to \$6,000.

SB 256 would provide KPERS Tier 3 members with an additional 1.0 percent dividend interest credit for one year.

KPERS 2022 Actuarial Valuation Report

The Committee reviewed the latest actuarial valuation, which serves as a snapshot of the financial condition of the Retirement System as of December 31, 2022. The Executive Director of KPERS indicated all membership groups remain at the full actuarially required contribution (ARC) rate, which is a key factor in reducing the unfunded actuarial liability (UAL) and improving funded ratios of each group. [*Note:* This annual actuarial valuation, which measures assets and liabilities, provides the basis for calculating future employer contribution rates.]

The 2022 valuation is used to set the fiscal year (FY) 2026 contribution rates for State/School employers and calendar year (CY) 2025 contribution rates for local employers, and it serves as the baseline for any cost studies performed in the 2024 Legislative Session.

Key Findings

Assets. As of December 31, 2022, the actuarial value of assets totaled \$26.5 billion. Actuarial assets are calculated by averaging, or “smoothing,” investment gains and losses over a five-year period. There is a net gain of almost \$1.9 billion to be realized in the outlying years. Net investments on a calendar-year basis decreased by 9.8 percent (market value). Due to smoothing, the return on actuarial assets gained 5.6 percent.

Funded ratio and unfunded actuarial liability. The Retirement System’s overall funded ratio of assets to liabilities increased from 71.6 percent (2021 valuation) to 73.4 percent. [*Note:* The standards for public pension plans suggest a public retirement system should be funded between 80.0 and 100.0 percent of future liabilities owed.] The UAL for the Retirement System declined from \$9.8 billion (2021 valuation) to \$9.6 billion. Significant factors affecting the UAL in the 2022 valuation include employers contributing at the full ARC rate and the \$871.1 million in additional contributions included in 2022 SB 421.

The Executive Director noted that, if all funding assumptions are met in future years, the State/School Group UAL would increase until CY 2028 due to deferred investment losses, after which it would resume declining. Under these conditions, the legacy UAL for the State/School Group would be paid off in the 2039 valuation.

Contribution rates. The report indicated the ARC rates for KPERS State/School employers increased from 11.42 percent in FY 2025 to 11.56 percent for FY 2026, primarily due to negative investment returns. The statutory employer contribution rate continues to be at the full ARC rate for FY 2026, the sixth consecutive year the statutory and actuarial rates have been equal. The Committee and the Executive Director discussed the funding projections presented and the anticipated investment returns for CY 2024.

Pension Obligation Bond Proceeds

The Executive Director addressed pension obligation bonds, which serve as a form of arbitrage intended to reduce future employer contributions and improve the solvency of KPERS. Bond proceeds also serve to improve the funded status of the Retirement System. To date,

the State has issued three series of pension obligation bonds. The first was in 2004 for a total of \$500.0 million, gross of fees; the second in 2015 for \$1.0 billion, net of fees; and the third in 2021 for \$500.0 million, net of fees.

Series 2004C. The 2004 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. As of December 31, 2022, the remaining principal balance was approximately \$331.1 million.

Series 2015H. The 2015 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 SGF. As of December 31, 2022, the remaining principal balance was approximately \$880.6 million.

Series 2021K. The 2021 Legislature approved a \$500.0 million bond issue, which was issued with a 30-year maturity and an interest cost of 2.65 percent. KPERS received \$500.0 million in net proceeds. Annual debt service is approximately \$24.0 million from the SGF. As of December 31, 2022, the remaining principal balance was approximately \$488.1 million.

Responding to a question on the possibility of a discount on repurchase of Series 2021K bonds, the Executive Director of the Kansas Development Finance Authority (KDFA) indicated repurchasing now would result in a loss of around 30.0 percent. KDFA provided several alternatives, including an optional redemption, engaging with open market prices, tender offer solicitations, and buying U.S. Treasury securities.

Total returns. Average annualized total returns on the Retirement System's investment portfolio have exceeded the interest cost of the 2004C and 2015H bond issues, but not the 2021K bond issue. As of August 31, 2023, average annualized total returns were 7.24 percent for 2004C, 7.20 percent for 2015H, and -0.48 percent for 2021K. The three bond series have collectively exceeded interest costs by approximately \$769.0

million (\$496.0 million for 2004C, \$304.0 million for 2015H, and -\$31.0 million for 2021K).

KPERS Membership and Retirement Trends

Active and Retiree Membership Trends

The Planning and Research Officer, KPERS, provided information on active and retiree membership trends. The Retirement System currently has 151,984 active members, which is comparable to the number of active members in 2006. Among all groups, KP&F membership has grown steadily since 2005, while other groups have either fluctuated or declined in membership.

KPERS has around 113,000 retirees and beneficiaries. The compound annual growth since 2006 is 3.44 percent. While the number of retirees and beneficiaries is expected to continue increasing, the rate of increase is projected to slow over time, reflecting expectations that members will work longer and retire at later ages. Notably, the impact of baby boomers is expected to stop in the next eight to ten years. Over the next 20 years, the number of retiree and beneficiary deaths is expected to surpass the number of new retirees each year. However, with survivor benefit options, not every death decreases the number of retiree and beneficiary members.

Speaking to broad trends, the Planning and Research Officer noted active membership has remained relatively flat for over a decade (155,446 in 2013 to 151,984 in 2022), while retirees and beneficiaries have steadily increased over time (86,843 in 2013 to 113,031 in 2022).

Pension Plan Maturity and Risk

Although pension plan maturity does not have a precise definition, the Planning and Research Officer explained one common metric is the ratio of retirees to active members. For KPERS, that ratio has continuously increased over the past 20 years. Additionally, the total liability attributable to retirees and beneficiaries has increased for all groups in that time frame. For example, for the State/School Group, the liability as a percent of total actuarial liability increases from 39.7 percent in 2003 to 53.5 percent in 2022. As more of total liability resides with retirees and beneficiaries, investment volatility will have a greater impact on

Retirement System funding because there will be comparatively fewer payroll dollars from active members and employers to spread costs over.

The Planning and Research Officer noted the Board and its consulting actuary are aware of these risks, reviewing various risk factors each year during the actuarial valuation. Furthermore, as a pre-funded plan and in contrast with pay-as-you-go plans, like Social Security, KPERS is designed to account for maturity risk through use of actuarially required contribution rates.

Investment Performance

The Chief Investment Officer (CIO), KPERS, provided an overview of the KPERS Trust Fund performance in FY 2023: a positive return of 7.4 percent, exceeding the actuarial rate of return of 7.0 percent but trailing the policy index, or asset class benchmark, of 8.4 percent. The portfolio's market value increased from \$24.3 billion in FY 2022 to \$25.6 billion in FY 2023.

The CIO noted the Board regularly conducts asset/liability studies, which are used to establish long-term asset targets. The most recent study was completed in May 2023, and the Board recommended the following targets for the portfolio:

- 43.0 percent global equity,
- 15.0 percent real estate,
- 13.0 percent core fixed income,
- 12.0 percent yield-driven assets,
- 11.0 percent private equity,
- 3.0 percent real return, and
- 3.0 percent cash equivalents.

Fund performance. In the past 3, 5, 10, 20, and 25 years, the portfolio experienced a low return of 6.9 percent for the 25-year average and a high return of 9.0 percent for the 3-year average. Compared with the policy index, or asset class benchmark, the Fund ranges from underperforming by 1.0 percent to outperforming by 1.6 percent for the above time periods.

In FY 2023, the portfolio experienced negative returns on real estate (9.7 percent) and fixed income (0.6 percent), largely due to interest rate-sensitive asset classes that responded to broader market changes. By contrast, fixed income returns

are about 13.0 percent as of September 30, 2023. The CIO noted total cash returns was about 3.5 percent in FY 2023 and are close to the long-term target of 3.0 percent.

Economic and market observations. The CIO indicated financial markets have struggled in the first three months of FY 2024 (July to September), with concerns about rising interest rates, inflation, central bank policy, and was putting pressure on markets. While the Retirement System's portfolio has maintained a positive return for the first nine months of 2023, returns were modest at 4.1 percent. Although financial markets are expected to remain volatile for the time being, the CIO emphasized the Retirement System's portfolio is structured for the long term.

KPERS Operating Budget and Pension Administration System Modernization

KPERS Operating Budget

The Executive Director of KPERS detailed the KPERS operating budget, which includes general expenses (such as staff, contracts, and office space), investment-related expenses (such as manager fees and investment staff), and administration of the Death and Disability and KPERS 457 programs.

KPERS estimates expenditures totaling \$73.9 million in FY 2024 and \$82.6 million for FY 2025, the majority of which is financed by the KPERS Trust Fund (\$72.9 million and \$81.6 million, respectively). General and investment-related expenses compose the largest portion of the operational budget, \$27.1 million and \$45.7 million, respectively, in FY 2024.

Benefits payments are considered non-expense items for budgeting purposes and are not included when discussing operational expenditures. KPERS estimates total benefits expenses of \$2.257 billion in FY 2024 and \$2.343 billion for FY 2025.

Responding to a question on reviewing investment manager performance, the Executive Director indicated KPERS has a staff of 9 employees that closely monitor the 15 to 20 fund managers currently used.

KPERS Pension Administration System

The Executive Director outlined the purposes of the pension administration system, which provides the functionality needed to collect data and contributions from employers and to process and pay benefits. KPERS started using its present system in 2005. The existing system remains capable of providing these processes but, due to the required customizations over the years, has become less efficient and more unstable over time.

In 2020, the Board made the decision to begin the multi-year modernization effort. Additionally, the Legislature also authorized a comprehensive system assessment, which was completed in September 2020 by The Segal Group, a consulting firm. The assessment helped clarify how the database could be restructured to provide better service to all customers. In 2021, KPERS then used the findings from the assessment to begin establishing requirements for the new system. After an “Analysis and Retool” phase completed by the existing contractor, Sagitec, KPERS engaged with Sagitec to gauge the possibility of upgrading the existing system.

In 2022, KPERS determined Sagitec was unable to upgrade the existing system to meet established requirements. Accordingly, the Board approved a request for proposal (RFP) on a new pension administration system. In 2023, the Kansas Information Technology Office approved the project and KPERS released the RFP for bid. KPERS received two qualified responses to the bid when it closed in June 2023. After a vendor review process, the Board is expected to select a vendor in November 2023. [*Note: On November 17, 2023, the Board selected Tegrit Software Ventures for the project, at an initial proposed cost of \$57.6 million to implement.*]

In 2024, KPERS will begin implementation of the new system, with an estimated completion time of five years. KPERS anticipates modernization expenditures totaling \$9.0 million in FY 2024 and \$12.0 million for FY 2025, all financed from the KPERS Trust Fund. Most expenses will be for contractual services paid to the vendor.

Responding to a question on the implementation schedule, the Executive Director

confirmed the process would take about five years, due to the size and complexity of the system. To illustrate, the Executive Director said there are more than 3,000 requirements and 1,400 contributing employers to account for in the system design. The Executive Director highlighted this complexity as the reason off-the-shelf solutions would not work as well and the reason the RFP received only two bidders.

Contemporary KPERS Topics and Issues

The Planning and Research Officer for KPERS provided information on **HB 2196**, which expanded the membership of the DROP to include all KP&F members and authorized the affiliation of certain persons employed by the Kansas Department of Wildlife and Parks (KDWP) into the KP&F Retirement System.

Deferred Retirement Option Program

Under the DROP, eligible members with normal unreduced retirement initiate the calculation of retirement benefits but choose to defer the actual receipt of the benefits for a three-, four-, or five-year period. During the DROP period, the member does not earn additional service credits but continues to work and contribute into DROP. Retirement benefits are held in a separate account and, at the end of the period, the member receives the lump sum with interest. The DROP account can earn interest according to a statutory formula, and currently, the formula allows for 3.0 percent interest in any year in which KPERS investments reach the 7.0 percent investment return assumption.

In 2015, the DROP was created as a five-year pilot program for troopers, examiners, and officers of the Kansas Highway Patrol. In 2019, the DROP was expanded to include agents of the Kansas Bureau of Investigation. In 2023, HB 2196 expanded eligibility further to include all eligible KP&F members who elect to participate and extended the sunset date to January 1, 2031. Between 2015 and 2022, 67 members have enrolled in the DROP and about 130 members retired without enrolling in the program.

Upon enactment of HB 2196, approximately 540 to 600 members became eligible for the DROP, and another 350 to 450 are projected to become eligible within the next two years. The

Planning and Research Officer noted basic DROP functionality has been enabled to all KP&F members and employers within the pension administration system.

KP&F Affiliation

The Planning and Research Officer also discussed implementations of provisions in HB 2196 that expanded KP&F eligibility to certified law enforcement officers at the KDWP on July 1, 2023.

Speaking on the impact and costs of affiliation, the Planning and Research Officer stated 167 positions became eligible for coverage, moving approximately \$9.8 million in total payroll from KPERS to KP&F. Impacted members will keep their existing KPERS service as of July 1, 2023, after which time they would begin earning KP&F service. KPERS and KP&F service are combined for vesting and retirement eligibility calculations. Responding to a question on retirement benefits for newly affiliated members, the Executive Director indicated they would receive retirement benefits for both KPERS and KP&F. As an employer, KDWP is required to pay \$2.7 million in unfunded actuarial liabilities for KPERS benefits earned by the group of impacted employees, \$1.5 million of which was paid on July 1, 2023.

KPERS Board Guidelines—Proxy Voting; Investment Criteria; Foreign Adversary Investments

HB 2100 established requirements for a proxy voting advisor and established restrictions on ESG criteria. Speaking on implementation, the Planning and Research Officer said the Retirement System’s Statement of Investment Policy, Objectives, and Guidelines (IPS) was updated to align with, and add definitions contained within, the bill, including social, political, or ideological interests (SPI).

Proxy voting. HB 2100 required engagement of a proxy voting advisor to manage and vote the Retirement System’s proxy ballots—a role previously held by investment managers. Subsequent to passage of the bill, the Board hired Egan-Jones as the System’s proxy voting advisor, which began operations on July 1, 2023.

Investment criteria. Pursuant to the bill, KPERS also updated the IPS such that managers under consideration for hire must provide certain written disclosures, including to act only upon financial factors when discharging their duties on behalf of the Retirement System’s asset and to report non-compliance with HB 2100 within ten days of discovery.

Foreign adversary investments. “Foreign adversary,” as defined in the The Code of Federal Regulations (15 CFR 7.4), includes the People’s Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Russian Federation, and the Venezuelan regime of Nicolás Maduro. The CIO of KPERS indicated the Retirement System does not hold any investments in Cuba, Iran, and North Korea, nor is the Board aware of investments associated with the Maduro Regime. Further, in 2022, the Board directed KPERS to liquidate investments in Russian securities in a timely and prudent manner, and to ensure that no new investments in Russian securities are made by investment managers.

The CIO noted the System does have exposure to China and the Hong Kong Special Administrative Region, though the nature of that exposure has changed with enactment of HB 2100, which prompted the System to exit two international equity commingled investment trusts.

Currently, the System owns shares of 15 companies representing \$365 million, or 1.5 percent of total fund assets. No stocks owned by the System are traded on China’s A-share market, which represents companies incorporated in China with shares that trade in the Chinese Yuan. Additionally, the Board adopted new benchmarks to communicate updated risk and return preferences to investment managers. As of November 1, 2023, international equity managers are permitted to invest up to 25.0 percent of the portfolio in U.S. equities.

Working After Retirement

The Executive Director reviewed working after retirement implications and requirements, noting the waiting period and prohibition on prearrangements are in place to satisfy an Internal Revenue Service requirement that, for qualified

401(a) plans, a *bona fide* retirement must take place before distributions occur.

The requirements for KPERS-covered work positions (effective January 1, 2018) include:

- 180-day waiting period to return if younger than 62 years old and 60 days if 62 or older;
- No prearranged agreement to return;
- No earnings limitation on retirees returning to work; and
- Statutory KPERS contributions at the statutory rate for the first \$25,000 in earnings and 30.0 percent for all earnings above \$25,000.

The Executive Director then detailed two bills with legislative consideration that would change working after retirement policy.

HB 2195 would make an adjustment to existing working after retirement rules to raise the employer contribution threshold and waive the threshold for an 18-month period. The estimated cost on the bill, as introduced, is \$1.4 million annually for the employer contribution threshold and \$5.5 million to waive the threshold.

HB 2272 would add an exemption from employer contributions for retirees hired as licensed nurses or direct support workers at CDDOs. The Executive Director stated this would apply to approximately 50 positions each year.

Alternative Investments Cap

The Executive Director indicted the Board utilizes two investment strategies related to alternative investments: private equity (investments in funds that provide capital to companies that are not publicly traded on an exchange) and infrastructure (investments in funds that provide financing for physical assets such as roads, bridges, and telecommunications). With recent market volatility, the Retirement System's alternative investment portfolio reached 14.1 percent as of June 30, 2023.

In 1992, the Legislature statutorily defined alternative investments and set a cap of 10.0 percent of total investment assets of the KPERS Trust Fund. In 1993, the cap was reduced to 5.0 percent. From 2000 to 2002, steep declines in public equity markets caused the System's alternative investment portfolio to exceed the statutory 5.0 percent cap, prompting KPERS to stop allocations as required by statute.

In 2004, the Legislature changed the cap from 5.0 percent of total investments to 1.0 percent of annual commitments to alternative investments, after which point KPERS resumed allocations.

In 2012, the Legislature authorized annual new investments in the alternative investment portfolio, up to 5.0 percent of the total market value of total assets as measured from the preceding calendar year. Further, the Legislature added the current overall cap of 15.0 percent on total alternative investments as a percentage of total investments.

HB 2103 and SB 23 would remove the alternative investments cap on the KPERS Trust Fund and require the Board to establish such a limit. The Executive Director indicated delegating authority to the Board would allow for consideration of asset allocation strategies that would diversify the portfolio and insulate it from risk. The Executive Director noted all other current limitations (*e.g.*, at least two qualified institutional buyers, and any individual alternative investment cannot exceed more than 2.5 percent of the total alternative investments) would remain in place. Since the law became effective in 2012, the Board's strategic investment plan has increased the allocation to alternative investments to help increase returns while minimizing risk.

The Executive Director conveyed the Board's concerns that, as alternative investments approach the statutory cap, it will be limited in its ability to set future investments policies because of the cap. For example, new investments in private equity and infrastructure would stop and new commitments in those sectors could not be made. Further, the Executive Director noted losing access to the alternative investment asset class would increase overall risk by restricting the System's ability to diversify investments across economic cycles.

Cost-of-Living Adjustments

Representatives of public retirees provided testimony about cost-of-living adjustments (COLAs), which modify benefits to counteract the impact of economic changes, such as inflation.

A representative from the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association mentioned that in KPERS' first 36 years of existence, there were 16 *ad hoc* COLAs implemented and 5 one-time benefit payments to retirees, as well as a 13th benefit check paid to members from 1980 to 1987. The representative noted retirees' purchasing power from KPERS benefits since 1998, when the last permanent adjustment was made, has decreased by 47.0 percent; that is, \$100 in 1998 has the equivalent purchasing power as \$52.96 today. The representative also compared KPERS benefits with the Wichita Employees' Retirement System (WERS), which has similar benefits in relation to retirement benefit calculations but with an annual 2.0 percent COLA beginning 36 months after retirement.

A representative from the Kansas Coalition of Public Retirees and the Kansas Association of Retired School Personnel testified that the UAL is the primary reason why the cost of COLAs appears high and is the result of underfunding for 25 years, from 1994 to 2019.

KPERS 457 Deferred Compensation Plan

The Deferred Compensation Plan Officer for KPERS provided an overview of KPERS 457, which is a voluntary governmental 457(b) deferred compensation plan available to all state agencies. Currently, the KPERS 457 plan has over \$1.4 billion in assets, with approximately 61,000 eligible participants and 27,000 participants with a balance.

The Deferred Compensation Plan Officer noted the benefits of the plan to both employer and employee. For the employer, there is no cost to join and no minimum number of employees needed. Furthermore, KPERS handles the fiduciary duties normally borne by employers, and the Deferred Compensation Plan's service provider, Empower, handles communication and education services for participants. For employees, KPERS 457 offers lower administrative and

investment costs than other accounts. At retirement, employees may leave money in the plan, withdraw as needed, roll money into another retirement account, or receive scheduled withdrawals.

Special Topic—KPERS Tier 3

The Planning and Research Officer for KPERS provided an overview of the KPERS Tier 3 cash balance plan. In response to the 2008 recession and a 2011 study commission, the 2012 Legislature created a cash balance plan for members that begin employment on or after January 1, 2015. Differing from KPERS Tier 1 and 2 plan design, the KPERS Tier 3 plan is based on the member's contributions and earning retirement credits from the employer, which are tracked throughout the member's career. Interest is applied to the two accounts, and the benefit is based on the total account balance at retirement and has nothing to do with the number of years worked or finalized average salary.

The two components of interest credited under the cash balance plan are the guaranteed portion and the dividend. The guaranteed interest credit rate on the member and employer accounts is 4.0 percent, and the discretionary dividend credit is a dividend design (KSA 74-49,306) equal to 75.0 percent of the five-year average net compound rate of return above 6.0 percent, as determined by the Board for the calendar year and the four preceding years. [Note: Since 2015, the Tier 3 plan serves as the primary retirement plan for new KPERS members. Some employees in corrections positions continue to be enrolled in KPERS Tier 2.]

The Planning and Research Officer noted CY 2023 was the eighth year of the KPERS Tier 3 plan. The dividend is reviewed by the Board each March, and over the first eight years of KPERS Tier 3, the formulaic interest dividend credit has applied four times. Increases occurred in CYs 2017 (1.1 percent), 2019 (0.825 percent), 2020 (2.475 percent), and 2021 (3.525 percent).

Adequacy from Stakeholders

A representative from the Kansas National Education Association (KNEA) characterized KPERS Tier 3 benefits as "tremendously inadequate," particularly with regard to income

replacement ratios and COLAs. The representative indicated the current benefit structure hampers teacher recruitment and retention and is in need of reform. Accordingly, the representative requested hearings and action on KPERS Tier 3 reform and COLAs.

A representative from the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association highlighted critical shortages in recruiting and retaining dispatchers and jailers, particularly due to low pay and inadequate benefits. Comparing benefits across KPERS plans, the representative requested an end to KPERS Tier 3 in its current form, preferably with a return to KPERS Tier 2.

A representative from the Riley County Clerk's Office shared accounts from two retirees, describing their experiences with KPERS retirement benefits. The representative also indicated they do not use KPERS Tier 3 as a recruitment and retention tool when engaging with employees, partly due to the difficulty of understanding and educating on the plan.

Review of Alternatives

The Executive Director of KPERS provided a comparison of general plan design components in defined benefit, defined contribution, and cash balance plans. In particular, he indicated the KPERS Tier 3 cash balance plan design has three components that can be adjusted to enhance benefits: increasing interest crediting, increasing employer credits, and increasing annuity rates.

Additionally, the Executive Director noted two pending bills that could serve as potential alternatives to the current KPERS Tier 3 plan.

SB 230 would create a defined contribution plan modeled on the federal Thrift Savings Plan for all new KPERS-eligible employees on July 1, 2025. Existing members would have the option to switch from their current plan into the new defined contribution plan. Key features of the plan would include:

- Mandatory 6.0 percent employee contribution;

- Optional employee contributions ranging from 1.0 to 10.0 percent;
- Base employer contributions of 4.0 percent;
- Additional employer contributions of 0.5 or 1.0 percent if the employee is making optional contributions;
- Additional employer contributions to the UAL of existing plans;
- Ability to withdraw or roll over contribution accounts and interest after termination or retirement;
- Annuity options from an insurer at retirement, as an alternative to 100.0 percent lump sum distributions; and
- The opportunity to elect into the Thrift Savings Plan, if allowed by the Internal Revenue Service.

HB 2365 would close the KPERS Tier 3 cash balance plan. New members after July 1, 2024 would be enrolled in KPERS Tier 2 and existing active KPERS Tier 3 members would be converted to KPERS Tier 2 by January 1, 2024.

CONCLUSIONS AND RECOMMENDATIONS

The Committee submits the following comments and recommendations:

- **Joint Select Committee.** The Committee recommends that legislative leadership establish a joint Select Committee to evaluate KPERS Tier 3 and whether it is adequately meeting the needs of employees and employers;
- **Alternative Investment Cap Removal.** The Committee recommends passage of legislation to address the present alternative investment cap on the KPERS Trust Fund and the delegation of authority on the Board to establish a cap. The

Committee also recommends the bill be effective upon its publication in the *Kansas Register*;

- **Working After Retirement.** The Committee recommends the appropriate standing Committees review working after retirement rules, including the statutory prescribed waiting lists, the employer contribution rates and the compensation threshold specified, and the current minimums prescribed for covered employees (school and non-school employers);

- **Cost-of-Living Adjustments.** The Committee recommends the appropriate standing Committees review COLAs, including input from stakeholders and the fiscal impact of implementing a COLA; and

- **Extraordinary KPERS Payment.** The Committee recommends appropriations committees review using some of the projected SGF surplus ending balance to make additional contributions toward the reduction of KPERS UAL.

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Report of the Joint Committee on State Building Construction to the 2024 Kansas Legislature

CHAIRPERSON: Representative Bill Sutton

VICE-CHAIRPERSON: Senator Carolyn McGinn

RANKING MINORITY LEADER: Senator Marci Francisco

OTHER MEMBERS: Senators Rick Billinger, J.R. Claeys, and Usha Reddi; and Representatives John Alcalá, Avery Anderson, Leo Delperdang, and Jarrod Ousley

CHARGE

Study, Review, and Make Recommendations on Capital Improvement Expenditures and Other State-owned Properties and Leases

The Committee is authorized by KSA 46-1701, which includes provisions allowing the Committee to meet on call of its chairperson at any time and any place within the state and to introduce legislation. The Committee is authorized to study, review, and make recommendations on all agency five-year capital improvements plans, leases, land sales, and statutorily required reports by agencies, and to travel throughout the state to observe state-owned buildings.

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Joint Committee on State Building Construction

ANNUAL REPORT

Conclusions and Recommendations

All five-year capital improvement plans were reviewed and recommended by the Committee with the following additional recommendations:

- Department of Labor – Inspection of the cast-iron piping at the 401 SW Topeka Blvd. building in Topeka should be completed earlier if funding is available;
- Kansas State School for the Deaf – Recommendation of the two supplemental requests of \$320,000 from the State Institutions Building Fund, with \$100,000 for utility service tunnel repairs and \$220,000 for elevator safety and code-required upgrades; and
- Department of Corrections – Support for the passage of 2023 SB 275, which is currently in the Senate Committee on Ways and Means, that would increase the moneys allocated to the Correctional Institutions Building Fund from lottery revenues.

Proposed Legislation: None.

BACKGROUND

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

The Committee was expanded from six members to ten members by 1999 HB 2065. Currently, it is composed of five members of the Senate and five members of the House of Representatives. Two members each are appointed by the Senate President, Senate Minority Leader, Speaker of the House of Representatives, and House Minority Leader.

The Chairperson of the Senate Committee on Ways and Means and the Chairperson of the House Committee on Appropriations serve on the Committee or appoint a member of such committee to serve (KSA 46-1701).

The Committee may meet at any location in Kansas on call of the Chairperson and is authorized to introduce legislation (KSA 46-1701).

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

Each state agency budget estimate for a capital improvement project is submitted to the Committee, the Division of the Budget, and the State Building Advisory Commission by July 1 of each year. Each

estimate includes a written program statement describing the project in detail (KSA 75-3717b). The budget estimate requirement does not apply to federally funded projects of the Adjutant General's Department or to projects for buildings or facilities of the Kansas Correctional Industries of the Department of Corrections that are funded from the Correctional Industries Fund. In those instances, the Adjutant General reports to the Committee each January regarding federally funded projects, and the Director of the Kansas Correctional Industries advises and consults with the Committee prior to commencing such projects for the Kansas Correctional Industries (KSA 75-3717b and 75-5282).

The Secretary of Administration issues monthly progress reports on capital improvement projects, including all actions relating to change orders and changes in plans. The Secretary of Administration is required to first advise and consult with the Committee on each change order or change in plans that increases project cost by \$125,000 or more, prior to approving the change order or change in plans (KSA 75-1264). Similar requirements were prescribed in 2002 for projects undertaken by the State Board of Regents for research and development facilities and the state educational facilities (KSA 76-786).

If the Committee will not be meeting within ten business days, and the Secretary of Administration determines it is in the best interest of the State to approve a change order or change in plans with an increase in project costs of \$125,000 or more, KSA 75-1264(d) provides an alternative method for achieving approval by the Committee. A summary description of the proposed change order or change in plans is transmitted to each member of the Committee, and a member may request a presentation of the proposal at a meeting of the Committee. If, within seven business days of the date the notice was transmitted, two or more members notify the Director of Legislative Research of a request to have a meeting on the matter, the Director will notify the Chairperson, and the Chairperson will call a meeting as soon as possible. At that point, the Secretary of Administration is not to approve the proposed action prior to presentation of the matter at a meeting of the Committee. If fewer than two members request the proposed matter to be heard by the Committee, the Secretary of Administration is deemed to have advised and consulted with the Committee and may

approve the proposed change order or change in plans.

The "comprehensive energy bill," 2009 Senate Sub. for HB 2369, required the State to establish energy-efficient performance standards for state-owned and -leased real property and for the construction of state buildings. State agencies are required to conduct energy audits at least every five years on all state-owned property, and the Secretary of Administration is prohibited from approving, renewing, or extending any building lease unless the lessor has submitted an energy audit for the building or it is not economically feasible to conduct such energy audit (KSA 75-37,128).

Each year, the Secretary of Administration is required to submit a report to the Committee that identifies properties where an excessive amount of energy is being used (KSA 75-37,128).

COMMITTEE ACTIVITIES

The LCC approved three meeting dates for the Committee during the 2023 Interim. The Committee met June 14, September 20, and December 12, 2023. During those meetings, the Committee reviewed all agency five-year capital improvement plans; received the Department of Transportation's Excess Right-of-Way Annual Report; reviewed three building sales, two land sales, and three change orders over \$125,000; received an update on construction of a building to house the Kansas Department of Health and Environment (KDHE) laboratory; and received an update on the demolition of the Docking State Office Building.

Presentation of Five-year Capital Improvement Plans

Kansas State Fair. An agency representative presented the five-year capital improvement plan and discussed the increased costs for re-purposing the Bison Arena. Other projects included the race track and interior roads at the fair grounds.

Kansas State Historical Society. An agency representative presented the five-year capital improvement plan, including the annual State General Fund (SGF) appropriation the agency receives for

emergency repairs and annual maintenance issues. Two enhancements will be requested of the Legislature, including new roofs for the Shawnee Indian Mission State Historic site and an upgrade of the air handling units and chiller at the main facility in Topeka.

Department of Labor. An agency representative presented the five-year capital improvement plan, which included renovations to the Eastman Center. The representative stated the agency is transitioning from an internal mail handling system to using central mail, and the agency will sell the building that was used for mail handling. The major projects discussed included replacement of the air conditioning, boiler replacement, new windows, tuckpointing, and replacing cast-iron pipes because of rust.

Kansas State School for the Blind. A representative from the agency sorted projects into four major sections: safety and security, HVAC, rehabilitation and repair, and renovation. Renovation projects include elevators, the gym floor, track stabilization, a dormitory remodel, and electrical upgrades.

Kansas State School for the Deaf. The agency representative discussed two supplemental requests. Due to humid weather, there was a mechanical failure allowing water to destroy computers, an elevator, and an HVAC system. The other request is for a major upgrade of the electrical system.

Department of Administration. A representative of the agency reviewed the five-year capital improvement plan for the Capitol Complex. Discussion included the Statehouse, since renovation was completed in 2014.

Department of Health and Environment Laboratory. Historically, the agency does not produce a five-year capital improvement plan because maintenance of the current laboratory falls under the Department of Administration. The agency did submit a five-year plan solely for the construction of the new laboratory. Once the new laboratory is in need of routine maintenance, the Department of Administration will cover the costs in its five-year plan.

Department of Commerce. A representative of the agency provided information on projects at the Topeka Workforce Center, which included modernization of the staff elevator, installation of a new HVAC system, and replacement of windows and doors.

Kansas Department for Aging and Disability Services. A representative from the agency presented the five-year capital improvement plan, which covered the agency and the four state mental hospitals. There was discussion on demolition of old buildings at two of the state hospitals. There was also discussion of a solar panel field at Osawatimie State Hospital being transitioned from the City to Evergy.

Judicial Branch. A representative from the agency discussed three projects, which included the library and learning center, a remodel of the Court of Appeals, and a reconfiguration of the lower level with the Judicial Council relocation.

Department for Children and Families. A representative of the agency discussed repair projects at the Topeka Service Center.

Department of Wildlife and Parks. A representative of the agency discussed maintenance of parks, public lands, fish and wildlife management areas, dams, wetlands development, boating access, shooting ranges, road and bridge maintenance, and river access. There was significant discussion on the roles of both the Department of Transportation and the Department of Wildlife and Parks on road maintenance and which agency is responsible for which roads. There was also discussion on land acquisition from private land owners and what restrictions are in statute.

Department of Transportation. Representatives for the agency provided information on the age of many buildings that need to be replaced because of access or size of equipment for road construction and maintenance. Due to larger equipment, the buildings need to be increased in size including the door height. There was also discussion on the geodesic dome-style buildings, which were cheaper to build but are more costly to maintain; therefore, this style of building is being phased out.

Kansas Bureau of Investigation. A representative of the agency provided information on the three properties in Topeka and one property in Great Bend the agency owns and maintains. They also discussed the Bureau’s collaboration with the City of Pittsburg, the Federal Bureau of Investigation, Kansas Highway Patrol, and Pittsburg State University on a new crime lab on the University’s campus.

Kansas Highway Patrol. An agency representative discussed the 12 facilities the agency owns and maintains. Repairs have been completed on the Training Center in Salina that was damaged during a wind storm in 2021. The five-year plan projects are sorted into four categories, which include the Troop J Training Academy, Troop facility, Troop I scale house, and new construction. There was discussion on a collaboration with the City of Hays for a new hangar at the Hays Regional Airport to house the agency’s two aircraft.

Adjutant General’s Department. An agency representative discussed maintenance projects in the four regions across the state. The agency is currently working on energy resilient projects, which means they can operate for 14 days in the event of a service disruption and withstand winds up to 250 mph.

Kansas Commission on Veterans Affairs Office. A representative from the agency discussed the maintenance at the veterans’ homes across Kansas. The agency representative also shared with the Committee the floor plan for the new veteran’s home to be built in Topeka.

Department of Corrections. The Secretary of Corrections presented the agency’s five-year plan and asked for an increase of the share of gaming revenue that is deposited into the Correctional Institutions Building Fund to provide increased funding for rehabilitation and maintenance of all correctional facilities.

State Board of Regents. A representative for the State Board of Regents presented its five-year plan and discussed the funding the Legislature has provided the Board for demolition of buildings at the universities and asked that this funding continue.

University of Kansas. A representative for the University of Kansas presented its five-year plan. They discussed finalization of the master plan and aligning the plan with the “Jayhawk Rising” strategic plan.

University of Kansas Medical Center. A representative for the University of Kansas Medical Center presented its five-year plan. They discussed current demolition, HVAC, and boiler projects.

Kansas State University. A representative for Kansas State University presented its five-year plan. They discussed working on multiple projects as part of the 21st Century Learning Institute.

Wichita State University. A representative for Wichita State University presented its five-year plan. They discussed a large collaboration space project and data center that were completed this year, as well as additional collaborations with private partners on new buildings.

Emporia State University. A representative for Emporia State University presented its five-year plan. They stated the Nursing School will return to a campus location. They are also updating and consolidating chillers and the power plant to gain energy efficiencies.

Pittsburg State University. A representative for Pittsburg State University presented its five-year plan. They discussed roof and HVAC projects as well as additional partner projects on campus and in downtown Pittsburg.

Fort Hays State University. A representative for Fort Hays State University presented its five-year plan. They discussed parking lot replacements, HVAC upgrades, and projects in the Forsyth Library, the Coliseum, and Stroup Hall.

Building and Land Sales

A representative from the Department of Commerce presented details of the request to sell two buildings: the Dodge City Workforce Center and the Salina Workforce Center. The buildings were sold at separate auctions with the proceeds from the sales

going back to the agency, because the buildings were originally purchased with federal funding.

A representative from the Department of Administration presented a proposed land sale of an empty lot known as “Woodston” that is currently owned by Larned State Hospital. The State has an interested buyer, and the Governor agreed to the sale in September 2023.

A representative from the Department of Administration presented a proposed building sale at 417 SW Jackson St. in Topeka, currently owned by the Department of Labor. The building is no longer needed by the agency since they are transitioning mail services, and the Governor agreed to the sale in October 2023.

A representative from the Department of Administration presented a proposed land sale located in Pueblo, Colorado. The land is currently owned by the Department for Children and Families. The land was acquired as part of a deal for child support payments sometime in 1979. The Governor agreed with the Secretary of Administration’s recommendation and approved DCF to move forward with the proposed sale on November 13, 2023.

Change Orders over \$125,000

A representative from the Department of Administration presented a change order for the Adjutant General’s Hiawatha Readiness Center to replace boilers. During the replacement process, additional problems with piping, leaks, and mold were discovered.

A representative from the Department of Administration presented a change order for the Adjutant General’s Joint Force Headquarters in Topeka. The change includes additional build-out of offices on the second floor.

A representative from the Department of Administration presented a change order for the Department of Corrections for additional work on a new water loop system to the Topeka Correctional Facility to maintain water to the facility.

Additional Presentations

Additional information on construction projects was presented to the Committee, including:

- An Adjutant General’s Department representative provided an update on the construction at the Hays Readiness Center;
- A Department of Transportation representative provided an update on the new District One Headquarters in Topeka. There was discussion on the reuse of the sunflower medallion from the current location and material from the Docking State Office Building deconstruction; and
- A Department of Administration representative provided an update and tour of the Docking State Office Building deconstruction and the Department of Health and Environment laboratory construction.

CONCLUSIONS AND RECOMMENDATIONS

All five-year capital improvement plans were reviewed and recommended by the Committee with the following additional recommendations:

- Department of Labor – Inspection of the cast-iron piping at the 401 SW Topeka Blvd. building in Topeka should be completed earlier if funding is available;
- Kansas State School for the Deaf – Recommendation of the two supplemental requests of \$320,000 State Institutions Building Fund, with \$100,000 for utility service tunnel repairs and \$220,000 for elevator safety and code-required upgrades; and
- Department of Corrections – Support of the passage of 2023 SB 275, which is currently in the Senate Committee on Ways and Means, that would increase the moneys allocated to the Correctional Institutions Building Fund from lottery revenue.

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Report of the Joint Committee on State-Tribal Relations to the 2024 Kansas Legislature

CHAIRPERSON: Senator Larry Alley

VICE-CHAIRPERSON: Representative Will Carpenter

RANKING MINORITY MEMBER: Senator Tom Holland

OTHER MEMBERS: Senators Elaine Bowers, David Haley, and Dan Kerschen; and Representatives John Alcalá, Christina Haswood, and Sean Tarwater

CHARGE

Review and Propose Gaming Contracts, Hold Hearings and Discuss Issues Concerning State and Tribal Relations

The Committee is directed by KSA 2022 Supp. 46-2303 to meet and hold hearings on issues concerning state and tribal relations; consider and recommend modification of proposed gaming compacts; and introduce resolutions approving submitted gaming compacts, with or without recommendation.

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Joint Committee on State-Tribal Relations

REPORT

Conclusions and Recommendations

The Joint Committee on State-Tribal Relations recommended the approval of the proposed amendment to the Prairie Band Potawatomi Nation-Kansas Gaming Compact and introduced resolutions to that effect. [Note: On April 28, 2023, those resolutions were adopted: SR 1725 was adopted by the Senate, and HR 6026 was adopted by the House of Representatives.]

Proposed Legislation: None.

BACKGROUND

The Joint Committee on State-Tribal Relations (Committee), created in 1993, is required by KSA 2022 Supp. 46-2303 to:

- Recommend modification of proposed gaming compacts and introduce resolutions approving proposed gaming compacts submitted by the Governor and recommend that such resolutions be adopted or be not adopted, or report such resolutions without recommendation, and notify the Governor, in writing, of the Committee's action; and
- Meet, discuss, and hold hearings on issues concerning state and tribal relations.
- KSA 2022 Supp. 46-2303 authorizes the Committee to:
- Establish and transmit to the Governor proposed guidelines reflecting the public policies and state interests, as embodied in the constitution, statutes, and case law of the State of Kansas, consistent with the Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*), that the Committee will consider in reviewing proposed compacts;
- Recommend to the Governor that any gaming compact provide for the imposition and collection of state sales

and excise taxes on sales of nongaming goods and services to persons other than tribal members and imposition and collection of state income tax on revenues derived from sales of nongaming goods and services;

- Hold public hearings on proposed gaming compacts submitted to the Committee by the Governor;
- Make recommendations on issues concerning state and tribal relations;
- Introduce legislation as deemed necessary in performing its functions; and
- Meet at any time and place within the state on the call of the chairperson.

[Note: This committee did not meet during the 2023 interim. A report is submitted to reflect CY2023 activities.]

COMMITTEE ACTIVITIES

April 25, 2023

A representative of the Office of the Governor called the organizational meeting of the Committee to elect the Committee's leadership, pursuant to KSA 2022 Supp. 46-2303. The

Committee elected a chairperson, vice-chairperson, and ranking minority member.

April 27, 2023

The Committee met to consider a proposed amendment to the gaming compact between the Prairie Band Potawatomi Nation (Nation) and the State of Kansas.

Review of Proposed Amendments

The Chief Counsel, Office of the Governor, explained that the Committee and Legislature may not amend or otherwise modify the proposed gaming compact. The Chief Counsel also stated the Nation made a request to the Governor to reopen the gaming compact in 2022 after the enactment of 2022 SB 84, which legalized sports wagering in Kansas. He said the Kansas State Gaming Agency worked with the Nation to review the provisions of the compact, and the Nation agreed to propose an amendment to the compact to allow the Nation to conduct sports wagering.

The Chief of Staff, Office of the Governor, stated the agreement was specific to the Nation, and there would be separate compact agreements for each of the other tribes. The Chief of Staff also discussed federal litigation concerning remote sports wagering outside of a tribe's reservation lands, and he stated the Nation would wait for a ruling in those cases before proceeding with remote sports wagering.

Review of Committee Statutory Responsibilities

A Senior Assistant Revisor of Statutes, Office of Revisor of Statutes, reviewed a memorandum discussing the statutory provisions governing the Committee's review of gaming compacts. The Senior Assistant Revisor stated the Committee could take one of four actions:

- Recommend changes to the proposed gaming compact;
- Approve the proposed gaming compact;

- Reject the proposed gaming compact; or
- Report the proposed gaming compact to the Legislature without recommendation.

The Senior Assistant Revisor noted the statute prohibits the Governor, or the Governor's designee, and the Attorney General, or the Attorney General's designee, from voting on any motion to approve, reject, or report the proposed gaming compact without recommendation.

A representative of the Office of the Attorney General explained the role of the Attorney General during the course of negotiating the compact and the Committee's consideration of the compact. The conferee also discussed federal litigation concerning remote sports wagering.

Final Comments by the Nation

Outside Counsel for the Nation recognized dignitaries present during the Committee's meeting and provided comments on the proposed gaming compact amendment. Counsel stated the Nation would like to have remote sports wagering but was waiting for the disposition of the federal litigation before proceeding. Counsel noted the Nation would be able to engage in brick-and-mortar sports wagering as soon as the proposed gaming compact amendment was approved.

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee on State-Tribal Relations recommended the approval of the proposed amendment to the Prairie Band Potawatomi Nation-Kansas Gaming Compact and introduced corresponding resolutions to provide legislative approval of the amendment to the compact.

[*Note:* On April 28, 2023, those resolutions to approve the proposed amendment were adopted: SR 1725 was adopted by the Senate, and HR 6026 was adopted by the House of Representatives.]

Report of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight to the 2024 Kansas Legislature

CHAIRPERSON: Senator Beverly Gossage

VICE-CHAIRPERSON: Representative Brenda Landwehr

OTHER MEMBERS: Senators Molly Baumgardner, Michael Fagg, Pat Pettey, and Mark Steffen; and Representatives Barbara Ballard, Emil Bergquist, Will Carpenter, Susan Concannon, and Susan Ruiz

CHARGE

Oversee Long-term Care Services and KanCare

KSA 2022 Supp. 39-7,160 directs the Committee to oversee long-term care services, including home and community based services (HCBS). The Joint Committee is to oversee the savings resulting from the transfer of individuals from state or private institutions to HCBS and to ensure that any proceeds resulting from the successful transfer be applied to the system for the provision of services for long-term care. Further, the Committee is to oversee the Children's Health Insurance Program, the Program of 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.

December 2023

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

ANNUAL REPORT

Conclusions and Recommendations

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

- The Kansas Department for Aging and Disability Services (KDADS) report to the 2024 Legislature and the Committee on mobile competency pilot projects, including input from representatives from the counties participating in the pilot projects on best practices for outpatient forensic competency evaluation and treatment;
- KDADS and the certified community behavioral health clinics report to the 2024 Legislature and the Committee on the availability of crisis services or other community-based services that could be provided to patients waiting in emergency departments, acute in-patient hospitals, or other settings for admission to a state hospital or state institution alternative hospital;
- If there is a report from the Special Committee on Child Care Centers and Child Care Homes to the 2024 Legislature, the report should also be directed to the Committee and presented at the next available quarterly meeting after the report is published;
- The Children’s Health Insurance Program eligibility income guidelines be amended in statute, as currently described in 2023 HB 2050;
- The House Committee on Social Services Budget work with the Kansas Department of Health and Environment and stakeholders to include coverage for adult dental exams and cleanings in KanCare;
- The Elder Count and Long-Term Care Resource Guide be updated, maintained, and made available to the public digitally; and
- The Community Support Waiver be implemented.

Proposed Legislation: None.

BACKGROUND

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

pursuant to KSA 2022 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 (LTC) services, including HCBS, which are to be provided through a comprehensive and coordinated system throughout the state. The system, in part, is designed to emphasize a delivery concept of self-direction, individual choice, services in home and community settings, and privacy. The Committee also oversees the Children's Health Insurance Program (CHIP), the Program for All-Inclusive Care for the Elderly (PACE), and the state Medicaid programs.

The Committee is composed of 11 members: 6 from the House of Representatives and 5 from the Senate. Members are appointed for terms that coincide with their elected or appointed legislative terms. The Committee is statutorily required to meet at least once in January and once in April when the Legislature is in regular session and at least once for two consecutive days during both the third and fourth quarters, at the call of the chairperson. The Committee is not to exceed six total meetings in a calendar year; however, additional meetings may be held at the call of the chairperson when urgent circumstances require such meetings.

In its oversight role, the Committee is to oversee the savings resulting from the transfer of individuals from state or private institutions to HCBS and to ensure proceeds resulting from the successful transfer be applied to the system for the provision of services for LTC and HCBS, as well as to review and study other components of the State's LTC system. Additionally, the Committee is to monitor and study the implementation and operations of the HCBS programs, CHIP, PACE, and the state Medicaid programs, including, but not limited to, access to and quality of services provided and financial information and budgetary issues.

As required by KSA 39-7,160, 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. [*Note:* See Appendix A for the 2023 report.]

The report also is to include information on the KanCare Program regarding:

- Quality of care and health outcomes of individuals receiving state Medicaid services under KanCare, as compared with 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, with the actual costs expended under the provision of state Medicaid services prior to January 1, 2013, including the manner in which such cost expenditures are calculated;
- Comparison of the estimated costs expended in a managed care system

providing state Medicaid services before January 1, 2013, with 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.

In developing its 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 LTC system to the Governor and the Legislature during the first week of each regular session.

COMMITTEE ACTIVITIES

The Committee met twice during the 2023 Session (February 3 and April 21) and twice during the 2023 Interim (August 2-3 and October 11-12). In accordance with its statutory charge, the Committee's work focused on specific topics described in the following sections.

KDHE KanCare Overview and Update

At the February 3, April 21, and August 2-3, 2023, meetings, the Secretary of Health and Environment (Secretary, in the KDHE portion of this report) provided an overview of the agency as part of the KDHE update.

At the August 2-3, 2023, meeting, the Secretary provided a review of the May 2022 home health regulations, as well as a timeline. She noted issues with the regulations as follows: categorization of HCBS providers, licensing fees,

supervision of home health aides, and the operational and financial implication for home health provider agencies. She also noted some statutory changes may be needed to resolve the issues, but the time frame of when the statutory changes recommendations would be ready was not certain. Additionally, she advised that the enforcement of certain regulations is limited due to changes in the industry and that both federal and state regulations apply.

At the October 11-12, 2023, meeting, the Secretary provided an update on the expiration of the current MCO contracts and the initiation of a request for proposal (RFP).

KanCare Updates

At each of the quarterly meetings, a representative of KDHE provided updates on KanCare. The KanCare Executive Summary for the prior quarter was provided as well. The quarterly reports include MCO profit and loss summaries, as well as a variety of data points.

At the August 2-3, 2023, meeting, a representative of KDHE stated the count of KanCare beneficiaries is increasing with a current average enrollment of 499,865. A KanCare member enrollment breakdown by MCO was provided. The representative reviewed various data points, including processed and denied claims and the ratio of denied claims to total claims for the period of January to May 2023; a comparison among MCOs regarding clean claims processed within 30 days; claims processed within 60 and 90 days; and the profit and loss filings for the MCOs for FY 2023.

At the October 11-12, 2023, meeting, a representative of KDHE reported the number of KanCare beneficiaries continues to decrease as a result of the unwinding from the termination of the public health emergency (PHE). The representative reviewed various data points, including MCO data regarding processed and denied service claims and those considered "clean" claims, as well as the profit and loss statements of the MCOs.

1115 Waiver Renewal

At the February 3, 2023, meeting, a representative of KDHE reported the State had

submitted its application for renewal of a waiver under Section 1115 of the Social Security Act (1115 waiver) on December 28, 2022. The federal public comment period for the application was scheduled to end February 4, 2023. The representative reviewed the planned next steps by the agency, which included completing the development of the companion Section 1915(b) waiver and state plan amendments (SPAs) to be submitted to the Centers for Medicare and Medicaid Services (CMS) by July 2023. Pending CMS approval, the go-live date for the 1115 waiver renewal, 1915(b) waiver, and SPAs is January 1, 2024.

Adult Dental Coverage

At the October 11-12, 2023, meeting, a representative of KDHE provided an overview of adult dental coverage in KanCare. The representative noted the feedback from adults with KanCare coverage is they are having difficulty finding a dentist. KDHE conducted research in 2023 to determine the root cause and found the members may need more intensive services due to inconsistent dental care; the codes used most often with Medicaid have very low reimbursement rates in relation to the amount of dentist time involved; and most Kansas Medicaid reimbursement rates are far below those of any other payor. The representative noted it would cost \$35.5 million all funds to bring KanCare's current dental rates up to the 10th percentile of national payor rates, according to American Dental Association data. The representative stated KDHE is focusing on enhancing reimbursement rates for the 20 most impactful dental services codes.

Changes to Medicaid Eligibility

At the February 3, 2023, meeting, a representative of KDHE reviewed the changes to Medicaid eligibility as a result of the federal consolidated Appropriations Act of 2022 (Omnibus Bill). The representative noted that the bill set March 31, 2023, as the end of continuous eligibility requirements. The representative said the states have 12 months to initiate a review of all Medicaid recipients to determine if they remain eligible, but also noted that terminations may not occur before April 1, 2023, unless the beneficiary moves away from Kansas, dies, or asks to terminate coverage. The representative clarified that the reviews would be conducted as they were

prior to the PHE. The representative noted the reviews will not occur on the prior review date, as each time the PHE was extended, the review was moved by four months.

The representative stated the first notices for redeterminations would be issued the week of March 13, 2023, and time is included for the response. She noted that if a response is not received timely, a discontinuance would run April 1 with coverage ending May 1.

At the April 21, 2023, meeting, a representative of KDHE provided an overview and timeline of the redetermination process. The representative reported members have until the 15th of the month after the review is mailed to them to return the completed and signed renewal forms to KDHE. If the member has an online account, the forms may be submitted online.

If the member is determined eligible, the effective date would be the first of the month following the review date. An example was provided: forms are mailed to the member on March 13, the member has until April 15 to return the completed forms to KDHE, and if the member remains eligible, there is not a break in coverage. If the member does not return the forms in a timely manner, coverage would end May 1.

The representative noted a reconsideration window is available for the succeeding 90 days in which members who fail to return the forms by the deadline have the following 3 months to submit them and, if determined eligible, the effective date of eligibility is backdated. Members who do not complete the forms in a timely manner are sent a letter advising them of the reconsideration period.

The representative stated the redetermination deadline is set by federal guidelines, and the March 2024 deadline to complete Medicaid unwinding does not include the reconsideration period.

At the August 2-3, 2023, meeting, a representative of KDHE provided an overview of the Medicaid redetermination process. The representative stated monthly renewal volumes have fluctuated, with the first four months having the highest volume. In the first four months, 48 percent of renewals occurred, primarily because

referrals are being processed chronologically. The representative reviewed how a renewal is processed during the reconsideration period. The representative shared the referral form for most applicants is 8–10 pages, and the maximum page count is 15, noting the signature requirement is in the middle of the application form. The agency is considering reorganizing the form. The representative also shared that the approval number of 29,000 out of 275,000 individuals is due to timing, as some renewals had just been sent out and some were in the 90-day return window.

The representative provided an overview of the lessons learned by the agency from the first months of the unwinding. The representative noted challenges with postal service delays, which the agency has addressed by changing the timing in future renewal cycles to allow for proper notice; challenges with renewal forms being returned unsigned and having to be sent back out for signature, which the agency has addressed by changing the timeline to allow sufficient time for forms to be returned signed; challenges with the increase in call volumes exceeding projections, which the agency has addressed by hiring additional staff; and the challenge regarding mail backlogs, which the agency addressed by purchasing additional scanners.

The representative provided unwinding data as of July 18, 2023, noting the number of notices sent, individuals approved, individuals discontinued, and individuals in the 90-day window for review. The representative advised of some agency-identified influences on the data that may cause discrepancies in the data, noting specifically the passive renewal process, a newer workforce inexperienced in passive renewals, and variations in how states in general are dealing with redeterminations.

The representative clarified the redetermination process includes referring individuals to the Marketplace after a non-renewal. Additionally, KDHE works with the MCOs to encourage members to go to the Marketplace on their own.

The representative stated roughly two-thirds of all individuals who are disenrolled from Medicaid are children. The representative noted children are transitioning from Medicaid to the CHIP program,

as some children may not be eligible for Medicaid but are eligible for CHIP. CHIP eligibility is dependent on the parent's income.

At the October 11-12, 2023, meeting, a representative of KDHE noted the redetermination or unwinding is impacting 121 adults in every 10,000. The representative provided an update on changes in the passive renewal process, explaining the automatic data income match is for each member, rather than the household. It is estimated this change will positively impact 10,000 Medicaid members who have lost eligibility.

CMS Medicaid and CHIP Core Set Reporting Final Rule

At the October 11-12, 2023, meeting, a representative of KDHE explained the CMS Medicaid and CHIP Core Set Reporting Final Rule as introducing quality measures for Medicaid and Home Health recipients to assure improved quality of health care. The rule will require collection and reporting of additional data. The additional data will provide information regarding the various Medicaid populations and the medical need of the populations approved for Medicaid. Additional details on the data to be collected will be provided at a later date.

Durable Medical Equipment

At the April 21, 2023, meeting, a representative of KDHE stated KDHE is investigating an increase in the reimbursement rate for durable medical equipment (DME) prosthetics, orthotics, and supplies from the current rate of 65 percent of Medicare to 80 percent of Medicare. The representative noted more advanced DME is manually priced. The representative highlighted the need for Legislative approval to increase the DME reimbursement. The representative clarified the DME rate increase could not be put in the caseload estimating process because of the expense and would result in a large rate increase for items that are not federally mandated through the caseload process.

Extended Postpartum Coverage and Medicaid Births

At the February 3, 2023, meeting, a representative of KDHE stated the Medicaid postpartum extension required three SPAs. The

SPAs were approved in August 2022 but were backdated to April 1, 2022. The extension will provide Medicaid coverage for 12 months postpartum.

At the April 21, 2023, meeting, a representative of KDHE confirmed the effective date for Medicaid postpartum extension was April 1, 2022. The representative stated KDHE continued to explore opportunities to improve infant and maternal health outcomes by studying ways to address challenges, including improving the rates paid to obstetricians and gynecologists (OB/GYNs) for prenatal, delivery, and postpartum care, and adding doula coverage.

The representative clarified the OB/GYN rate would apply to any provider who bills for the OB/GYN code, which could include midwives. KanCare covers about 40 percent of the total number of births, approximately 10,000 to 15,000 babies annually.

At the August 2-3, 2023, meeting, a representative of KDHE provided a review of data from the KDHE Division of Public Health's Natality Reports regarding the percentage of births in Kansas where the mother and newborn are covered by Medicaid. The percentage of births in Kansas where the mother was Medicaid-eligible, including cases where Medicaid was the primary payor and cases where the mother had other primary insurance, remains consistent at 40 percent. The percentage of births in Kansas where Medicaid is the primary payor remains consistent at around 30 percent.

Federal Medical Assistance Percentage Funding

At the February 3, 2023, meeting, a representative of KDHE highlighted that the increased federal medical assistance percentage (FMAP) funding due to continuous eligibility requirements would continue through the quarter in which the Public Health Emergency (PHE) ends. The representative provided a chart detailing the step-down time frame.

At the October 11-12, 2023, meeting, a representative of KDHE stated the agency did not have the data regarding the FMAP dollars received during the PHE versus how much was spent

during the same time period but would provide it at a later date.

Health Care Access Improvement Program

At the February 3, 2023, meeting, the representative of KDHE stated the Health Care Access Improvement Program (HCAIP) was operating and self-sustaining for the first time. CMS approval was received in October 2022, and the first quarterly payments were made in December 2022. The next quarterly payments would be made in February 2023. The representative clarified the new HCAIP design continued to meet the disbursement requirements of KSA 65-6218 to hospital providers and providers licensed to practice medicine and surgery or dentistry. The representative stated the amount for HCAIP with the assessments and the federal draw down is approximately \$450 million annually.

KanCare Clearinghouse

At the February 3, 2023, meeting, a representative of KDHE provided a status update regarding the Medicaid eligibility application process. The representative stated that, as of the meeting date, 7,137 applications were in-house. Of those applications, 537, or 8 percent, were more than 45 days old; 83 applications, or 1 percent, were more than 45 days in active status; and 454 applications, or 6 percent, were more than 45 days in pending status. The representative provided additional details regarding application type status and application processing times, and noted 23 vacancies in staff.

At the April 21, 2023, meeting, a representative of KDHE provided a status update regarding the Medicaid eligibility process. The representative stated there were 310 staff and 23 vacancies, a 7 percent vacancy rate. The representative provided the call center metrics and noted a 20 percent increase in call volume in March 2023 compared with February 2023.

At the August 2-3, 2023, meeting, a representative of KDHE provided charts to show a comparison of the Medicaid eligibility application status from 2020 and current rates. The representative reviewed call center metrics.

At the October 11-12, 2023, meeting, a representative of KDHE reviewed the call metrics for the Customer Service Center. The representative highlighted a reduction in the average call wait time from 2 hours to 43 minutes, but shared the goal for wait time is 1 minute.

MCO Contract Reprourement

At the February 3, 2023, meeting, the representative of KDHE noted that the current MCO contracts expire December 31, 2023, and will be extended to December 31, 2024. However, the representative stated the MCO contract extension process had not begun. The representative clarified that both CMS and the Department of Administration, Office of Procurement, had to approve the one-year extension. However, the representative highlighted that there is no option other than renewal, as the State cannot let MCO contracts lapse.

The representative further advised KDHE had a target date of mid-September 2023 to release the RFP for MCO contract reprourement.

At the April 21, 2023, meeting, the representative of KDHE stated the MCO contracts are to be extended to December 31, 2024; KDHE and KDADS hosted a series of input sessions in March and April 2023; and the target date for the RFP release remained late-September 2023.

At the August 2-3, 2023, meeting, a representative of KDHE provided an update on the procurement process, noting the input sessions have included legislators, providers, association representatives, advocates, and self advocates and were held over several months. The representative reviewed some of the themes among comments received during the stakeholder input sessions and noted the planned RFP release date remained late-September 2023.

At the October 11-12, 2023, meeting, the Secretary provided an update on the expiration of the current MCO contracts and the RFP that was released on October 2, 2023. The Secretary traced the timeline used by the agency for RFP development. She stated KanCare enhancements are measured by milestones and regular review of each enhancement.

Public Health Emergency

At the February 3, 2023, meeting, the representative of KDHE stated the PHE was scheduled to expire April 11, 2023, with a May 11, 2023, termination date. The representative stated the passage of the federal Consolidated Appropriations Act of 2023 decoupled the Medicaid continuous eligibility requirement from the PHE. The representative noted that as of April 1, 2023, KDHE would have authority to begin removing KanCare recipients who have become ineligible from the program. The representative highlighted that Kansas Medicaid continued to track the PHE closely, as the PHE governs the time periods states will be able to exercise disaster-related SPAs and certain HCBS waiver flexibilities.

Support and Training to Employ People Successfully Program

At the February 3, 2023, meeting, the representative of KDHE stated the Support and Training to Employ People Successfully Program (STEPS) had increased participation from 38 individuals in November 2022 to 50 individuals. The representative noted the program had received 200 referrals.

Workforce

At the August 2-3, 2023, meeting, a KDHE representative provided an update regarding the agency's recruitment efforts. The representative noted the agency began a small pilot program to recruit qualified staff from around the state, who will work 100 percent remotely, and workers to fill 15 full-time equivalent (FTE) positions had been hired to assist in the mail room.

At the October 11-12, 2023, meeting, a representative of KDHE reviewed the agency's recruitment efforts for vacant positions.

Working Healthy/Medically Needy

At the April 21, 2023, meeting, a representative of KDHE stated KDHE continues to look at changes to the Working Healthy (WH) program, which, in some cases, penalizes participants because of the monthly premiums that must be paid to keep Medicaid coverage if their earnings exceed 100 percent of the federal poverty level. The representative noted some WH

participants are considering moving to a waiver from the WH program because, due to the increase in the HCBS protected income limit (PIL) in 2021, the individual would have a \$0 monthly obligation under a waiver versus a monthly WH premium. The representative noted KDHE recommended increasing the threshold at which WH premiums must be paid to level the incentives with those of HCBS waivers. The representative also noted KDHE requested funding to offset lost premium through the spring caseload estimating process.

The representative provided information on the Medically Needy (MN) program and clarified federal regulations limit increases to the PIL. The PIL for the MN program is tied to the amount of money the State spends on Temporary Assistance for Needy Families (TANF). The MN PIL is currently 133 1/3 percent of the highest monthly TANF benefits payment for a household of two. The representative noted Medicaid expansion would be the most impactful way to make this change for the Medically Needy population.

At the August 2-3, 2023, meeting, a representative of KDHE provided an update on the MN program. The MN program provides Medicaid benefits to individuals whose income exceeds state Medicaid eligibility limits but meet additional criteria. The representative noted about 3,500 to 4,000 individuals participate in the MN program, and the number is increasing due to the unwinding process. The representative shared that KDHE has discussed with CMS options to increase the Medically Needy Income Limit (MNIL), which is linked to the income limit set by Aid to Families with Dependent Children in July 1996. The MN resource limit is \$2,000 for an individual and \$3,000 for a couple. The income limit for a single person is \$9,000. The representative noted the costs associated with increasing the MNIL would be subject to legislative approval via caseloads or the annual appropriations process. The representative clarified KDHE will rely on its actuaries to determine the possible cost to the State if income limits for the MN program were adjusted.

At the October 11-12, 2023, meeting, a representative of KDHE clarified the spend down for MN program, which is similar to an insurance deductible, is calculated based on an individual's current income. The representative reviewed that

the period of approval for the MN is 6 months so a member will have 2 spend down periods in a 12-month time frame, as well as an annual review. The representative clarified a spend down applies to when a medical expense was incurred by the member in the time frame, but it does not mean the medical debt was actually paid by the member in the time frame. The representative noted Medicaid will not pay the spend down medical expense if the member qualifies for Medicaid during the time period. KDHE utilizes a tracker for the spend down but is not familiar with community resources to assist individuals on the MN program in tracking the spend down.

KanCare Ombudsman

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

At the February 3, 2023, meeting, the KanCare Ombudsman provided an update on the Office. The Office transitioned from KDADS to the Department of Administration, Office of Public Advocate, over an eight-month period and functions as an independent agency. She also provided an overview of the Office annual report completed in October 2022.

At the April 21, 2023, meeting, the KanCare Ombudsman reviewed the Quarter 1, 2023, KanCare Ombudsman Report. She highlighted the number of contacts over the previous two quarters, with the first quarter increase the highest since early 2022, and noted the Overland Park office is assisting with the increased number of calls.

The KanCare Ombudsman provided an update on office staffing. The Volunteer Coordinator position was filled and is the position that oversees the two physical offices and data collection. She also announced her upcoming retirement in June 2023.

The August 2-3, 2023, meeting did not have a report from the KanCare Ombudsman, as an Ombudsman had not been appointed.

At the October 11-12, 2023, meeting the KanCare Ombudsman stated there has been an increase in inquiries to the office. She provided an update on office staffing, noting two FTE

positions would be added to the office and that she planned to increase the presence of the office in western Kansas.

Medicaid Inspector General

At the February 3, 2023, meeting, the Medicaid Inspector General stated the Office of the Medicaid Inspector General (OMIG) was finalizing its 2022 annual report with expected availability during the month. The OMIG continued to oversee complaints of fraud, waste, abuse, and illegal acts concerning KanCare, MediKan, and the state's CHIP.

The Medicaid Inspector General provided an update on office staffing and noted two investigators and one analyst were needed. He provided an example of a Medicaid eligibility fraud case and noted the threshold of recovery must be at least \$25,000 to justify the resources to proceed with a legal action.

The Medicaid Inspector General stated three performance audits were in process. The OMIG had concluded an audit regarding eligibility determinations for Medicaid recipients who had moved out of the state. The OMIG initiated performance audits of eligibility determinations for Medicaid recipients on the Transitional Medical Assistance Program (TransMed) and Medicaid beneficiaries with multiple identification numbers.

At the April 21, 2023, meeting, the Medicaid Inspector General announced the OMIG calendar year 2022 report had been published online and filed with the Legislature. Three performance audits were being finalized and results were anticipated to be published in May 2023. He also provided updates on the fraud, waste, and abuse training; historic data of screened complaints from 2019 through April 18, 2023; and office staffing.

At the August 2-3, 2023, meeting, the Medicaid Inspector General provided an update on the three audits. The performance audit concerning Medicaid beneficiaries who have moved out of the state but remained enrolled in KanCare for the time period of January 1, 2019, through December 31, 2021, was published June 5, 2023. The report concluded external factors and internal deficiencies hinder KDHE in its ability to identify,

verify, and terminate Medicaid eligibility on a timely basis.

The other two audits described in February were being finalized and reports were expected to be published in August 2023. Two additional audits had been initiated: Medicaid reimbursements to public schools and the prior authorization process for Medicaid providers and MCOs.

The Medicaid Inspector General provided an update on the OMIG's nine positions: three auditors, one data analyst, one financial analyst, two special agents, one secretary, and the Inspector General.

The Medicaid Inspector General reported the OMIG processed 1,410 complaints in calendar year 2022: 1,347 complaints alleging beneficiary eligibility fraud, 15 allegations of beneficiaries committing non-eligibility fraud, and 48 complaints involving providers and contractors. He reviewed the complaint routing process when there is no egregious fraud and when there is a determination of sufficient probable cause to investigate.

At the October 11-12, 2023, meeting, the Medicaid Inspector General stated the OMIG had completed the performance audit of eligibility determination for Medicaid beneficiaries on TransMed and the performance audit of Medicaid beneficiaries with multiple identification numbers. The OMIG had two audits in progress and had initiated an audit of the process for facilities to be designated as continuous care retirement centers.

The OMIG conducted a review of COVID-19 test kits to determine whether Kansas Medicaid received fraudulent claims for at-home COVID-19 test kits and if Kansas Medicaid paid any fraudulent claims. The OMIG determined Kansas Medicaid paid \$0 on the claims.

Joint OMIG and KDHE Training

The Medicaid Inspector General reported the OMIG and KDHE jointly developed fraud, waste, and abuse awareness training had been provided to 196 persons as of the February 3, 2023, meeting; to 579 persons as of the August 2-3, 2023, meeting; and to 710 persons in 17 sessions as of

the October 11-12, 2023, meeting. He also reported at the August meeting the training would be offered annually.

Division of the Child Advocate

At the February 3, 2023, meeting, the Kansas Child Advocate provided a presentation on the Kansas Division of the Child Advocate (KDCA). The KDCA was created to ensure Kansas prioritizes as the highest importance the safety and health of children and to increase support for families, protect children from harm, ensure adequate care is seen as vital to improving the delivery of child welfare services, and to provide impartial review of concerns voiced by children and families and evaluation for system improvement.

The Kansas Child Advocate stated there are three main categories for investigations: case specific, systemic, and KDCA-initiated. She reviewed data on topics including the origination of complaints, complaints by month, and types and frequency of complaints received by KDCA in 2022.

Kansas Office of Apprenticeship

At the April 21, 2023, meeting, the Director of Apprenticeship and Internship (Director, in this section), in the Kansas Office of Apprenticeship (Office), Department of Commerce, provided an overview of the registered apprenticeship program. The Director shared the vision and mission statement of the program, noting the program focuses on addressing the workforce needs specific to Kansas and is employer-designed and -driven. The Director stated the apprenticeship system is in place to assist businesses with barriers to profit and individuals who may have barriers to employment and is utilized by multiple industries.

The Director provided an overview of the Patterson Grant Foundation's HealthCare Registered Apprenticeship model that is available for counties with fewer than 50,000 residents.

The Director clarified that federal law requires an employer to provide a wage progression, identifying both a starting and ending wage for the journeyman level, or risk loss of the apprenticeship program. The Director stated Department of Labor data indicate nine out of ten

individuals who apprentice remain on the job for five or more years. The Director noted each apprenticeship is an individualized plan that has standards for job training, mentorship, and technical training, and mentors provide individual attention during the apprenticeship. Companies must state a mentor-to-apprenticeship ratio and maintain the ratio. If the ratio is not maintained, the number of apprentices must be lowered.

The Director stated the Office is within the Department of Commerce and has an annual budget of \$500,000. The Office also receives funding from some federal grants. The Director stated the Office works with occupation organizations to develop a registered apprenticeship system, as the system needs mandatory and robust mentorship from those in the occupation for an apprenticeship program. The Director noted apprenticeship program funding is available at a local, state, or federal level, as well as privately.

KDADS Overview and Updates

At the February 3, 2023, meeting, the Secretary for Aging and Disability Services (Secretary, in the KDADS portion of this report) provided an agency overview. The Secretary gave an update on the regional state hospital project, as the FY 2023 Governor's Budget Recommendation included \$15 million to contract for and build a regional acute adult inpatient psychiatric facility. The Secretary stated funding had been approved by the State Finance Council for a state hospital in Sedgwick County and is available for architect fees and site locations. The site and operator selections would be open processes, and it would be up to the county, in conjunction with KDADS, to decide on the site and operators.

The Secretary stated KDADS had developed an estimate for a potential new Community Support waiver per the recommendations from the 2022 Special Committee on Intellectual and Developmental Disability (I/DD) Waiver Modernization. The fiscal impact could range from \$72 million all funds, including \$29 million from the State General Fund (SGF), to \$149 million all funds, including \$40 million SGF, when fully implemented. The Secretary noted the waiver would need to be rolled out in stages to allow for the building of network capacity.

At the April 21, 2023, meeting, the Secretary notified the Committee that the State Finance Council had approved \$66.0 million for KDADS for facility and program expansions from the Strengthening People and Revitalizing Kansas (SPARK) funds. KDADS provided notice on February 27, 2023, of the funding opportunities across three program areas: expansion of health care facilities, expansion of the reach of current service providers, and workforce training expansion. Responses were due by March 17, 2023. KDADS received 67 proposals: 41 for facility expansion, 13 for expansion of service providers, and 13 for workforce training. The proposals were in the evaluation phase.

The Secretary reported KDADS was working with Sedgwick County regarding the construction of a regional acute care adult inpatient psychiatric facility in Sedgwick County, and the ownership of the facility would transfer to KDADS after construction is complete, to operate the facility as a state hospital. The Secretary noted a memorandum of understanding defines the roles and responsibilities for Sedgwick County and the State. KDADS retains final decision-making authority. The Secretary noted the location selected for the construction of a regional acute care adult inpatient facility must include space for expansion. The Secretary clarified 25 of the 50 beds to be created at the facility would be for evaluation and 25 would be for acute care.

At the August 2-3, 2023, meeting, the Secretary provided an update on the agency. KDADS is working with the Office of Recovery on funding agreements for the SPARK awards for each grantee to ensure all state and federal requirements for the federal American Rescue Plan Act (ARPA) funding are met. The Secretary briefly described each proposal under consideration.

The Secretary reviewed the regional state hospital project and clarified Sedgwick County is overseeing the project, and KDADS is providing the funding. The current anticipated completion date is mid-2025. She noted the parties are working on the design specifications. The Secretary shared the State would move to the 1915(b) waiver in January 2024. The Secretary clarified the state funds relating to the 10 percent FMAP initiatives are not new state dollars, but are

dollars saved from FMAP funds for HCBS projects and PACE.

At the October 11-12, 2023, meeting, the Secretary reviewed the progress on use of an allocation of \$15 million to contract for and build a regional acute adult inpatient psychiatric facility. She noted the formation of a South Central Regional Psychiatric Hospital Advisory Panel and the appointments to the panel. The panel is directed to gather information and make recommendations regarding workforce development needs and will also propose an operating model and any needed statutory changes.

HCBS

At the February 3, 2023, meeting, a KDADS representative provided a summary of the HCBS waiver enrollment.

HCBS Waiver Projects

At the April 21, 2023, meeting, a KDADS representative provided a list of the HCBS Waiver projects in 2023. KDADS expected to draw down approximately \$93.2 million in additional federal match for HCBS, for which the state funds savings must be reinvested in HCBS-related initiatives. Amendments to waivers for Virtual Delivery of Services and Paid Family Caregivers with a proposed effective date of September 1, 2023, have been submitted to CMS for approval. The waiver renewal time period for each waiver was provided.

At the August 2-3, 2023, meeting, a KDADS representative provided updates on enrollment numbers for the HCBS waiver, HCBS waiver initiatives, and the current status of each waiver renewal. The representative identified waivers that would transition from 1115(c) to 1915(b) waiver authority.

At the October 11-12, 2023, meeting, a KDADS representative reviewed the status of the HCBS Waiver projects and the status of each of the seven waiver renewals.

HCBS Waiver Amendments

At the April 21, 2023, meeting, a KDADS representative stated KDADS had submitted a

proposal to CMS for a waiver amendment to make the Paid Family Caregiver Appendix K flexibility permanent, with an anticipated effective date of September 1, 2023.

At the August 2-3, 2023, meeting, a KDADS representative provided updates on the Telehealth and Virtual Delivery and the Paid Family Caregiver waiver amendments. The representative stated amendments to make permanent the Appendix K amendment regarding modes of service delivery would be effective September 1, 2023. The representative stated CMS has assured KDADS that all amendments would be approved before the end of the PHE on November 11, 2023.

HCBS Waiver Waitlists

A KDADS representative provided an update on the HCBS waiver waitlists at every Committee meeting.

At the August 2-3, 2023, meeting, a KDADS representative stated the I/DD waiver wait was ten years, and the wait for Physical Disability (PD) waiver services was two years.

At the October 11-12, 2023, meeting, a KDADS representative stated the current waitlist time for the PD waiver is not known, as the population is more transitory. The representative also noted a team decision is required to remove someone from the Brain Injury (BI) waiver.

HCBS Final Settings Rule

At the April 21, 2023, meeting, a KDADS representative provided an update on the HCBS Final Settings Rule. [Note: This CMS rule requires states to review and evaluate HCBS settings, including residential and nonresidential settings.] The representative noted KDADS continued activities to develop an ongoing monitoring process to ensure Kansas maintains compliance with the HCBS settings rule after March 17, 2023.

I/DD Community Support Waiver

At the April 21, 2023, meeting, a KDADS representative stated KDADS had submitted a proposal to CMS for the development of an I/DD Community Support Waiver, and noted that a majority of the \$5 million in HCBS-specific FMAP enhancement dollars toward the

development of the waiver will be for development and enhancement of a provider network of services. The representative noted the funding will last for a few years and, during that time, KDADS will hire staff to write the waiver, consult with stakeholders in writing the waiver, and issue grants to providers to develop waiver services. KDADS was monitoring budget legislation containing a proviso directing KDADS to apply for an I/DD Community Support Waiver.

At the August 2-3, 2023, meeting, a KDADS representative reviewed the timeline for the Community Support waiver. The representative stated KDADS has submitted a proposal to CMS to use FMAP funds to hire staff to develop the Community Support waiver, help engage stakeholders for the writing of the waiver application, and issue grants to providers to develop waiver services.

At the October 11-12, 2023, meeting, a KDADS representative explained shared licensing for Shared Living Providers is not permitted under the I/DD Waiver. Another representative provided an update on the status of the proposed Community Support waiver.

Quarterly HCBS Report

An appendix with additional data on HCBS waiver enrollment, census, and caseload and state hospital census was provided at each meeting.

Remediation

At the August 2-3, 2023, meeting, a KDADS representative stated KDADS was working on a list of remediation strategies in response to a CMS report from the Heightened Scrutiny site visit completed in March 2023 regarding institutional, isolating, or both characteristics in home and community-based settings. The representative reported the State must complete remediation activities by May 16, 2024, and a list of remediation strategies was provided.

10 Percent FMAP Enhancement Projects

At the February 3, 2023, meeting, a KDADS representative provided a summary of the 10 percent FMAP enhancement projects for HCBS that focus on workforce, employment, and access to care. The representative noted KDADS was

completing a study on the HCBS waitlists. Other projects in procurement have specific goals on what the State wants to achieve.

At the April 21, 2023, meeting, a KDADS representative reviewed the FMAP Employment First program and noted a vendor had been chosen for the Targeted Case Management Model Study. The representative provided an update on the FMAP waitlist study by the University of Kansas. The representative shared the agency is preparing two requests for approval, one for the FMAP Technology First program that provides technology to individuals the agency supports to increase participant independence, and one for the FMAP Smart Home Technology program.

At the August 2-3, 2023, meeting, a KDADS representative provided a list of the agency's 10 percent FMAP enhancement projects and the status of each project. The representative provided an update on the FMAP Employment First program RFP and noted KDADS is awaiting procurement approval of a chosen contractor. The representative provided additional updates on the FMAP Targeted Case Management study and the FMAP waitlist study. It was noted KDADS will prepare a request for application for the FMAP Technology First initiative and the FMAP Smart Home Technology initiative after approval is received from CMS for each initiative.

At the October 11-12, 2023, meeting, a KDADS representative reviewed the status of the FMAP enhancement projects.

Behavioral Health

Camber Children's Mental Health Facility

At the February 3, 2023, meeting, a KDADS representative stated a ribbon-cutting ceremony was held January 27, 2023, at the Camber Children's Mental Health Facility in Hays, Kansas. The representative noted the facility was cleared to start taking admissions on February 6, 2023. The representative noted the private psychiatric side of the facility does not have any age limits other than the child must be at least 6 years of age. Federal law requires the psychiatric residential treatment facility (PRTF) side to be for ages 6 to 21. The age limit is covered by what is called the "psych under 21 exclusion."

Certified Community Behavioral Health Clinics

At the February 3, 2023, meeting, a KDADS representative noted the KDADS certified community behavioral health clinic (CCBHC) program staff started baseline reviews with the first nine CCBHCs in October 2022. The representative noted the community mental health centers (CMHCs) are continuing the process to becoming CCBHCs, and the next group of CMHCs to become CCBHCs is scheduled to be ready by July 1, 2023.

At the August 2-3, 2023, meeting, a KDADS representative stated 20 of the 26 CMHCs had been provisionally certified as CCBHCs. The remaining CMHCs were expected to become certified as CCBHCs no later than July 2024. The representative stated KDADS would begin full certification reviews of the original CCBHCs and rebasing in August 2023. The representative noted the position of Demonstration Project Manager had been filled.

At the October 11-12, 2023, meeting, a KDADS representative stated four more CMHCs had completed certification to become CCBHCs. The representative noted KDADS was working to integrate the Mobile Crisis model into the CCBHC implementation and quality review process.

I/DD Crisis Stabilization System

At the August 2-3, 2023, meeting, a KDADS representative noted KDADS was in the process of hiring an I/DD Behavioral Health Crisis Coordinator to oversee and implement the I/DD Crisis Stabilization System.

Kansas Behavioral Health Indicators Dashboard Demonstration

At the October 11-12, 2023, meeting, a KDADS representative demonstrated how the Kansas Behavioral Health Indicators Dashboard website works. The website was designed to help monitor behavioral health indicators statewide. The representative reviewed various data sources and how to prepare various reports to view one or multiple pieces of data.

Psychiatric Residential Treatment Facilities

At the February 3, 2023, meeting, a KDADS representative stated 76 individuals (36 in foster

care) were on the PRTF waitlist as of January 26, 2023. The number of PRTF licensed beds at that time was 424, of which 162 beds were not in use due to staffing issues and COVID-19 protocols. The PRTF census at that time was 262, with 85 of these being youth in foster care. The representative stated weekly meetings were being held with the MCOs to address the waitlist, and the MCOs continued to make progress connecting members with community services. KDADS continued to review referral data from the MCOs by CMHC catchment area to determine whether Serious Emotional Disturbance (SED) waiver services were being applied for and provided prior to referral to PRTFs. This report of continued monitoring was also provided at the August 2-3 and October 11-12, 2023, meetings.

At the April 21, 2023, meeting, a KDADS representative stated 103 individuals (38 in foster care) were on the PRTF waitlist as of April 6, 2023; there were 392 PRTF licensed beds, and 121 of these beds were not in use due to staffing shortages and COVID-19 protocols. The census for PRTFs at that time was 271 total, of which 101 were foster care youth. It was noted the MCOs continued to make progress on connecting members to community services.

At the August 2-3, 2023, meeting, a KDADS representative stated 103 individuals (44 in foster care) were on the PRTF waitlist, noting the total was the same as the prior report, but there had been an increase of 6 in the number of those in foster care. The representative stated the PRTFs have 392 licensed beds, of which 109 were not in use due to staffing issues. The representative stated the census at that time was 283 total, of which 91 were foster care youth. It was noted KDADS continued weekly reviews with the MCOs and the Department for Children and Families regarding individual cases on the waitlist.

At the October 11-12, 2023, meeting, a KDADS representative stated 98 individuals (42 in foster care) were on the PRTF waitlist. The representative explained some PRTF beds were not being filled due to staffing shortages.

At the October 11-12, 2023, meeting, a KDADS representative provided an update on licensure inspections of PRTFs. The representative noted KDADS inspects PRTFs on an annual basis

and conducts announced on-site visits for annual licensure renewal. The Survey and Certification staff also conducts announced and unannounced on-site visits for complaint allegations and adverse incident reports.

Telehealth and Wraparound Services

At the August 2-3, 2023, meeting, a KDADS representative stated increased accessibility via telehealth is utilized by consumers in rural areas, and the Assertive Community Treatment program had been implemented across multiple counties to provide wraparound services, as well as increase contact with individuals with severe and persistent mental illness.

Long Term Services and Supports

Adult Care Home Receivership

At the February 3, 2023, meeting, a KDADS representative reviewed the 22 adult care nursing facilities in receivership and noted 1 facility remained in receivership. The representative reviewed the ARPA funding distribution process, as well as the nursing facility rate-setting contract.

At the April 21, 2023, meeting, a KDADS representative stated one nursing facility in receivership remained unresolved and for sale. It was noted two nursing facilities closed during state fiscal year (FY) 2023 Quarter 3.

At the August 2-3, 2023, meeting, a KDADS representative provided data on the Medicaid monthly caseloads and caseloads for facilities in receivership.

Client Assessment Referral and Evaluation and Pre-Admission Screening and Resident Review

At the February 3, 2023, meeting, a KDADS representative stated the 2022 Client Assessment, Referral and Evaluation (CARE) report is available for viewing. The representative noted temporary staff is being recruited to work on the Medicaid and non-Medicaid nursing facility assessments still pending data entry. The CARE backlog consists of both Level 1 and Level 2 assessments and evaluations, which are completed by a contractor. The representative stated the backlog should be manageable by June 30, 2023. It was also noted KDADS was planning an RFP for the full system, both Level 1 and 2, and should

include both CARE and Pre-Admission Screening and Resident Review (PASRR).

At the April 21, 2023, meeting, a KDADS representative stated the CARE backlog related to Medicaid eligibility applications had been resolved. The representative noted the implementation of the CARE Upload Tool, an online portal to upload documents and communicate with the CARE team. The representative stated KDADS and KDHE received CMS funding to craft an RFP for a potential electronic PASRR (ePASRR) vendor and solution.

At the August 2-3, 2023, meeting, a KDADS representative provided data on CARE inquiries created versus completed for FY 2022 and FY 2023. The representative stated the CARE backlog relating to Medicaid eligibility applications had been resolved and the CARE Upload Tool was fully implemented. The representative noted KDADS continued to have monthly meetings with stakeholders to discuss changes to the CARE Program process and obtain input from facilities.

The representative also stated KDADS and KDHE received a CMS enhanced federal match (90/10) during the planning period to draft the RFP for the potential ePASRR vendor and solution.

At the October 11-12, 2023, meeting, a KDADS representative outlined a timeline to trace the development of a CARE Project with an RFP contract award scheduled for December 2024.

Dementia Services Coordinator Position

At the April 21, 2023, meeting, a KDADS representative noted KDADS was monitoring HB 2184 regarding the provision that included state general funds to create a dementia services coordinator position. [Note: As enacted, 2023 HB 2184, an appropriations bill, did not specifically include language regarding the dementia services coordinator position, but appropriations conferees agreed to adding the position as documented in the Conference Committee Report Explanation for the bill {on p. 16}.]

At the August 2-3, 2023, meeting, a KDADS representative stated KDADS has restructured to include the Dementia Program Manager under the

Aging Services Team, as funding for the position was provided in HB 2184 (2023). It was anticipated the position would be posted in August 2023.

At the October 11-12, 2023, meeting, a KDADS representative noted KDADS had added a Dementia Services Program Manager to its staff.

Fentanyl Test Strips

At the October 11-12, 2023, meeting, a KDADS representative reviewed the process for excluding fentanyl test strips from the definition of drug paraphernalia (in enacted 2023 SB 174), a change which has allowed the state to receive a \$233,610 federal grant for fentanyl test-strip distribution.

Nursing Facility Program

At the February 3, 2023, meeting, a KDADS representative provided a list of the areas over which the Nursing Facility Program has oversight. The representative provided an update on the Nursing Facility program. The representative also provided a review of the monthly caseloads noting there had been a reduction in caseloads since FY 2013.

At the April 21, 2023, meeting, a KDADS representative presented a review of the nursing facilities' Medicaid monthly average caseloads. The representative provided a summary of the \$15 million in ARPA funds allocated by the 2022 Kansas Legislature for nursing facilities, as well as an update on the nursing facility rate-setting contract. Additionally, the representative presented a review of the intermediate care facilities with comparisons from calendar year 2022 and calendar year 2023 Quarter 1. The representative confirmed the nursing facility rate-setting contract includes rebasing and figures in actual cost. Another representative shared charts that showed the adult care home bed closures and openings over the past five years.

At the August 2-3, 2023, meeting, a KDADS representative provided data on the number and county location of nursing facilities in the state. The representative stated the new nursing facility rate-setting contract became effective July 1, 2023, and will end June 30, 2028, but includes the option of two one-year extensions. Another representative

provided data on the number of long-term facilities that have opened, changed ownership, or closed in the first two quarters of 2023 and on long-term bed closures and bed openings over the past five years. It was clarified no nursing homes that are closed retain their licenses.

At the October 11-12, 2023, meeting, a KDADS representative provided data on nursing facilities and noted no nursing facilities were closed or opened during Quarter 3 of 2023 and Case Mix Index values will vary more widely when the CMS reimbursement system changes from Resource Utilization Group to the Patient-Driven Payment Model. Another KDADS representative traced the changes regarding long-term care facility ownership, bed closures, and bed openings. A representative clarified the nursing facilities' Medicaid monthly average caseload reflects fewer patients, not fewer Medicaid beds.

Program of All-Inclusive Care for the Elderly

At the February 3, 2023, meeting, a KDADS representative provided an update on the the PACE program. The representative noted Midland PACE was collaborating with KDADS to work on expanding its services to Johnson, Miami, and Franklin counties, and KDADS was in the process of finalizing the expansion with both Midland and CMS. The representative also stated Bluestem PACE opened an alternative care setting in Hutchinson in 2021.

At the April 21, 2023, meeting, a KDADS representative noted KDADS continues to collaborate with Midland PACE to expand PACE services to Johnson, Miami, and Franklin counties. The representative acknowledged the \$2.5 million in state general funds in the FY 2024 state budget for the PACE expansion to rural areas.

At the August 2-3, 2023, meeting, a KDADS representative provided an update on the PACE program, noting that Midland PACE is working to expand into Johnson, Miami, and Franklin counties by 2024. The representative also updated the Committee on the recommendations from the National Advisory Committee on Rural Health and Human Services, chaired by former Kansas Governor Jeff Colyer, M.D., specifically as related to PACE.

Promoting Excellent Alternatives in Kansas

At the February 3, 2023, meeting, a KDADS representative stated KDADS and Kansas State University would begin Promoting Excellent Alternatives in Kansas (PEAK) on-site visits at the end of February through March 2023. The goals of the PEAK advisory group are to work on increasing input from residents and workforce support. A chart noting PEAK participation rates from 2012 to 2023 was provided.

At the April 21, 2023, meeting, a KDADS representative provided an update on the PEAK program and noted the on-site visits for FY 2023 have been completed and planning has begun for FY 2024 on-site visits. The representative shared a revised PEAK incentive grid will become effective July 1, 2023. The representative stated the goals of the PEAK advisory group this year are to work on increasing input from residents and workforce support.

At the October 11-12, 2023, meeting, a KDADS representative outlined the activities of the PEAK advisory group leadership.

Ventilator Program

At the April 21, 2023, meeting, a KDADS representative reviewed a program for persons on ventilators. The program provides extra support and funding for people on ventilators in nursing facilities.

State Hospitals

Competency

At the August 2-3, 2023, meeting, the Deputy Secretary of Hospitals and Facilities (Deputy Secretary) stated the competency and evaluation contract for western Kansas was finalized, and Wheat State Healthcare will work with mental health centers to provide competency evaluations in jails. The Deputy Secretary noted, as of the June 2023 report, 182 persons were on the waitlist for competency or restoration evaluation, and the longest wait was around 430 days.

At the October 11-12, 2023, meeting, the Deputy Secretary provided details to show how 2022 HB 2508 (now in KSA 2023 Supp. 22-3302 and 22-3303) has modified and modernized the forensic competency statutes by allowing more

flexibility in competency determinations. The Deputy Secretary noted the contract with Wheat State Healthcare coordinates competency services provided by the CMHCs. The Deputy Secretary reviewed the current budget impact from two other 2023 legislative initiatives (enacted SB 228 and HB 2184) that directed KDADS to reimburse counties for costs related to delays in admission to Larned State Hospital or Osawatomie State Hospital (OSH). The Deputy Secretary stated reimbursements to hospitals for competency hearings occur within the month received. It was clarified that \$5 million is allotted for involuntary commitment needs while waiting for transfer, but there is not a cap on reimbursement to counties for involuntary commitments held pending competency evaluations.

Facilities

At the April 21, 2023, meeting, a KDADS representative reviewed the location of the adult inpatient psychiatric beds and the number of beds per location. The Secretary clarified the waitlist for admission to a state hospital varies day to day and noted, at the time, there were relatively short waiting lists at OSH and Larned State Hospital.

At the August 2-3, 2023, meeting, the Deputy Secretary reported on the number of vacancies at the four state hospitals for 2020 through July 2023, including the percentage of change in vacancies.

At the October 11-12, 2023, meeting, the Deputy Secretary provided the number of vacancies at each state hospital, alternative programs to state hospitals, and the number and occupancy of adult inpatient psychiatric beds in Kansas.

Osawatomie State Hospital Moratorium

At the February 3, 2023, meeting, the Deputy Secretary provided an update on the lifting of the moratorium at OSH, and its waitlist was provided. The Deputy Secretary shared an update on the remodeling of the Biddle Building there. Updated information on those topics was provided at the April 21, 2023, meeting.

At the August 2-3, 2023, meeting, the Deputy Secretary stated OSH had not admitted any individuals on a voluntary status since January 3,

2023, as OSH continued to exceed 85 percent capacity. In the same time period, Adair Acute Care had admitted 26 individuals on a voluntary basis and had admitted 5 individuals to the Social Detox Program. The Deputy Secretary also provided the current status of the remodeling of the Biddle Building at OSH.

At the October 11-12, 2023, meeting, the Deputy Secretary stated lifting the moratorium at OSH remained on schedule.

Services for Incarcerated Individuals

At the October 11-12, 2023, meeting, a KDADS representative stated that a person who is incarcerated is not eligible to receive Medicaid. Medical services including behavioral and mental health services are provided by the Kansas Department of Corrections (KDOC). The representative briefly described a relationship between KDADS and KDOC regarding intervention efforts. It was noted a person released from KDOC custody may apply for Medicaid. The representative stated KDADS works with individuals in county jails, and the CCBHCs also offer coordinated care for counties.

State Institution Alternatives

At the April 21, 2023, meeting, a KDADS representative provided a list of the state institution alternatives (SIA) hospitals, noting the utilization from August 30, 2021, to April 7, 2023, was 926 adults and 1,006 children. The representative clarified SIAs cannot accept involuntary admissions.

The Secretary clarified conversations regarding involuntary admissions have not been had with the private psychiatric hospitals that are SIAs but with crisis centers that want to become crisis intervention centers. The Secretary reported the crisis intervention center regulations had been through the Department of Administration and were being reviewed by the Office of the Attorney General. The Secretary noted crisis centers in Douglas and Wyandotte counties are interested in accepting involuntary admissions upon obtaining crisis intervention center status.

At the August 2-3, 2023, meeting, the Deputy Secretary provided a list of the SIAs, including location and total beds for each location, and noted

the utilization from August 30, 2021, to July 14, 2023, was 1,167 adults and 1,099 children.

Workforce

At the February 3, 2023, meeting, the Deputy Secretary discussed staffing vacancies at various staff facilities, as well as agency efforts for recruitment and retention of staff. The Deputy Secretary stated state hospitals are not closing due to staffing, but they are heavily dependent on third-party agency staffing. He noted Larned State Hospital spent \$24.4 million on contract labor through December 2022, with an additional \$4 million spent in January 2023.

At the April 21, 2023, meeting, a KDADS representative provided an update on state hospitals and reviewed various charts noting the numbers and percentages of staffing vacancies for each of the state hospitals.

At the October 11-12, 2023, meeting, the Deputy Secretary stated it is projected the State will spend \$40 million on contract labor for Larned State Hospital in FY 2024.

Survey, Certification, and Credentialing

At the February 3, 2023, meeting, a KDADS representative provided a list of the areas over which the Survey, Certification, and Credentialing Commission has oversight. The representative shared Health Occupations Credentialing was working with Stormont Vail Hospital to complete the second pilot Nurse Aide Training and Competency Evaluation Program (aide training program), and noted applications for the program had not been received from any other entities.

The representative provided an update on the Emergency Declaration waiver, which allowed certified nurse aides (CNAs) with minimal training to work in nursing facilities if the State or an individual provider could show their need through a series of qualifying criteria. It was noted this authorization ended January 23, 2023, with the expiration of the provision in 2022 HB 2477.

The representative reviewed various data points on approved classes and participation for CNAs, certified medication aides (CMAs), and home health aides (HHAs). The representative also

provided adult care home bed closures and openings from 2017 to 2021.

At the April 21, 2023, meeting, a KDADS representative stated KDADS continued to work with Stormont Vail on the aide training program and noted applications had not been received from other entities to date. It was noted the clinical rotation training on chronically ill persons for this CNA training will be completed at nursing facilities in Topeka per Stormont Vail Hospital's application request. It was stated KDADS was working with the Kansas Hospital Association to meet federal CMS requirements regarding temporary nurse aide training, which state trainees must be able to do clinical rotations in hospitals in order to complete CNA certification.

The representative also reviewed updates in the development of a shared living timeline for new providers; provided an update on CMS COVID-19 Emergency Declaration Waiver impacts regarding certification and credentialing; and noted that KDADS had met with the Kansas Council on Developmental Disabilities to review abuse, neglect, and exploitation mapping. The representative noted concerns expressed through the abuse, neglect, and exploitation hotline regarding a state hospital would be directed to KDHE, which has the responsibility to inspect state hospitals.

At the August 11-12, 2023, meeting, a KDADS representative provided data on the CNA/CMA/HHA courses, and initial certifications for CNA/CMA/HHA based on start date from mid-2020 through the second quarter of 2023.

At the October 11-12, 2023, meeting, a KDADS representative provided an update on the various nursing staff courses and certification.

Presentations on KanCare from Individuals, Providers, and Organization Representatives

Written and oral testimony was presented at each quarterly Committee meeting by individuals, providers, and representatives of organizations.

Some individuals, providers, and organizations gave positive feedback for the following: the increased HCBS reimbursement rates; the changes

to the I/DD waiver; improvements to the service delivery system through the recommendation of a Community Support Waiver; increased adult dental benefits that began July 1, 2022; the assistance of the KanCare Ombudsman office with individual issues; the Workforce Incentive Program, which ended July 31, 2023; Centers for Independent Living funding increases in 2023; rate increases for certain pediatric billing codes; the continuation of payments to family caregivers; increased funding of the hourly reimbursement rate for the T1000 medical billing code; the FMAP/ARPA-funded pilot Transition from Hospital to Home; and the addition of a new Medicaid code for sedation dental access effective September 1, 2023.

Concerns and suggested solutions presented by conferees are summarized below.

Concerns

Adult care sector. Medicaid reimbursement rates need to be increased, especially as the current KDADS FY 2024 budget proposal increase does not cover the projected inflation rate, and low reimbursement rates affect the long-term care industry's ability to provide care meeting the high standard it wants for the aging population. Supplemental staffing oversight is needed, as the costs for contracted services through staffing agencies are a significant barrier for the industry. Additional workforce issues facing the industry are development pathways, recruitment, and retention. Legislation is needed to give residents of adult residential care facilities the same rights as those enjoyed by people living in nursing homes, or who lease their home in a community, to be able to appeal any involuntary discharge.

Backup care plan. The HCBS population survey found one-third of surveyed consumers reported they did not have a backup care plan.

Brain injury waiver. There is an issue with availability of therapy due to concerns of whether individuals are timely transitioning from the waiver, as well as the availability of a qualified and appropriately compensated workforce.

Centralized credentialing standardization. There is a need to review how credentialing is

being done and whether improvement could be made to the system.

Community-based care management (CBCM). CBCM is an alternative to traditional targeted case management under Medicaid. CBCM would aid in meeting the complex needs of the I/DD population, as the models would integrate all services for physical, behavioral, and age-related conditions into one service plan. Additional training may be needed for targeted case managers to integrate the model.

Community support waiver (CSW). It was noted the CSW differs from a comprehensive waiver in that a CSW does not usually offer "residential services" as part of the waiver. If this waiver is pursued, consider the following: give people with disabilities budget authority across services to ensure persons with I/DD and their families have full control over the services they receive, change the assessment tool from a deficit-based assessment to a strengths-based model with a focus on what individuals can do, and more clearly identify the type of support actually needed. Additional concerns were expressed about the agency's time frame to submit a 1915(c) waiver application along with the reprocurement of KanCare. A flexible cap for the CSW was also requested to permit a determination of how best to utilize services in a program.

Complex rehabilitation technology. The current reimbursement is unsustainable for providers to continue to provide complex rehabilitation technology (CRT) services to individuals utilizing state Medicaid through the Kansas Medical Assistance Program. It was noted the current Medicaid reimbursement rate is 65 percent of Medicare, and providers are unable to collect any of the secondary payment amounts through the state Medicaid system. Additionally, there have been steep increases in operating expenses due to inflation, acquisition costs and freight costs have risen significantly, and there has been no rate increase in more than ten years.

Dental coverage in KanCare. Dental coverage available in KanCare as the adult dental coverage or as a value-added benefit for adults was insufficient, especially for individuals who may need dentures. It was noted that nearly one-third of older Kansans have lost six or more teeth

due to tooth decay or gum disease. It was also noted tooth loss has a significant impact on health, because the inability to eat healthy foods leads to nutritional deficiencies. [Note: Denture coverage was added to the Kansas Medicaid Program effective July 1, 2023.]

Direct support workers. Concern was expressed about the available workforce of direct support workers, specifically the sufficiency of wages and availability of benefits.

Durable medical equipment (DME) and CRT equipment for children. To be eligible for a mobility device or specialized wheelchair, one must go to a seating clinic. Currently, in the Kansas City area, the sole facility with a seating clinic offers only 24 appointments per month for assessment, which has resulted in a 6-month waiting list. The system creates a significant delay in access to service and equipment. Due to the time parameters, children are growing and changing between the appointments, which results in the wrong-sized equipment being received. There is a need to address the availability of DME, as well as available alternatives if DME is not timely available.

Elder Count. It was requested the Governor's Conference on Aging be reestablished and an Elder Count and Long-term Care Resource Guide be re-created.

Final Settings Rule. Testimony was presented regarding recent security visits performed by CMS and their findings of noncompliance with the Final Settings Rule. A concern was brought forth on how congregate settings will be able to receive HCBS funds and whether the array of services available currently to the I/DD population will remain.

Additional concerns were raised regarding the Minimal Staffing Rule that will increase staffing costs in the face of workforce shortages.

Foster homes. How and where children with disabilities are placed in a foster home has been problematic.

Home modifications. Benefits available for home modifications differ depending on which

HCBS waiver services an individual receives, and the process is administratively complicated.

KanCare reprourement. The priorities of the members of certain populations were identified as transparency, accountability, oversight, modernization, addressing unmet system needs, and reinvestment. It was requested case management services be re-established for the Frail Elderly (FE), PD, and BI waiver populations during the reprourement process.

KDHE home health regulations. The implemented policy changes have created an overwhelming financial and time burden for the industry.

Kansas Neurological Institute. Kansas Neurological Institute is a safety net facility where the beds are filled with the most-fragile, nonverbal, and highest-risk individuals who need 24-7 specialized care. The *Olmstead* decision has led some states to push these individuals into regulated group home settings, where many die within a few months.

Long-term care in Kansas. The long-term care system is collapsing under the weight of high costs and staffing issues. Since March 2020, 47 long-term-care facilities in Kansas have closed or reduced services. It was noted admissions have been reduced by some providers due to staffing issues.

MCO care coordination model. The HCBS population survey found HCBS consumers and caregivers expressing widespread dissatisfaction with the MCO care coordination model.

Medicaid application processing. Delays in the processing of Medicaid applications is impacting nursing facility reimbursement and HCBS applications. The process lacks transparency on specific applications.

No Patient Left Alone Act (2023 HB 2264). Concerns were expressed regarding the impact of the No Patient Left Alone Act. [Note: As enacted, 2023 HB 2264 contained amendments to the Woman's-Right-to-Know Act and the definition of abortion and not the proposed No Patient Left Alone Act.]

Nursing facilities. Some areas of Kansas have become adult care home “deserts”; 17 counties have no Medicare skilled nursing homes. It was noted since 2020, 45 facilities have closed, resulting in a loss of 1,576 beds in 33 counties. Many facilities have reduced bed capacity, closed wings or units, and are limiting admissions.

Nutritional services for older adults. Funding for Meals on Wheels, also known as Friendship Meals, has remained flat. However, inflation has adversely impacted the cost of providing meals to older Kansans.

Pre-Admission Screening and Resident Review (PASRR) reimbursement. A concern was raised regarding the low reimbursement rate for the CARE Level I assessments performed for the PASRR, which required by federal law prior to nursing facility admission.

Prior authorization. A poll by the Kansas Hospital Association of its members on prior authorization issues indicated a majority of hospitals had a serious adverse event because of the prior authorization process, including events that involved extending a Medicaid-covered patient’s recovery time and causing a readmission stay in the hospital. Concern was expressed as to the amount of administrative time needed to resolve prior authorizations.

Protected income limit. There is a need to address how the PIL or spend down is calculated for individuals identified as “medically needy.”

Rate parity on HCBS waivers. The discrepancies between the waivers’ pay rates makes it an unequal hiring field for workers. PD and BI waivers pay the lowest rates. Rate parity may assist in reducing the direct service worker (DSW) shortage.

Self-directed services. Kansans with I/DD who wish to self-direct their services often utilize one-on-one supports and services; while provider settings typically take place in a group setting (with, e.g., 3:1 staffing ratios). Providing supports with a higher reimbursement rate and higher staffing ratios means providers can offer workers a higher base pay (with benefits) than persons self-directing their supports, severely cutting into the limited available pool of direct care professionals.

A HCBS population survey found self-directed consumers assumed a lot of responsibility as employers with limited resources.

Senior Care Act. The maximum monthly expenditure amount has not been amended since 1996. [Note: According to the *Kansas Register*, Volume 13, No. 38, September 22, 1994, page 1429, KAR 26-8-7 was amended on November 7, 1994, to the maximum monthly expenditure amount of \$1,445.]

Service delivery model. The current service delivery model does not include alternatives to traditional modes of service delivery, such as shared living, which matches host homes to adults with I/DD, and remote support technology, which provides a virtual connection to a live support person through assistive technology.

Strategic workforce plan. Development of a strategic workforce plan is needed to address the ongoing workforce shortage.

Supported Employment Services. The Supported Employment Services component of the HCBS I/DD waiver is insufficient to retain professionals who specialize in job recruitment and training and to cover the additional costs associated with providing services.

Targeted case management. Funding is needed for community service coordination/targeted case management (TCM) for all HCBS waivers. Additionally, there is the need to rebuild and bolster the TCM workforce capacity to attract and retain talent. A further concern expressed was the need to increase TCM rates. The proposed increase in the Governor’s FY 2024 budget to increase the rate to \$54.15 per hour, although appreciated, was insufficient to achieve sustainability, and a rate of \$75 per hour is needed. CMS identified a conflict of interest between TCM and Residential and Day Service providers.

Unmet care needs. The HCBS population survey participants widely reported unmet care needs.

Waitlists. The waitlists need to be addressed, as many individuals have been waiting for services for at least ten years. Parents should be able to know when their child will come off the waitlist.

Funding should be increased to reduce the waitlists by 20 percent.

Workforce. There is a need to address and modernize the Kansas workforce that provides services to individuals with disabilities.

Workforce infrastructure. There is a need to expand the workforce infrastructure to increase employment for people with disabilities.

Workforce shortages. The key points shared from the Workforce and Long-term Care Jobs Report were the following: physically and emotionally challenging work, shrinking talent pool, low wages, competing staffing agencies, and satisfaction and quality linked with consistent staffing. Additionally, the continuing workforce shortage problem causes access-to-care issues.

The HCBS population study identified the DSW workforce shortage as the most pressing and widely reported challenge reported by study participants.

Recommended Solutions

Conferees offered comments on potential solutions for the topics below.

Adult care sector. The recommendations to address workforce shortages made by the Workforce subgroup of the Kansas Senior Care Task Force in the 2022 Task Force Report to the Legislature should be implemented.

Case management for FE and PD HCBS waivers. A person-centric model of case management that is responsive to the daily needs of an individual choosing to remain in the community should be implemented.

CHIP. The year-specific language in the CHIP statute for the CHIP eligibility threshold should be removed.

Centers for Independent Living. The Legislature should consider an increase in state funding for CILs in the Department for Children and Families budget.

Community-based services. Incentives should be offered to KanCare recipients to utilize community-based services.

Coverage of adult dental in Medicaid. Coverage of dental exams and cleaning for adults should be added to KanCare.

Direct care workers. The following changes in policy are needed to make services more effective: allow a personal care worker and a therapist to work with an individual at the same time and eliminate the distinction between behavioral and cognitive therapy.

Equipment for children. The required use of a specialized seating clinic should be eliminated, and therapists who work with the individual should be allowed to make recommendations for specialized seating in collaboration with the physician and a DME/CRT provider.

Family caregiver pay. Parent caregiver pay should continue after the PHE ends to help address the lack of workers to provide the services needed for individuals with disabilities.

HCBS. The HCBS population survey recommended improving DSW wages; ensuring benefits for DSWs, including health care coverage and paid leave; providing individualized budget authority across all services for all waivers; lowering MCO care coordination case load sizes with state-set standards; and strengthening backup care plans.

Long-term care. The Legislature should fully fund Medicaid reimbursement rates and provider costs, reign in the restrictive labor practices of temporary staffing agencies, and focus on workforce development and workforce-friendly policies.

Medicaid expansion. KanCare should be expanded, as it would reduce health costs for everyone, protect Kansans from medical debt, fix low eligibility limits, and preserve and strengthen rural health care. KanCare expansion could help address the workforce shortage by making more workers healthy enough to reenter the workforce and would make Kansas more economically competitive.

Medicaid redetermination. KDHE should share more data to clarify among which populations and where in Kansas the redetermination process is not proceeding as expected.

Nursing facilities. KDADS policy should be changed to allow two facilities to share one license and to set parameters for distance between locations and number of beds.

Pediatric codes. Targeted increases in covered pediatric service codes should be expanded to include sick visits and wellness vaccination.

PIL. The PIL for the Medically Needy Program should be increased to match 300 percent of the Supplemental Security Income (SSI) standard.

Respite care. The Legislature should consider an adjustment to policies to provide respite care for family members of the population dealing with dementia.

Self-direction. Policies should be preserved and enhanced to assure self-direction for people with disabilities as a first choice.

Senior care. The Legislature should consider an adjustment to the maximum monthly expenditure amount proportionate to higher operating costs and sufficient to ensure a quality workforce, and an annual adjustment for inflation.

Supported decision making. The Legislature should consider Kathy's Bill (2023 HB 2253) and similar legislation for supported decision making.

Targeted case management. The Legislature should consider an adjustment to the TCM rate during the 2024 Legislative Session.

Universal state-funded registry for non-eligible hires. A universal state-funded registry should be established in which each agency publicly posts its information regarding applicants who are not eligible for hiring due to actions of abuse, neglect, exploitation, or malpractice or criminal actions.

Vocational rehabilitation. The Legislature should consider an adjustment to funding for vocational rehabilitation services.

Waiver rate enhancement. The Legislature should consider an adjustment to the Technology Assisted (TA) waiver and I/DD waiver Specialized Medical Care T1000 rate.

Workforce infrastructure. Agencies should be permitted to offer different hourly wages for more difficult-to-staff hours and for overtime. Additional reimbursement options should be offered to acknowledge and address staffing needs.

Conferees

Private citizens and representatives of the following organizations and providers testified or provided written-only testimony before the Committee: 3Rivers Inc. Center for Independent Living; Alliance for a Healthy Kansas; Alliance Rehab and Medical Equipment; Alzheimer's Association; Case Management Services; Center for Research on Aging and Disability Options in the University of Kansas School of Social Welfare; Impact HHA; Infant Toddler Services of Johnson County; InterHab; KanCare Advocates Network; Kansas Action for Children; Kansas Adult Care Executives; Kansas Advocates for Better Care; Kansas Association of Area Agencies on Aging and Disabilities; Kansas Association of Centers for Independent Living; Kansas Chapter of the American Academy of Pediatrics; Kansas Council on Developmental Disabilities; Kansas Hospital Association; Kansas Neurological Institute Parent Guardian Group; Kansas Health Care Association/Kansas Center for Assisted Living; LeadingAge Kansas; Maxim Healthcare; Minds Matter, LLC; NAMI Kansas; Oral Health Kansas, Inc.; Parents and Advocates; REACH Healthcare Foundation; Recover-Care Midwest; Self Advocate Coalition of Kansas; Southeast Kansas Independent Living Resource Center; and Thrive Therapy of Kansas, Wichita Area.

Responses from Agencies and MCOs

Representatives of KDHE, KDADS, and the three MCOs provided responses to concerns expressed by individuals, stakeholders, and organization representatives at each Committee meeting. A spreadsheet prepared by KLRD staff

was used to track issues presented to the Committee and the resolution of those concerns.

The agencies and MCOs used the spreadsheet to respond to the concerns. Each conferee concern was identified by name, the issue was noted, and the response or resolution from the agency, the MCO, or both was provided. Issues determined by the Joint Committee to have been addressed were noted as closed. The spreadsheet included carryover issues from calendar year 2022, as well as new items the Committee identified to be added to the spreadsheet.

KDHE Responses

At each meeting, a KDHE representative reviewed the agency's responses to unresolved Medicaid issues identified by conferees at previous Committee meetings.

At the February 3, 2023, meeting, the KDHE representative addressed the general issues pertaining to KDHE and provided specific updates on the following: the ability of KDHE to regulate providers' percentage of administrative overhead; BI waiver reimbursement rates; temporary staffing agencies; emergency medical services workforce shortages; the CHIP eligibility threshold error, noting the issue has been addressed through a proviso in prior years; a report from KDHE regarding existing programs for newborns and prenatal health needs of pregnant mothers; and the Secretary of Health and Environment's submitted statement regarding enforcement of the Home Health regulations, noting there is not a timeline for enforcement of the regulations, as it is at the discretion of the Secretary of Health and Environment.

The KDHE representative stated KDHE estimates it would cost \$1,712,436.19 all funds, including \$686,584.17 SGF, to add dentures, partials, and adjustments and repairs to base Medicaid coverage beginning July 1, 2023. The estimate assumes an 18 percent increase in utilization for beneficiaries age 21 and older.

At the April 21, 2023, meeting, the KDHE representative addressed the general issues pertaining to KDHE and provided specific updates on the Dental Passport; the restrictions that apply to limit internships or apprenticeships in the

programs KDHE oversees; a review of centralized credentialing in Kansas, noting Kansas has never implemented centralized credentialing in Medicaid; and an update that KDHE has partnered with the OMIG to offer Medicaid fraud training to be taught by the OMIG.

At the August 2-3, 2023, meeting, the KDHE representative addressed the general issues pertaining to KDHE and provided specific updates on internships and apprenticeships available through KDHE, noting that most, if not all, internships are paid.

At the October 11-12, 2023, meeting, the KDHE representative was available for questions but noted all concerns with KDHE had been resolved at prior meetings.

KDADS Responses

At each meeting, a KDADS representative reviewed the agency's responses to unresolved Medicaid and HCBS issues identified by conferees at previous Committee meetings.

At the February 3, 2023, meeting, the KDADS representative addressed the general issues pertaining to KDADS and provided specific updates on the following: data related to psychotropic drug administration had not been compiled but would be available for future meetings; KDADS would continue to track and report data on issues raised by the Committee and submit statutorily required reports; KDADS would take under consideration the request for person-centered support systems in the KanCare procurement; KDADS was working with CMS oversight to ensure all HCBS assessments are tracked; provider capacity issues were being addressed with the MCOs, and rate increases would require additional resources; enhancements to the daily rate for BI rehabilitation services was in the Governor's Budget Recommendations; KDADS was working with national experts on the housing issues; grant funding had been researched regarding a dementia services coordinator position; and CCBHC implementation was in progress.

At the April 21, 2023, meeting, the KDADS representative addressed the general issues pertaining to KDADS and provided specific

updates on seating requirements for children; an update on the PASRR Medicaid response backlog; an overview of agency internships, apprenticeships, or both; and a review of centralized credentialing, noting legislation that had been passed on electronic credentialing.

At the August 2-3, 2023, meeting, the KDADS representative addressed the general issues pertaining to KDADS and provided specific updates on internships and apprenticeships available in KDADS and an update on Assistive Services language for inclusion in the I/DD waiver renewal application.

At the October 11-12, 2023, meeting, the KDADS representative addressed the general issues pertaining to KDADS and provided specific data regarding the BI waiver; a review of the relationship between KDADS and Sedgwick County in relation to building a regional acute adult psychiatric care facility; a review of community support as an alternative to incarceration; the adoption of language for Assistive Services to be included in the I/DD waiver renewal application, which is similar to language used for Technology First; the continued monitoring of the Kansas Assessment Management Information System to assure reports are accurate and cover all relevant recipients of waiver services; Applied Behavior Analysis (ABA) therapy; and access to respite care under the HCBS waivers.

Department for Children and Families Responses

At the August 2-3, 2023, meeting, the DCF provided a written response pertaining to phone hold times at the DCF Lenexa office.

At the October 11-12, 2023, meeting, the DCF Deputy Secretary provided an update on the phone hold times at the DCF Lenexa office and addressed concerns regarding the issue.

MCO Responses

A representative from one MCO provided responses to issues on behalf of all three MCOs at each Committee meeting.

At the February 3, 2023, meeting, the representative addressed the general issues

pertaining to MCOs and provided the following responses: specific updates on prior authorizations; a request that hospitals experiencing long wait times regarding prior authorizations speak to the specific MCO so the issue may be resolved; the pre-approval process may differ on when the pre-approval occurs, as some conditions are administratively approved because they are deemed medically necessary, such as in childbirth; and advising the current standard to authorize services is 72 hours for emergent or urgent pre-authorization and 14 days if the situation is not urgent.

At the April 21, 2023, meeting, the MCO representative addressed the general issues pertaining to MCOs and reviewed centralized credentialing as a three-step process for providers. The first step is Medicaid ID enrollment, which is a centralized process. The second step is credentialing, in which documents are collected that were not provided during the enrollment process. The last step is contracting individually with each MCO. The representative noted steps two and three are not centralized.

At the August 2-3, 2023, meeting, the representative addressed the general issues pertaining to MCOs and provided specific updates regarding the number of prior authorization requests received by an MCO and the number of outright and denied admissions processed.

At the October 11-12, 2023, meeting, the representative addressed the general issues pertaining to MCOs and provided specific information on the BI population in each MCO.

MCO Updates

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

Aetna Better Health of Kansas

At the February 3, 2023, meeting, the Aetna Better Health of Kansas (Aetna) representative provided an update on its programs and services and shared a member success story. The representative reviewed the value-added benefits offered by Aetna and the utilization rates. The representative reviewed the language line services available to Aetna members. It was noted the

language services are available with a live person 24/7 by phone for multiple languages. The representative shared various community events Aetna leadership and staff had recently participated in, as well as upcoming events.

At the April 21, 2023, meeting, the Aetna representative provided an update on the pregnancy programs offered to members. Baby Talk is a prenatal education program that complements prenatal care for those who are less than 32 weeks pregnant that expanded statewide in 2023. Maternity Matters identifies and assesses pregnancy risks for all expecting members using Aetna's advanced analytics. A review of the three levels of case management identifying and supporting vulnerable members was presented. Data were provided on the impact of Aetna's case management on maternity members. The representative shared maternal mortality rates and noted opioid use is a contributing factor in maternal deaths. The representative reviewed the value-added benefits Aetna designed to impact maternity and provided a review of upcoming community events. The representative addressed questions regarding dual eligibility for Medicare and Medicaid.

At the August 2-3, 2023, meeting, the Aetna representative introduced an Aetna member who shared life experience and the support received from Aetna that has helped them attain their current lifestyle.

The Aetna representative provided an update of the organization and an overview of Aetna's partnership with Careforth; information regarding the model of care and caregiver experience; a review of Aetna's involvement with its members to assist in redetermination; and a chart with the upcoming Aetna community events.

At the October 11-12, 2023, meeting, the Aetna representative introduced an Aetna corporate partner who reviewed the online mental health and well-being support program, Kooth. Kooth is available to Aetna members, and the goal is to provide early intervention for youth mental health issues. The program was described as a personalized, proactive, and accessible digital support system that focuses on self-help. The partner representative reviewed the cost-benefit, outcomes, and impact of the program that includes

chat-based counseling by licensed counselors and a data-governance framework. The representative noted the app is used more at home than at school.

Sunflower Health Plan

At the February 3, 2023, meeting, the Sunflower Health Plan (Sunflower) representative provided an update on its programs and services and shared a member success story. The representative reviewed the value-added benefits offered by Sunflower and the utilization rates. The representative reviewed the interpreter services that are available 24/7 to members and provided information on the Sequential Intercept Model for individuals with I/DD or other cognitive impairments.

The Sunflower representative reviewed three programs offered by Sunflower: the Start Smart for Your Baby program, stating the program reduces the rate of low birth weight deliveries in the Medicaid population; the Caregiving Collaborations program, for which the purpose is to improve the caregivers' quality of life and give them the extra support needed as they assist others; and the My Health Pays reward program.

At the April 21, 2023, meeting, the Sunflower representative provided an update on its programs and services. The representative stated Sunflower has partnered with KDADS and with Shared Living providers to develop a high quality Shared Living program. Sunflower brought the Strong Youth-Strong Communities (SYSC) program to its members. SYSC brings teens together to learn life and leadership skills that help unlock their potential, noting professional members of the Professional Football Hall of Fame host SYSC summits and share their personal stories of challenges and obstacles. The representative also stated Sunflower has provided training to KIDS TLC (a psychiatric residential treatment provider) staff on processes, best practices, and how the two groups can jointly collaborate. Another representative addressed questions regarding dual eligibility for Medicare and Medicaid.

At the August 2-3, 2023, meeting, the Sunflower representative provided an update on its programs and services and described an example of how Sunflower services had assisted a participant. The representative reviewed an

upcoming community event with other MCOs and Swope Health; presented a review of Sunflower's partnerships with federally qualified health centers; and shared the results of the 2022 Long Term Services and Supports Member Satisfaction Survey.

At the October 11-12, 2023, meeting, the Sunflower representative reviewed supports offered by Sunflower to its members. The representative reviewed a partnership with InterHab and the importance of direct-support care. Recent community activities were also reviewed.

UnitedHealthcare Community Plan

At the February 3, 2023, meeting, the United Healthcare Community Plan (UHC) representative provided an update on Mental Health First Aid (MHFA). MHFA is an evidence-based training program administered by the National Council for Mental Wellbeing that teaches individuals how to identify, understand, and respond to signs of mental illness. The program provides the skills to reach and provide initial health care and support to someone who may be developing a mental health or substance use challenge or experiencing a crisis.

At the April 21, 2023, meeting, the UHC representative provided an update on UHC's efforts to assist in KanCare renewals. The representative noted the challenges associated with the redetermination due to members' lack of awareness; outdated addresses for members; the large volume of applications; and language, equity, and literacy barriers. The representative shared UHC has collaborated with KDHE to provide members with information and shared examples of literature to inform members about the redetermination process in various languages. Another UHC representative addressed questions regarding dual eligibility for Medicare and Medicaid.

At the August 2-3, 2023, meeting, the UHC representative provided an update on MHFA for Kansas barbers and stylists. The representative explained MHFA is a grassroots movement that identified barber shops and beauty shops as open and comfortable settings; therefore, they are an "ideal setting for therapy." The representative also noted more than 2.6 million people across the

United States have been trained in MHFA and, since the program was founded in 2016, 600 barbers in 35 cities and 14 states had been certified. The representative stated the MHFA program is available to all licensed cosmetology schools in Kansas, noting it is a three-day training program.

At the October 11-12, 2023, meeting, the UHC representative reviewed value-added benefits, noting a mobility collaborative in Johnson County to provide employment support for members through transportation services and education services to prepare for a GED, learn computer coding, or develop resume-writing skills.

Kansas Behavior Supports

At the April 21, 2023, meeting, a representative of Kansas Behavior Supports provided testimony regarding ABA therapy. The representative stated Kansas Behavior Supports provides home-based services throughout Kansas and serves serves 90 children in Kansas with autism. The representative noted there is a two-year wait for ABA services in Kansas. The representative requested an increase in the ABA reimbursement rates, as there are multiple challenges when providing services, and Kansas rates are the lowest among surrounding states. The representative noted specifically that current rates are not sufficient to cover overhead costs.

The Transformative Impacts of Aging in Kansas and America

At the August 2-3, 2023, meeting, the Director of the Landon Center on Aging, University of Kansas School of Medicine (Director, in this section) presented testimony regarding the Transformative Impacts of Aging in Kansas and America. The Director noted 17 percent of Kansas' population is 65 or older, 40 percent of individuals in hospitals are 65 or older, and 50 percent of individuals older than 85 have reduced cognition or are frail. The Director defined healthspan as "the number of years lived in a healthy, vital, and functionally capable state with a good quality of life." The Director stated the issue is that a person's lifespan might far exceed their healthspan. The goal is to prolong the healthspan for a greater portion of life by preventing, treating, or even reversing diseases associated with older age.

The Director also provided data reflecting the population changes from 1900 to 2020 and projecting what the population will look like in 2040; noting by 2030, the U.S. population of individuals 65 or older will double to more than 70 million. He noted the number of individuals 85 or older will increase five-fold to 18 million by 2050 and stated centenarians are the fastest-growing age group, with a projection of 1 million by 2050. He noted 61 percent of the top 5 percent of Medicare spenders with chronic conditions and functional limitations are seniors and eligible for both Medicare and Medicaid.

The Director stated the aging population is transforming the U.S. health care system and affecting nursing homes, long-term-care facilities, and hospitals. He stated that at age 65, people can now expect to live another 15 to 20 years on average, and a person's health status during that time is of great importance. The Director reviewed two frameworks on aging and highlighted that the activities of daily living have a large influence on healthspan as one ages.

Wamego Hospital Geriatric Emergency Department Accreditation Process

At the August 2-3, 2023, meeting, representatives of the Wamego Health Center presented on the process the health center followed and was following regarding the Geriatric Emergency Department accreditation. The representative stated the purpose of the American College of Emergency Physicians Geriatric Emergency Department Guidelines is to provide a standard that can effectively improve the care of the geriatric population and is feasible to implement in the Emergency Department. He stated the purpose of the Geriatric Emergency Department is to recognize those patients who will benefit from inpatient care and to effectively implement outpatient care to those who do not.

The representative identified three tiers in the process, noting the health center has achieved the first tier and was scheduled to continue their efforts to move to the top tier of accreditation, especially as the reward is higher quality of care and safety for patients.

Corterra Healthcare Geriatric Psychiatric Hospital Accreditation Process

At the August 2-3, 2023, meeting, representatives of the Corterra Healthcare Geriatric Psychiatric Hospital (Corterra Healthcare) presented information on the population the hospital serves: people ages 55 and older, with the majority coming from senior living facilities. Individuals must go through a process to ensure they meet the criteria to be admitted into the hospital. The representative stated the hospital is designed to stabilize senior patients experiencing mental health crisis, with an objective of them returning to the community or previous level of living.

The Corterra Healthcare representatives reviewed the accreditation and licensing process and stated the license process is in coordination with KDADS. KDHE will perform the CMS certification process. They stated Corterra Healthcare plans to seek accreditation by The Joint Commission, with KDHE overseeing that process.

The Corterra Healthcare representatives discussed the growing urgency to address senior behavioral health care that burdens many and impacts everyone. The representatives provided data on the prevalence of adult mental illness, thoughts of suicide, and reports of unmet needs by adults with any mental illness in Kansas as compared with the nation and noted an estimated 1.5 million Kansans live in areas underserved for mental health, known as mental health shortage areas.

Palliative Care

At the August 2-3, 2023, meeting, a presentation on palliative care was given by representatives of the Palliative Care and Quality of Life Interdisciplinary Advisory Council (Council). Palliative care is defined as “the comprehensive, interdisciplinary care for patients living with serious, potentially life-threatening or life-limiting conditions, with the goal of improving the quality of life for both the patient and the family.” The representatives noted Kansas ranks last in its region and 42nd out of 51 states and the District of Columbia regarding access to palliative care. The representative also noted that in 2021, only 3.6 percent of Kansans had received palliative care.

The Council representative stated palliative care focuses on relieving the symptoms and stress of serious illness, ideally along with curative treatment. Two priority areas of focus were noted: access, and education and workforce training. Access includes broadened access to telehealth, an increase in the number of certified palliative care clinicians, enhanced reimbursement, and the development of a task force to determine feasibility of statewide assessment to understand the magnitude of seriously ill populations for appropriate resource allocation.

The Council representative provided recommendations to address the priority focus areas and noted the use of Project ECHO (Extension for Community Healthcare Outcomes) as a means to deliver continuing medical education. The representative clarified there needs to be more information provided for specialty certifications, such as palliative care, as well as a need for funding for ECHO training and for reimbursement for the entire interdisciplinary team.

The Council representatives provided data regarding palliative care workforce shortages specific to health care providers certified in palliative care. Statewide distribution of these providers accentuates the workforce shortage. The representative noted the issue is dire in rural and frontier regions, and reliance on primary care and frontline providers is necessary to meet immediate needs. The representatives stated these providers need additional training, education, and access to subspecialty care, noting the majority of care is provided by unpaid family caregivers.

The Council representative stated the five-year Kansas Palliative Care State Plan was approved on January 25, 2023. The representative stated approximately 20 studies indicate a direct cost savings of about \$600 per patient per day. She noted there is a reduced need for hospital stays and emergency room visits, especially intensive care unit stays during the end of life.

Alzheimer’s in Kansas: The Current Landscape and Future Implications

At the August 2-3, 2023, meeting, a presentation on Alzheimer’s in Kansas was given by a representative of the University of Kansas

Alzheimer’s Disease Research Center (ADRC). The ADRC is one of 33 nationally designated Alzheimer’s Disease Research Centers in the country. Its research focuses are prevention and delay of onset, diagnostics, delay of disease progression, treatment, and access to support. Its care and support focuses are the memory clinic, growing the capacity of providers to address dementia, the Cognitive Care network of providers, and support groups. Its education focus is on providers, other health professionals, I/DD professionals and communities, and the general community. The representative noted 6.7 million Americans of all ages are living with Alzheimer’s, including 1 in 10 individuals age 65 and older and 1 in 3 age 85 and older. She stated 60,000 Kansas are living with the disease. Of the more than 100,000 family caregivers, 60 percent are employed.

The ADRC representative stated Kansas is one of 20 states identified as a “dementia neurology desert.” There are 20 geriatricians in Kansas and fewer than 20 certified geriatric psychiatrists. A review of the current cognitive screening tools, as well as the common detection practice, was provided, noting the challenges in early detection. Early detection is important, as it creates opportunities to possibly slow the advancement of the disease.

An overview of the Cognitive Care Network was provided, and it was noted the network has a significant impact in rural areas. The representative provided information regarding the movie “Why,” which deals with reducing the stigma surrounding Alzheimer’s. Screenings of the movie were scheduled throughout the state, to build community capacity and understanding about the subject.

Health Care Labor Workforce

At the August 2-3, 2023, meeting, a presentation on the Health Care Labor Workforce was given by an economist from the Kansas Department of Labor – Labor Information Center. The representative stated the health care workforce can be broken down into three primary industries: ambulatory health care services, hospitals, and nursing and residential care facilities.

The presentation reviewed the industry groups, the projected growth in each occupation, median wages by metropolitan area, and the regional impact. The presentation focused on the most in-demand health care occupations in the state: registered nurses, nursing assistants, home health and personal care aides, and licensed practical and licensed vocational nurses. The representative noted data is gathered beyond wages, but it is difficult to use because there are variables, such as part-time versus full-time, that cannot be clearly quantified.

Health Professional Shortage Areas

At the August 2-3, 2023, meeting, a presentation on health professional shortage areas (HPSAs) was provided by the Coordinator of the Office of Primary Care and Rural Health, KDHE (State Office). The State Office helps Kansas rural and medically underserved communities in building sustainable access to quality, patient-centered primary health care services.

The presentation reviewed HPSA designations that identify areas, population groups, or facilities within the United States that are experiencing a shortage of health care professionals. State and federal agencies use HPSAs to prioritize and direct limited resources to areas with unmet primary, dental, and mental health care needs. The representative stated the State Office is responsible for the collection of information from health care professionals used in the population-to-professional ratios. The presentation provided a review of contributing factors used in HPSA determinations and the rules for population group HPSAs.

The presentation included a review of health care vacancies and turnover in Kansas, stating the largest numbers of job openings through 2028 are projected to be for registered nurses, CNAs, and HHAs. Also included were a review of the Kansas State Loan Repayment Program and the Nurse Corps Loan Repayment Program. It was noted separate state funding and legislation would be required to create a state loan repayment program for social workers or other professionals.

Health Care Long-Term Care Workforce Project

At the August 2-3, 2023, meeting, a representative of The Council of State Governments provided a presentation on its Long-Term Care Workforce Project. The representative stated the focus areas of the project are optimizing ARPA funding for Long Term Services and Supports and HCBS, promoting economic recovery by revitalizing the direct-care workforce and supporting family caregivers, and addressing state regulation of providers and services as states continue to recover from the COVID-19 pandemic. The representative presented information regarding the challenges felt by the direct-care workforce and family caregivers, as well as state strategies to assist in this area. He provided an overview of the Long-Term Care Workforce Network and noted a National Online Resource Center is being built, and the Council of State Governments provides technical assistance site visits to states.

Health Care Caregiver Workforce

At the August 2-3, 2023, meeting, a presentation on family caregivers was given by a representative of AARP Kansas. The representative reviewed the role of caregivers, noting many are unpaid family caregivers who provide services ranging from daily living activities to complex medical and nursing tasks. The representative provided a list of recommendations to support unpaid family caregivers, as well as supporting documents regarding the value of family caregivers.

KanCare Reprourement

At the October 11-12, 2023, meeting, the Secretary of Administration noted the expiration of the MCO contracts on December 31, 2024, and reviewed the procurement process for a new contract. The RFP was posted in October 2023, and the bid closing date is January 4, 2024. After an extended evaluation of the bids, the negotiation of a contract will begin, and the planned date for a contract is March 22, 2024. Implementation and readiness reviews will occur after the contract is signed, and the go-live date is January 1, 2025. Both the Secretary of Administration and Secretary of Health and Environment responded to questions from Committee members.

The Secretary of Health and Environment confirmed the move from the 1115 waiver to the 1915(b) waiver will occur in 2024, noting the new contracts will not be under the present waivers.

It was noted the RFP requires the core team for each MCO to have an office near Topeka, and other offices may be located across the state. The RFP also includes performance measures that focus on quality more than quantity. The RFP identifies dedicated resources that are to be allocated to monitor performance measures. It was also noted the RFP focuses on the whole-person-support model for medical services, and behavioral health is included in the integrated health-care model.

The Secretaries addressed various questions on financing and stated the following: a bond amount is included in the RFP; proprietary information is not made public; the costs for the new contracts have not been determined; and capitation rates and case loads are both considered in building a rate structure.

What States Are Doing on Mental Health

At the October 11-12, 2023, meeting, a fellow from the Mercatus Center, George Mason University, presented a synopsis of various paths states are choosing regarding mental health care in areas such as expanding prescriptive authority for various health professionals, telehealth, and using CCBHCs.

Status of 2020 and 2021 Recommendations on Kansas Mental Health Modernization and Reform Recommendations

At the October 11-12, 2023, meeting, a representative of DCF and a representative of the Office of Judicial Administration (OJA) provided an update to the 2022 spreadsheet of the recommendations from the 2020 and 2021 Special Committee on Kansas Mental Health Modernization and Reform pertaining to their respective agency or department. [Note: KLRD staff provided the original spreadsheet at the September 26-27, 2022, Committee meeting.]

The OJA representative noted the recommendation of the 2021 Kansas Mental Health Modernization and Reform Commission to establish specialty courts to allow *ex parte*

communication directly to a judge by a probation officer or treatment provider. The OJA representative reported from 2009 through 2021, rules and regulations were promulgated to establish standards and administration of specialty courts in Kansas. The OJA representative also referenced a multi-branch community of practice delegation embracing the three branches of state government created to reduce barriers and offer supports for the Kansas mental health system, with 15 of the 31 judicial districts participating

The DCF representative reported that in FY 2023, DCF added funding for an additional full-time position for each child placing agency to augment recruitment for new licensed foster homes. The agency also launched a financial framework to create a network of providers to reserve beds for emergency placement of a foster child and created programs for supplemental training. The DCF representative traced the agency's response to 2023 HB 2021 by adding a definition of "behavioral health crisis" to the Child In Need of Care Code. The agency is working with the Kansas Department of Corrections (KDOC) to allow community supervision resources for juvenile offenders. DCF and KDOC regularly share data for management information, and DCF also actively participates in the Mental Health Intervention Team (MHIT) program. The representative commented on other pertinent DCF programs: implementation of a pilot Parent/Youth Facilitation Program in Saline and Wyandotte Counties for students at risk of truancy; expansion of Multisystem Treatment (MST) statewide to prevent a child from going to foster care; planning for additional Functional Family Therapy intervention teams with KDOC; and creation of Children's Behavior Interventionist services with Medicaid funding for youth ages 3-20; and use of a Team Decision Making tool as used in Iowa regarding foster care needs.

Conclusions and Recommendations

At its meeting on October 11-12, 2023, Committee members discussed their conclusions and recommendations to the 2023 Legislature.

The Committee recommends:

- KDADS report to the 2024 Legislature and the Committee on mobile competency

pilot projects, including input from representatives from the counties participating in the pilot projects on best practices for outpatient forensic competency evaluation and treatment;

- KDADS and the CCBHCs report to the 2024 Legislature and the Committee on the availability of crisis services or other community-based services that could be provided to patients waiting in emergency departments, acute in-patient hospitals, or other settings for admission to a state hospital or state Institution alternative hospital;
- If there is a report from the Special Committee on Child Care Centers and Child Care Homes to the 2024 Legislature, the report should also be directed to the Committee and presented at the next available quarterly meeting after the report is published;
- The CHIP eligibility income guidelines be amended in statute, as currently described in 2023 HB 2050;
- The House Social Services Budget Committee work with KDHE and stakeholders to include coverage for adult dental examinations and cleanings in KanCare;
- The Elder Count and Long Term Care Resource Guide be updated, maintained, and made available to the public digitally; and
- The Community Support Waiver be implemented.

APPENDIX A

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

Annual Report for the 2024 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 2022 Supp. 39-7,159) creating a comprehensive and coordinated statewide system for long-term care services became effective July 1, 2008.

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

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

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

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

Number of individuals Transferred—The following summarizes the number of individuals transferred from intellectual/developmental disability (I/DD) institutional settings into HCBS during state fiscal year (FY) 2023, together with the number of individuals added to HCBS due to crisis or other eligible program movement during FY 2023. The following abbreviations are used in the table:

- ICF/IDD — Intermediate Care Facility for Individuals with Developmental Disabilities; and
- FY — State Fiscal Year.

I/DD INSTITUTIONAL SETTINGS AND WAIVER SERVICES*	
Private ICFs/IDD: Average Monthly Caseload FY 2023	39
State I/DD Hospitals: Average Monthly Caseload FY 2023	268
I/DD Waiver Community Services: Average Monthly Caseload FY 2023	9018
*Monthly averages are based upon program eligibility. Sources: FY 2023—Medicaid eligibility data as of October 2023. The data include people coded as eligible for services or temporarily eligible.	

The following summarizes the average monthly caseload. These additional abbreviations are used in the table:

- FE — Frail Elderly waiver;
- PD — Physical Disability waiver; and
- BI — Brain Injury waiver.

FE / PD / BI INSTITUTIONAL SETTINGS AND WAIVER SERVICES*	
Nursing Facilities: Average Monthly Caseload FY 2023	9027
Head Injury Rehabilitation Facility: Average Monthly Caseload FY 2023	45
FE Waiver: Average Monthly Caseload FY 2023	6707
PD Waiver: Average Monthly Caseload FY 2023	6055
BI Waiver: Average Monthly Caseload FY 2023	932
*Monthly averages are based upon program eligibility. Sources: FY 2023—Medicaid eligibility data as of October, 2023. 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 2016 – 141
FY 2017 – 142
FY 2018 – 140
FY 2019 – 138
FY 2020 – 132
FY 2021 – 126
FY 2022 – 126
FY 2023 – 126

PARSONS STATE HOSPITAL AND TRAINING CENTER: AVERAGE DAILY CENSUS

FY 2016 – 163
FY 2017 – 159
FY 2018 – 160

FY 2019 – 162
FY 2020 – 157
FY 2021 – 151
FY 2022 – 149
FY 2023 – 147

PRIVATE ICFs/IDD: MONTHLY AVERAGE*

FY 2016 – 137
FY 2017 – 133
FY 2018 – 137
FY 2019 – 119
FY 2020 – 110
FY 2021 – 103
FY 2022 – 44
FY 2023 – 39

NURSING FACILITIES: MONTHLY AVERAGE*

FY 2016 – 10,235
FY 2017 – 10,047
FY 2018 – 10,049
FY 2019 – 10,226
FY 2020 – 10,500
FY 2021 – 9,571
FY 2022 – 9,049
FY 2023 – 9,027

*Monthly averages are based upon Medicaid eligibility data.

Savings Resulting from the Transfer of Individuals to HCBS

In most, but not all cases, services provided in the community do cost less than those provided in an institutional setting, such as an ICF/IDD or a nursing facility. However, “savings” are realized only if a bed is closed behind the person transferring to HCBS. Due to demand, beds are typically refilled by individuals requiring the level of care provided by the facilities; therefore, the beds are not closed.

As certified by the Secretary for Aging and Disability Services, despite individuals moving into community settings, which does have the effect of cost avoidance, the savings resulting from moving the individuals to HCBS during the preceding 12 months, as of September 30, 2023, was \$0.

Balance in the KDADS Home and Community Based Services Savings Fund

The balance in the Kansas Department for Aging and Disability Services Home and Community Based Services Savings Fund as of September 30, 2023, was \$0.

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Report of the Capitol Preservation Committee to the 2024 Kansas Legislature

CHAIRPERSON: Patrick Zollner

LEGISLATIVE MEMBERS: Senators Chase Blasi and Elaine Bowers; and Representatives Jesse Borjon and Valdenia Winn

NON-LEGISLATIVE MEMBERS: Joseph Brentano, B.J. Harden, Anthony Hensley, Will Lawrence, and Cory Sheedy

EX OFFICIO MEMBERS: Frank Burnam and Curtis Young

CHARGE

Review Various Issues Regarding the Capitol

Pursuant to KSA 75-2269, the responsibilities of the Committee are:

- Approving all proposals for renovation of all areas of the Capitol, the Capitol's Visitor Center, and the grounds surrounding the Capitol to ensure that the historical beauty of the areas is preserved;
- Preserving the proper decor of such areas;
- Assuring that any art or artistic displays are historically accurate and have historic significance;
- Overseeing the location and types of temporary and revolving displays of the Capitol, including the visitor center; and
- Overseeing the reconfiguration or redecoration of committee rooms within the Statehouse.

January 2024

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Capitol Preservation Committee

ANNUAL REPORT

Conclusions and Recommendations

The Capitol Preservation Committee made the following conclusions and recommendations:

- The Committee granted conditional approval of the artist for the Suffragist Memorial, as recommended by representatives of the League of Women Voters of Kansas, with the understanding the Committee will review a full rendering of the artist's proposal for final project approval;
- The Committee created a Subcommittee for the 1st Kansas (Colored) Voluntary Infantry Regiment mural;
- Kansas State Historical Society staff will be asked to design a proposal for signage or a plaque for the Visitor Center that would commemorate the construction workers who died in the process of building and maintaining the Capitol;
- The Committee created a Subcommittee to discuss a request for signage or labels for the four statues in the Rotunda on the 2nd Floor of the Capitol and to discuss possibly moving the mural in the conference room connected to the Lieutenant Governor's Office to a space open to the public; and
- The Committee requested more information from the Director of Legislative Administrative Services about possible artwork for committee rooms in the Capitol.

Proposed Legislation: None.

BACKGROUND

The Capitol Preservation Committee was created by the Legislature in 2010 to approve renovation proposals in all areas of the Capitol, Capitol Visitor Center, and Capitol grounds to ensure the historical beauty of those areas is preserved, preserve the proper decor of those areas, assure any art or artistic displays are historically accurate and have historic significance, approve the location and types of temporary displays, and oversee the reconfiguration of committee rooms within the Capitol. As provided by KSA 75-2269, the Division of Legislative Administrative Services is responsible for implementing the recommendations of the Committee.

The Committee is composed of 12 members, with the Governor appointing 3, the President of the Senate and the Speaker of the House each appointing 2, and the Minority Leaders of the House and Senate each appointing 1.

The Committee's three ex officio members are the Statehouse Architect, the Director of the Kansas Creative Arts Industries Commission, and the Executive Director of the Kansas State Historical Society.

The Governor has the authority to appoint the chairperson from the Committee's membership. Currently, the chairperson is the Executive Director of the Kansas State Historical Society.

COMMITTEE ACTIVITIES

The Committee met on October 24, 2023, at the Capitol. During the meeting, the Committee discussed the proposed Suffragist Memorial and heard updates on various Capitol Complex projects and the *Ad Astra* statue. The Committee also discussed the 1st Kansas (Colored) Voluntary Infantry Regiment mural and heard presentations on a proposed new memorial recognizing fallen construction workers during the Capitol's construction.

Suffragist Memorial Subcommittee

Prior to the Committee's meeting, the Suffragist Memorial Subcommittee received the report from representatives of the League of Women Voters of Kansas regarding the artists who were finalists for the Suffragist Memorial in the Capitol and which artist was ultimately selected by the organization.

The representatives of the League of Women Voters presented the selected artist's proposal for the Suffragist Memorial mural to the Committee and discussed the budget, location, subject matter, and timeline of the project. The Committee approved the selection of the artist, the general content of the mural, and the location of the mural, subject to review and approval of the final image by the Committee. The Committee will plan to request from the Legislative Coordinating Council a meeting day in January to further study the final image of the mural.

Capitol Complex Update

The Director for the Office of Facilities and Property Management, Department of Administration, provided updates on the Statehouse Parking Garage, exterior lighting on the Statehouse, and cleaning the exterior steps. On the Statehouse grounds, repairs are underway on the Kansas Law Enforcement Memorial and the base of the Statue of Liberty.

The Director also discussed the replacement of pavers in the ground that are more than ten years old and have been damaged, and he stated the planned new location of the Liberty Bell replica that is currently stored in pieces in the Statehouse Parking Garage will be on or near the Docking State Office Building upon its completion.

[*Note:* The 2022 Capitol Preservation Committee received a briefing on plans to place the full-sized replica of the Liberty Bell on Statehouse grounds during the Docking State Office Building renovation process. The replica was one of 57 replicas that was created as a result of a 1950 bond drive. Kansas' replica is number 26. Every state and territory and the Truman Library received a replica to display. Kansas is one of three states that does not display its replica. There are visitors who have a goal of seeing all 57 replicas. If available, Kansas Highway Patrol or Capitol Security officers will take visitors to the storage area in the Statehouse Parking Garage where the Liberty Bell replica is stored.]

Ad Astra Update

Senator Bowers provided an update on the *Ad Astra* statue and completion of *Ad Astra* Plaza. There is work with contractors on the project and it is expected that all the funding for the project will be raised within a few months. The Director of the Office of Facilities and Property Management, Department of Administration, stated that work has already commenced and the Office of Facilities and Property Management is assisting with facilitation. It is hoped that the project will be finished in the spring or summer of 2025.

1st Kansas (Colored) Voluntary Infantry Regiment Mural

The Committee established a Subcommittee on the 1st Kansas (Colored) Voluntary Infantry Regiment mural that will be located in the Capitol.

New Business

The Committee discussed new items that had not previously been presented to the Committee.

Fallen Workers Memorial

The Committee received testimony from an employee of the State Library and a member of the public to consider a memorial to the workers who died during work on the Capitol.

The two conferees stated the need to memorialize these workers, as their names are not listed anywhere in the Capitol. The picture of the construction workers from when the Capitol was first built is prominently displayed in Construction Hall in the Visitor Center and most likely shows one or more of the fallen workers.

The Chairperson agreed to ask Kansas State Historical Society staff to work on a proposal for signage or a plaque for the Visitor Center that would not necessarily require the Committee's approval.

Rotunda Statues

Senator Bowers stated a former legislator had suggested that signage or labels are needed for the four statues in the Rotunda on the 2nd floor. The statues were created by Peter F. "Fritz" Felten, Jr., from Hays, who used limestone from southern Kansas to create figures of Dwight D. Eisenhower, Arthur Capper, Amelia Earhart, and William Allen White. The statues were installed in 1981, and each one weighs about 2,000 pounds.

The Chairperson created a Subcommittee to further discuss the request.

Conference Room Mural

A Committee member initiated discussion regarding the mural located in a conference room off the Lieutenant Governor's office in Room 251-S of the Capitol. The Committee member stated the current term for the mural, "the Lieutenant Governor's mural," is a misnomer, because the conference room is the Governor's Conference Room, and, therefore, it is the Governor's Mural. The mural was commissioned by the Hays Arts Council, and the artist of the mural was Dennis Schiel from Hays.

Because the mural is located in a conference room off the Lieutenant Governor's Office and the room is used by the Governor, Lieutenant Governor, and their respective staffs, it is not part of the regular tour provided by the staff of the Capitol Visitor Center. Visitors are permitted to stop by the Lieutenant Governor's Office to ask whether the conference room is open to view the mural, but that is not commonly known by most visitors.

There was a consensus that the Subcommittee created to discuss possible signage and labels could also discuss the possible relocation of the Governor's mural to a place in the Capitol that is open to the public.

Committee Room Artwork

The Committee received an update from the Director of Legislative Administrative Services on

committee room artwork. There has been a search for suitable artwork from artists all across the state. In addition, there have been discussions with the Kansas State Historical Society to make prints of artwork in their collection. The committee rooms already have picture rails installed, as the Capitol is a historic building and there are guidelines about installations on the walls.

The Director agreed to return to the Committee with more information about possible artwork that has already been identified. It was also recommended that the Director utilize the lists of artists who have been vetted through the Kansas Creative Arts and Industries Commission.

CONCLUSIONS AND RECOMMENDATIONS

The Committee made the following conclusions and recommendations:

- The Committee conditionally approved the artist for the Suffragist Memorial, as recommended by representatives of the League of Women Voters of Kansas, with the understanding the Committee will review a full rendering of the artist's proposal for final project approval;
- The Committee created a Subcommittee for the 1st Kansas (Colored) Voluntary Infantry Regiment mural;
- Kansas State Historical Society staff will be asked to design a proposal for signage or a plaque for the Visitor Center to commemorate the fallen construction workers who died in the process of building and maintaining the Capitol;
- The Committee created a Subcommittee to discuss a request for signage or labels for the four statues in the Rotunda on the 2nd Floor of the Capitol, and to discuss possibly moving the mural in the conference room connected to the Lieutenant Governor's Office to a space open to the public; and
- The Committee requested more information from the Director of Legislative Administrative Services about possible artwork for committee rooms in the Capitol.

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Report of the Health Care Stabilization Fund Oversight Committee to the 2024 Kansas Legislature

CHAIRPERSON: Marvin Kleeb

OTHER MEMBERS: Senators Chase Blasi and Cindy Holscher; and Representatives Will Carpenter and Henry Helgerson

NON-LEGISLATIVE MEMBERS: Craig Concannon, M.D.; Darrell Conrade; Dennis George; Douglas Gleason, M.D.; James Rider, D.O.; and Jerry Slaughter

CHARGE

Review the Status of the Health Care Stabilization Fund

The Committee annually reviews the operation of the Health Care Stabilization Fund, reports, and makes recommendations regarding the financial status of the Fund.

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Health Care Stabilization Fund Oversight Committee

ANNUAL REPORT

Conclusions and Recommendations

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

The Committee considered information presented by the Board of Governors' representatives, including its statutorily required report; the Board's actuary; and health care provider and insurance company representatives and other interested parties. The Committee acknowledges its role to provide oversight and monitoring of the HCSF, including legislative actions and other contemporary issues affecting the soundness of the HCSF, and makes the following recommendations and comments:

- **Actuarial report and status of the HCSF; income and rate level indications; Board reports.** The Committee notes the analysis provided by the Board of Governors' actuary characterized calendar year (CY) 2023 as a "mixed year," with the Fund's position as of June 30, 2023, similar to the prior forecast. Among those negative indications: loss performance on active providers was worse than anticipated, investment results were worse than anticipated, and rate inadequacy was high for the hospitals (Class 17—medical care facilities). The Committee acknowledges analysis regarding the changes in 2021 law, which increased the coverage option on primary insurers (first \$500,000) and also resulted in a reduction of Fund assets, liabilities, and for FY 2024, unassigned reserves. The Committee notes the revenue of the HCSF is limited to two sources: surcharge rate payments by health care providers and interest income on investment of the HCSF.
- **Fund revenue.** The Committee recognizes both the statutory requirements of the Health Care Provider Insurance Availability Act (HCPIAA) governing the investment and reinvestment of HCSF moneys in accordance with Pooled Money Investment Board (PMIB) investment policies and the ongoing climate affecting the investment yield of the Fund. The Committee encourages the Board to continue in its engagement with the PMIB to seek a better balance for moneys in reserve that can be invested with a goal of using an optimal fiduciary approach. The Committee further notes the rate level indications on surcharge revenues, particularly for Class 17 facilities, which are experiencing narrowing margins and some financial stresses, will place upward rate pressure in the next fiscal year absent an increased investment yield.

- **Private Practice Reserve Fund.** The Committee recognizes the impact of the increased coverage requirements contained in 2021 law on the self-insurance programs for the University of Kansas (KU) Faculty and Foundations and the residents-in-training program. For the residency programs, the HCSF is reimbursed from the State General Fund (SGF) for its administrative costs (namely attorney fees and expenses and settlements). For the KU Faculty and Foundations, the first \$500,000 for reimbursable expenses is paid from the Private Practice Reserve Fund. Any costs exceeding this amount must be paid from the SGF. With no change in the moneys available from the Private Practice Reserve Fund, the Committee notes, there will be an ongoing increase in settlements and attorney fees, which will require additional reimbursement from the SGF.
- **Open cases.** The Committee recognizes the impact not only on medical care facilities (hospitals) but also on adult care homes. It notes in Plan Year 2019, 8 adult care homes were insured in the Availability Plan; by 2021, some 49 facilities were insured in the Plan. While there was a slight decline from Plan Year 2022 (58 facilities), 54 adult care homes still seek insurance outside the commercial marketplace. The Committee will continue to monitor health care facility providers, the marketplace concerns stated below, and the issues of affordability and availability of liability coverage and challenges seen in these facilities. The Committee requests available analysis regarding any trends in litigation and loss experience.
- **Marketplace conditions; present headwinds.** The Committee acknowledges the presentations from the representatives of the Board of Governors, a health care insurer, and health care provider representatives regarding the availability and affordability of medical professional liability insurance and present conditions. The Committee notes the increasing enrollment since 2020 in the Health Care Provider Insurance Availability Plan (Availability Plan). The Availability Plan's experience mirrors many of the concerns seen nationwide for the professional liability insurance industry, which has led to insurers and reinsurers tightening underwriting standards and raising rates. The headwinds impacting Kansas health care providers are tied to larger economic concerns as well as State policies, including inflationary issues impacting the cost of providing health care and its delivery, the interest rate environment, increasing litigation costs coupled with higher severity claims (resulting in larger settlements or verdicts), the uncertainty regarding the application of the Kansas Supreme Court's decision in *Hilburn v. Enerpipe Ltd.* (2019) to the cap on noneconomic damages as it applies to medical malpractice actions, and ongoing consolidation of the health care industry and workforce staffing challenges. The impacts of COVID-19 on overall health care delivery also must be acknowledged.
- The Committee further recognizes Kansas health care providers and the insurance industry benefit from the HCPIAA, state tort law, and the HCSF itself. Health care providers know professional liability insurance is available, given the market stabilization afforded by the HCSF and the oversight provided by the Board of Governors and its actuary. It notes other states with similar funds have weathered these same headwinds without sufficient payments, investments, and other revenues and now face using state general fund dollars to shore up those funds.
- **Defined health care providers.** The Committee appreciates the concerns presented by a licensed maternity care center regarding the difficulty of securing coverage in the commercial marketplace and the increased cost of participation in the Availability Plan. The Committee requests the 2024 Legislature again consider legislation allowing maternity care centers that meet the criteria (licensed maternity center and accredited by

the Commission for the Accreditation of Birth Centers) and pass this legislation in a clean form. This bill has been prefiled as 2024 HB 2478.

- The Committee further requests the Kansas Legislative Research Department more broadly review the inclusion of advanced practice registered nurses (APRNs) as defined health care providers and the resulting fiscal impact of inclusion in the HCSF and report its findings to the Legislature and the Committee for consideration. (Some APRNs, such as registered nurse anesthetists and certified nurse midwives have sought and been made part of this definition previously.) The Committee recognizes law enacted in 2022 (S. Sub. for HB 2279) allowed an APRN to prescribe drugs without a written protocol as authorized by a responsible physician and required an APRN to maintain medical malpractice insurance. [Note: This requirement is part of the Kansas Nurse Practice Act, as amended, and does not specify the level of coverage that must be maintained.]
- **Fund to be held in trust.** The Committee recommends the following language to the Legislative Coordinating Council, Legislature, and the Governor regarding the HCSF:
 - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the SGF. The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on behalf of each individual health care provider. Those payments made to the HCSF by health care providers are not a fee. The State shares no responsibility for the liabilities of the HCSF (excepting KU faculty and resident self-insurance programs reimbursement). Furthermore, as set forth in the HCPIAA, the HCSF is required to be “held in trust in the state treasury and accounted for separately from other state funds”; and
 - Further, this Committee believes the following to be true: all surcharge payments, reimbursements, and other receipts made payable to the HCSF shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such HCSF shall remain therein and not be credited to or transferred to the SGF or to any other fund.

Legislative review. The Committee requests its report be directed to the standing committees on health, insurance, and judiciary, as well as to the appropriate subcommittees of the standing committees on appropriations.

Proposed Legislation: None.

BACKGROUND

The Health Care Stabilization Fund Oversight Committee (Committee) was created by the 1989 Legislature and is described in KSA 40-3403b. The 11-member Committee consists of 4 legislators, 4 health care providers, 1 insurance industry representative, 1 person from the general public with no affiliation with health care providers or the insurance industry, and the Chairperson of the Health Care Stabilization Fund

(HCSF or Fund) Board of Governors or another member of the Board designated by the Chairperson.

The law charges the Committee to report its activities to the Legislative Coordinating Council and to make recommendations to the Legislature regarding the HCSF.

The Committee met November 30, 2023, in the Statehouse.

COMMITTEE ACTIVITIES

Report of Willis Towers Watson

Fund Position and Forecasts

The Willis Towers Watson actuarial report is based on the actuarial review of Fund experience as of December 31, 2022, and serves as an addendum to the report provided to the HCSF Board of Governors on September 19, 2023. The actuary addressed forecasts of the HCSF's financial position at June 30, 2023, and June 30, 2024, along with the company's 2022 estimate for June 2023. In the 2022 review, the estimate of HCSF-held assets as of June 30, 2023, was \$299.54 million, with liabilities of \$269.07 million, and with \$30.46 million in unassigned reserves.

The actuary presented the following estimates for the company's 2023 study:

- June 30, 2023: \$288.0 million in *assets*; \$258.03 million in *liabilities*; and \$29.97 million in *unassigned reserves*.
- June 30, 2024: \$276.93 million in *assets*; \$249.40 million in *liabilities*; and \$27.53 million in *unassigned reserves*.

The actuary noted the ongoing impact of the 2021 law change on the assets and liabilities (overall net worth) of the HCSF will require a reduction in reserves of \$2 million to \$2.5 million. Based on this analysis, the company determined the HCSF needed to raise its surcharge rates by 5.2 percent in calendar year (CY) 2024 in order to maintain its unassigned reserves at the expected year-end CY 2023 level (approximately \$28 million). [Note: This Committee's report to the 2022 Legislature outlines changes in surcharge revenues adopted by the Board of Governors to reflect the impact of and savings associated with 2021 House Sub. for SB 78 (SB 78).]

Rate Level (Surcharge) Indications

The actuary also reviewed the HCSF's (premium surcharge) rate level indications for CY 2024, noting the indications assume a break-even target between revenues and expenses. He detailed various CY 2024 items, including: payments, with

settlement and defense costs of \$35.70 million; change in liabilities (due to referenced change in HCSF law) of \$8.63 million (negative); administrative expenses of \$2.13 million; and transfers to the Kansas Department of Health and Environment (KDHE) assumed to be \$200,000 (assuming no transfers to or from the Health Care Provider Availability Plan [Availability Plan]); and planned investment, based on CY 2022 surcharge decisions, of \$372,000. The actuary indicated the net operating cost for the HCSF in CY 2024 is an estimated \$29.02 million. He further noted the HCSF has two sources of revenue: its investment income (assumed to be \$7.48 million based on 2.70 percent yield) and surcharge payments from providers (\$21.55 million needed to break even). With the projected surcharge revenue (\$20.47 million), this translates to a positive rate level indication for CY 2024 (5.2 percent).

Historical review and comment. The actuary addressed surcharge revenue and claims costs from 1999 through projected 2024 (based on estimates as of December 31, 2022). The actuary highlighted the significant decrease in revenue from 2021 to 2022, which reflects the change in 2021 HCPIAA law (reducing coverage requirements on the HCSF). In CY 2021, the HCSF was responsible for paying amounts for the layer of claims from \$200,000 per claim for most providers up to \$1.0 million per claim and \$800,000 worth of coverage. Beginning in CY 2022, the coverage option changed to \$500,000 of coverage, with the primary market responsible for \$0 to \$500,000, and the HCSF picking up from \$500,000 to \$1.0 million. The actuary noted the Fund will continue to see reductions over the next immediate years as the inventory of claims under the prior coverage limits wear off and the HCSF, under the new limits (2021 law), will be responsible only for paying the excess of \$500,000, instead of the excess of \$200,000.

Investment Yield

The actuary reviewed the HCSF's investment income over the previous ten fiscal years, noting the highest level of yield during this time was in 2014 and, in the past two years, that yield has been less than 2.5 percent. The actuary compared the present investment yield with the 5-year Treasury rate, noting the Fund's overall portfolio is impacted by securities (not yet mature, reinvested) and cash flow. He indicated the assumed future

yield rate for next year will be 2.70 percent, unchanged from their 2022 study. [Note: Testimony also indicated a 10-basis point change in the assumed rate would cause a 1.5 percent change in the CY 2024 surcharge rate indication.]

Indications by Provider Class; Loss Experience

The actuary provided an overview of rate indications by provider class, defining classes 1-30 and providing the number of providers and the CY 2023 rate for each class). The actuary noted, based on the company's analysis of experience by provider class, differences continue to be seen in relative loss experience among the classes. Classes with decreases or increases greater than 10.0 percent (meaning a rate decrease or increase is indicated by relative loss experience for the class) include:

- Decreases greater than 15.0 percent [greatest to least decrease]: Class 2 (physicians, no surgery); Class 24 (nursing facilities); Class 13 (registered nurse anesthetists); Class 6 (surgery specialty, includes emergency room [ER] [no major] and ear, nose, throat [ENT]); Class 16 (professional corporations, partnerships); and Class 12 (chiropractors); and
- Increases greater than 9.0 percent [least to greatest increase]: Class 15 (Availability Plan insureds); Class 8 (surgery specialty, includes general, plastic ER with major); Class 22 (nurse midwives); Class 3 (physicians, minor surgery); and Class 17 (medical care facilities).

Class 17 comment. The actuary highlighted a concern with rate indications for Class 17; analysis suggests rates need to increase close to 60 percent in order for that revenue to cover the claims costs for hospitals. Looking to the analysis by relative loss experience, Class 17 providers paid 14.0 percent of the total surcharge for the period of 2016-2021, but represented 22.0 percent of the reported losses during that time. Following receipt of this analysis, the Board of Governors determined the need to address this imbalance (e.g., how much and how soon in rate setting).

CY 2024 surcharge rates. The actuary also provided a history of surcharge rate changes since

2012, noting the reduction in CY 2022, which corresponds to the 2021 law (providers receiving less coverage from the HCSF). In addition, there were no changes in the CY 2023 surcharge rates. Addressing the CY 2024 surcharge rates, the actuary noted the company provided several options to the Board of Governors to consider in establishing HCSF rates. It was noted that all of these options included an increase to Class 17. The Board decided on the following rate changes for CY 2024:

- Rate increases on classes 3, 8, 15, 17, and 22, ranging from a positive 2.5 percent (Class 15) to a positive 9.4 percent (Class 17);
- Rate decreases for classes 2, 6, 12, 13, 16, and 24, ranging from a negative 4.8 percent (Class 12) to negative 6.7 percent (classes 16 and 24); and
- No change in rates for classes 1, 4, 5, 7, 9, 10, 11, 14, 18, 19, 20, 21, and 23.

[Note: The estimated net overall impact of these selected changes is a 0.0 percent change in rate level.]

Discussion

CY 2022 observations. The actuary characterized the CY 2022 experience for the HCSF as a "mixed" year. He pointed to positive and negative indications for the year: payment activity was very high; loss performance on active providers was worse than expected; loss performance on inactive providers was better than expected; investment results were worse than anticipated; surcharge revenue was higher than predicted; and rate inadequacy is high for the hospitals (how much the hospitals are paying relative to the claims costs those facilities are experiencing). The actuary concluded, given these indications, the HCSF's net financial position at June 30, 2023, is similar to the level previously forecasted in the company's 2022 study.

Stabilization mechanisms in other states. The actuary highlighted other states' programs to address health care provider liability and patient compensation, indicating Indiana, Wisconsin, Pennsylvania, Louisiana, New Mexico, and

Nebraska have similar programs. He noted a review of New Mexico’s actuarial report (which was not prepared by the HCSF actuary/actuarial firm) details a similar coverage option: that fund is responsible for the claims costs exceeding \$250,000. The New Mexico liabilities at year-end 2022 were \$267.0 million, which is similar to the HCSF’s liabilities; however, assets were only one-half of that total, or \$136.0 million, which puts this program to the negative by \$131.0 million. The New Mexico Legislature appropriated \$32.0 million from general fund taxpayer moneys to help address this shortfall in the Patient’s Compensation Fund. With a deficit remaining, it is likely additional and large surcharges to all participating providers will be necessary. The actuary contrasted the New Mexico situation with the position of the HCSF, indicating the HCSF is in a strong financial position.

Committee discussion. Committee members, the actuary, and Board of Governors’ representatives discussion topics included the Board’s *investment policy* (outlined in KSA 40-3406), the management of the investment process by the Pooled Money Investment Board (PMIB), average duration of the investments and the longer-term liabilities of the Fund, and the relationship of investment income to overall Fund assets (*i.e.*, increased investment income reduces the needed income from health care provider surcharge revenues). On the topic of increased *payment activity* in CY 2022, it was noted it was a higher-than-average year for settling claims, with several jury trials. In addition, the courts were opened to civil cases (following the COVID-19 closures and restrictions), which led to an interest on both sides to resolve a backlog of claims.

On the topic of *rate level indications (surcharge)*, the actuary addressed costs and losses affecting hospitals and health systems nationwide, noting several unfavorable verdicts in jury trials against these facilities. Once a hospital or system experiences a verdict of this type, the result, the actuary indicated, is upward pressure on future settlement amounts. He highlighted a \$31.0 million verdict in Arizona, noting this raises the bar and a facility or system likely could not take on the risk of another \$31.0 million verdict and would settle instead. Further discussion focused on the experiences of Class 17 participants with cost drivers discussed (*e.g.*, birth-related cases and

valuation of relevant economic damages) and the Board action to address provider rate class relative experience. The rate discussion also included the applicability and present rate set for the Missouri Modification Factor. [*Note:* All Kansas resident health care providers who are also licensed to practice in Missouri must pay an additional 30.0 percent surcharge.]

Comments

In addition to the report from the Board of Governors’ actuary, the Committee received information from Committee staff detailing resource materials provided for consideration, including the Kansas Legislative Research Department’s FY 2024 Appropriations Report and relevant budget and subcommittee reports outlining the actual and approved Board of Governor’s expenditures, the Committee’s conclusions and recommendations from its most recent annual report, proviso language from the Omnibus Appropriations bill (2023 SB 25) specific to certain maternity care centers and HCSF coverage for defined health care providers effective for FY 2024, and a reference copy of the statutes comprising the HCPIAA.

Committee staff also provided an update on relevant health care professional or facility legislation that was considered or passed during the 2023 Session. An Assistant Revisor of Statutes reviewed HB 2325, which would have amended KSA 40-3401 to add maternity centers to the definition of “healthcare provider” in the HCPIAA if the facility has accreditation by the Commission for the Accreditation of Birth Centers and meets the licensure definition for maternity center in KSA 65-503. The Assistant Revisor detailed amendments and committee actions and stated the bill was vetoed by the Governor and the veto was sustained. She noted the language specific to maternity care centers (HB 2325, as amended by the House Committee on Insurance) was incorporated into proviso language in SB 25 (section 17).

The Assistant Revisor highlighted three additional relevant bills that became law: HB 2014 (liability for emergency health care providers); HB 2264 (amended the definition of abortion; amendments to the Woman’s-Right-to-Know Act regarding medication abortion reversal notification; veto overridden; portions temporarily

enjoined by a District Court judge); and SB 131 (out-of-state physician sports waiver).

Chief Counsel's Update

The Deputy Director and Chief Counsel for the Board of Governors addressed the FY 2023 medical professional liability experience based on all claims resolved in FY 2023, including judgments and settlements. She characterized FY 2023 as a “very busy year,” explaining the increase in claim settlements and trials is partly due to closures or restrictions during the pandemic years and cases going through the system now.

Jury Verdicts and Settlements

Using HCSF data, the Chief Counsel stated 21 medical malpractice cases, involving a total of 24 Kansas health care providers, were tried to juries during FY 2023. The trials were held in the following jurisdictions: Johnson County (5); Sedgwick County (3); Saline County (2); Barton County (1); Pratt County (1); Riley County (1); Shawnee County (1); Wyandotte County (1); and Jackson County, Missouri (6). Seventeen of these cases resulted in defense verdicts; one case ended in mistrial; and, in three cases, the jury found for the plaintiff. In these cases, the amount awarded by the jury was greater than primary coverage limits (resulting in HCSF obligations) for a total of \$1,807,500. It was noted that of the 30.0 percent of the cases (six cases) in Jackson County, Missouri, courts, five resulted in defense verdicts, and one case resulted in a plaintiff verdict.

The Chief Counsel highlighted the claims settled by the HCSF, noting in FY 2023, 95 claims in 85 cases were settled involving HCSF moneys. She noted this claims total exceeds, by more than 20, the number of settlements and acknowledged the impact of COVID-19 on the flow of court cases. The Chief Counsel commented on the severity of the claims, noting while there were increased settlements in FY 2023, three fewer claims were in the top category of damages settlement amounts.

The Chief Counsel reported, for the 95 claims, primary insurance carriers tendered their policy limits to the HCSF in 76 claims; the HCSF provided primary coverage for inactive health care providers in 13 claims; and the HCSF “dropped down” to provide coverage for 6 claims in which

the aggregate primary policy limits were reached. The Chief Counsel noted when the claims involved the HCSF, the primary coverage limitation was \$200,000. She further reported that for the claims involving HCSF moneys, the HCSF incurred \$33,419,873 in settlement amounts; in addition, the primary insurance carriers contributed \$15,200,000 and the excess insurance carriers contributed \$9,135,377, for a total settlement amount of \$57,755,250. She also reported, in addition to the 95 settlements, 7 claims were settled by an excess insurance carrier when both the primary and HCSF coverage were exhausted. The report notes this is the first instance in the Fund history when aggregate Fund coverage for a policy was exhausted.

The Chief Counsel also reported that, in addition to the settlements involving HCSF contributions, the HCSF was notified primary insurance carriers settled an additional 114 claims in 102 cases. [*Note:* These are claims settled within the primary coverage limits and do not require excess coverage.] The total amount of these settlements was \$11,388,362. The Chief Counsel also referenced a historical report of HCSF total settlements and verdicts, FY 1977 to FY 2023. She also provided historical information on new cases by fiscal year, noting 307 new cases during FY 2023. Of these new cases, 71 were against adult care facilities. There were 274 new cases in FY 2022, including 55 against adult care facilities. The Chief Counsel provided historical context for recent claims, noting the impact of COVID-19, as well as the addition of five new categories of health care providers to the HCSF in 2015: certified nurse midwives, physician assistants, nursing facilities, residential health care facilities, and assisted living facilities. She noted there has been a corresponding gradual increase in the number of cases due to these new provider categories.

Self-insurance Programs

The Chief Counsel also addressed the self-insurance programs and reimbursement for the University of Kansas (KU) Foundations and Faculty and residents that provide basic liability coverage. (As directed by statute, the HCSF administers these programs and handles the claims for first-dollar coverage.) She reported the FY 2023 KU Foundations and Faculty program incurred \$3,043,026 in attorney fees expenses and

settlements; \$500,000 came from the Private Practice Reserve Fund; and \$2,543,026 came from the State General Fund (SGF). The Chief Counsel noted the largest reason for the increase above FY 2022 program costs was attorney fees and expenses. She further explained there was a KU case involving KU health care faculty and residents that went to trial, for which there was a defense verdict. The Chief Counsel also indicated she anticipates the program costs for FY 2024 will reflect fewer settlements as the number of claims, to date, are slightly lower; however, attorney fees and expenses will likely remain at a similar amount.

In regard to the self-insurance programs for the KU/Wichita Center for Graduate Medical Education (WCGME) residents programs, including the Smoky Hill residents in Salina, the total amount for FY 2023 was \$1,003,622. Commenting that the program costs for the residents' self-insurance program has remained fairly steady historically, the Chief Counsel noted the increase in program costs for FY 2023 is attributable to two cases involving residents in training that settled. [Note: All expenses—settlement amounts and attorney fees and expenses—are reimbursed from the SGF.]

The Chief Counsel provided a list of historical expenditures by fiscal year for the KU Foundations and Faculty program and the residents in training since the inception of the two self-insurance programs. She reported the ten-year average for the Foundations and Faculty program cost is about \$2.0 million a year and noted FY 2023 was an “above average” year. The ten-year average for the residents-in-training program cost is about \$988,000 and FY 2023 was “slightly above average.” The Chief Counsel noted the increase in faculty meeting the criteria for participation in the self-insurance program (557 in FY 2013; 1,014 in FY 2023). She advised the Committee that the Private Practice Reserve Fund reimbursement amount (which reimburses the first \$500,000 of this program's expenses) has not changed since 1989, in contrast to the substantial growth of full-time faculty (277 in FY 1990) and the primary insurance coverage limit change in CY 2022 from \$200,000 to \$500,000 for new claims. The remaining costs of the KU Foundations and Faculty program are reimbursed by the SGF.

The Chief Counsel also provided information about moneys paid by the HCSF as an excess carrier. She noted two settlements involved residents in training in FY 2023; neither claim involved an amount exceeding the claim's primary coverage. There were 13 settlements involving full-time faculty members in FY 2023; only two of those exceeded the primary amount of \$200,000, with a total amount of \$450,000.

Discussion

The Committee and Chief Counsel discussed topics as outlined below.

Judgments and Settlements

The Committee and Chief Counsel further discussed licensure requirements and HCSF coverage for Kansas licensed health care providers who choose to practice in Missouri and must also be licensed in Missouri. It was noted it is typically less expensive for a Kansas health care provider who lives in Kansas and practices in both states to have coverage from a primary carrier in Kansas and excess through the HCSF, rather than purchasing a Missouri policy. A Missouri doctor (a resident of Missouri) who holds a Missouri license and comes across state lines to render services in Kansas is required to participate in the HCSF for the portion of services rendered in Kansas. On the topic of the seven claims settled by excess insurers, the Chief Counsel reported a hospital experienced machine malfunctions involving cardiac surgery, which contributed to several large claims.

Self-insurance Programs

The Committee and the Chief Counsel discussed the number of slots allocated for program residents. It was noted the self-insurance program covers only KU affiliates, and residents from other programs outside Kansas would either need to meet the definition of “healthcare provider” or receive professional liability coverage from their own school of medicine. On the topic of the new Doctor of Osteopathic Medicine (DO) school in Wichita, it was noted the school would either need to be affiliated with KU or separate legislation would be needed to add the DO residents to the self-insurance program requirements in the HCPIAA. Committee members and the Chief Counsel discussed the

reimbursement arrangements and eligibility criteria for the KU Faculty and Foundations program and the level of training (versus clinical) services provided by faculty members.

Medical Malpractice Insurance Marketplace; Availability Plan Update

The President and Chief Executive Officer (CEO), Kansas Medical Mutual Insurance Company (KAMMCO), reviewed the current status of the medical malpractice marketplace in Kansas and the Availability Plan.

Health Care Provider Insurance Availability Plan; Market Conditions

The KAMMCO conferee addressed several aspects of the Availability Plan and its current participants, noting as of October 1, 2023, 402 providers were in the Plan. The conferee outlined the Plan's participants by risk type, with the largest year-over-year growth seen in physicians (14.72 percent); other health care providers (*e.g.*, registered nurse anesthetists, chiropractors, nurse midwives, physician assistants, and podiatrists) (24.39 percent); and professional associations (9.09 percent). Long-term care facilities showed a slight decrease, from 58 to 54 participants (-6.90 percent). The conferee also provided details on participation by physicians and surgeons by classification (*e.g.*, Family or General Practice, no surgery) and on other individual risks written by the Plan (*e.g.*, 16 nurse midwives). The conferee addressed the historical Plan participation trends (1990-2023), noting the variations over time reflect the insurance market cycle. Low points indicate soft market cycles, meaning there is availability in the marketplace. Triggering events (*i.e.*, 9/11, recessionary periods) led to constriction in the marketplace. A market firming, which could lead to a hard market, began in 2020 and has continued into 2023. This most recent firming has led to carriers, reinsurers, and others tightening underwriting standards and raising rates. The conferee provided the numbers of total claims, total lawsuits, Plan insureds, and claims per 100 insureds over the past ten years. The 2023 claims data are as follows: 25 claims, 15 lawsuits, 402 insureds, and 6.2 claims per 100 insureds.

Adult care homes. The KAMMCO conferee noted much of the recent rise in health care providers insured by the Plan is due to the

insurance market conditions for adult care facilities, which likely results from conditions brought on by the COVID-19 pandemic. Recent plan participation data shows:

- Plan Year 2019: 8 insured facilities;
- 2020: 10 insured facilities;
- 2021: 49 insured facilities;
- 2022: 58 insured facilities; and
- 2023: 54 insured facilities.

Claims Environment; Firming Conditions

The KAMMCO conferee addressed the current environment for the insurance industry, which he characterized as “difficult,” noting high interest rates, higher costs of claims and settlements, and expensive litigation costs. Commenting on the nationwide changes in health care delivery in the past ten years, he noted one of the effects of the Affordable Care Act was a significant consolidation and vertical integration in the health care industry (*e.g.*, hospitals buying physician clinics, others buying hospitals). He stated this and other factors, COVID-19, for example, have accelerated these industry changes nationwide and increased the uncertainty of predicting rates and making projections, whether next year or five years from now. Speaking to Kansas-specific challenges, the KAMMCO conferee noted the continued uncertainty surrounding the cap on noneconomic damages resulting from the Kansas Supreme Court opinion in *Hilburn v. Enerpipe Ltd.* (2019), and whether *Miller v. Johnson* remains the precedent for maintaining the cap in medical professional liability cases. Other contemporary issues continue to define potential headwinds, the conferee concluded, pointing to cyberattacks on systems, hospital and health care industry workforce (*i.e.*, staffing and the cost to maintain the workforce), and the potential the increase in risk creates for possible litigation and the costs to insure those risks.

Comments from Health Care Providers and Other Interested Parties

Kansas Medical Society and Kansas Hospital Association. The Executive Director of the Kansas Medical Society (KMS) provided comment, in conjunction with written remarks submitted by the Kansas Hospital Association, on

both the continuation of the Committee’s oversight and the report provided by the Board of Governors’ actuary, stating that, over the years, the HCSF has done exactly what was intended: providing stability in the malpractice environment by allowing providers to afford coverage to practice in Kansas and giving patients access to a right to recovery in the event of an adverse outcome. The KMS conferee stated the Committee plays a vital role in protecting the public by ensuring that the Fund remains solvent and independent and encouraged the continued oversight and reporting to the Legislature. The KMS conferee indicated the organizations do not believe an additional outside actuarial analysis is necessary.

Maternity centers; certified nurse midwives. The CEO for New Birth Company provided comment regarding barriers for maternity centers in obtaining malpractice insurance and referenced written testimony submitted by the Kansas Affiliate of the American College of Nurse-Midwives. [Note: As defined in KSA 65-503, a “maternity center” is a facility that provides delivery services for normal, uncomplicated pregnancies.] Maternity centers are not currently included among the defined health care providers under the HCPIAA; legislation has previously been sought (a proviso has been enacted for FY 2024; the 2023 bill containing these provisions was vetoed) to include such facilities in the HCSF. The conferee noted challenges with securing underwriting for New Birth Company, stating a third-party carrier interested in underwriting coverage for nurse midwives declined to write coverage, citing the Company’s absence from the HCSF definition. The conferee noted a bill (2024 HB 2478) has been pre-filed to address inclusion of certain maternity care centers as defined health care providers.

Speaking more generally to issues of insurance availability for nurse midwives, testimony provided by the American College of Nurse-Midwives (CNMs) noted that after 2020, no insurance providers in the HCSF offered coverage to CNMs, which left the more costly Availability Plan as the only remaining coverage option. The testimony noted one carrier offering coverage but choosing to not cover some practices. The testimony referenced different scopes of practice within the profession and lower litigation rates,

indicating rating should be based on complexity and risk of services provided. Both conferees’ testimony also addressed broader concerns about the need to improve maternal and infant health outcomes, the need to have a more robust workforce to meet those needs, and the importance of providing more affordable coverage options for certified nurse midwives and maternity centers.

Kansas Trial Lawyers Association. A partner with Shamberg, Johnson, and Bergman, Chtd., appeared on behalf of the Kansas Trial Lawyers Association (KTLA). The conferee addressed KTLA’s concern that the Board of Governors is not in compliance with HCPIAA provisions in KSA 40-3404, as the Fund is not offering health care providers the option to purchase the \$1.5 million-per-claim excess insurance that is required by KSA 40-3403(I)(1)(B)(ii). The conferee noted since the enactment of the HCPIAA, the Legislature has determined both the amount of coverage purchased by health care providers and the amount of excess coverage provided by the Fund.

The conferee addressed changes to liability coverage requirements (per occurrence and in the aggregate) over time and amendments in 2021 that included the provision regarding an HCSF-provided excess coverage option. The conferee noted the Board of Governors chose not to offer the option to purchase \$1.5 million of coverage (2021 law) when it met in 2021 to consider surcharges for Fund coverage. The conferee further stated the Board has not discussed offering this option of higher excess coverage in either its 2022 or 2023 meetings. The conferee requested the Committee either require the Board to offer such coverage or, if a determination is made that is not necessary to offer the coverage, to require the Board to make an appropriate record so the courts may review the HCSF’s decision to determine compliance with Kansas law regarding agency decisions.

Board of Governors’ Statutory Report

The Executive Director of the HCSF Board provided a brief history of the HCPIAA, noting that when this law was enacted in 1976, it had three main functions: a requirement that all health care providers, as defined in KSA 40-3401, maintain professional liability insurance coverage;

creation of a joint underwriting association, the Availability Plan, to provide professional liability coverage for those health care providers who cannot purchase coverage in the commercial insurance market; and creation of the HCSF to provide excess coverage above the primary coverage purchased by the health care providers and to serve as reinsurer of the Availability Plan.

The Executive Director provided the Board of Governors' statutory report [as required by KSA 40-3403(b)(1)(C)] and issued on October 1, 2023. The FY 2023 report indicated:

- Net premium surcharge revenue amounted to \$19,782,219. The highest surcharge rate for a health care professional was \$10,006 for coverage of \$500,000 per claim/ \$1.5 million annual aggregate limit. Application of the Missouri modification factor for a Kansas resident neurosurgeon licensed to practice in Missouri would result in a total premium surcharge of \$13,008 for this health care practitioner; the lowest surcharge rate for a health care provider was \$200 (primarily used by a non-resident provider providing minimum health care services in Kansas);
- The average HCSF compensation per settlement (85 cases involving 95 claims were settled) was \$351,788; these settlements resulted in a total HCSF obligation of \$33,419,872. (These amounts are in addition to compensation paid by primary insurance carriers.);
- The balance sheet, as of June 30, 2023, indicated total assets of \$290,328,876 and total liabilities of \$278,720,437.

Health Care Provider Insurance Availability Plan

The Executive Director's presentation also included an update on the Availability Plan. He reported 402 plan participants as of October 23, 2023. The Executive Director noted the Plan's purpose and reported that individual providers pay about 33.0 percent more in premiums for basic coverage than if insured by a commercial insurance company and also must pay a higher HCSF surcharge. He also discussed the HCSF's role as the reinsurer to the Plan, noting in years

(including FY 2023) when the Plan's losses exceed income, the HCSF is required by law to transfer the net loss to the Availability Plan. For FY 2023, the Plan will transfer \$401,820.

Recent Legislation and Changes; Conclusions

The Executive Director's report highlighted the 2021 law change that increased, effective January 1, 2022, the required basic coverage that specified health care providers must obtain from an insurer, from \$200,000 to \$500,000 per claim. Providers are also required to obtain \$500,000 per claim coverage from the HCSF. The report also addressed the Legislature's continued interest in the promotion of health care services for Kansans and the ongoing role of the HCPIAA in ensuring access to adequate professional liability insurance coverage.

Discussion

The Executive Director responded to an earlier discussion with the Board actuary and generally reviewed the Board's investment procedures and statutory requirements. He noted the Board of Governors will hear from the PMIB Executive Director at its next meeting and the Board routinely reviews its investment policy and guidelines and makes adjustments as needed (conforming to requirements in the HCPIAA for investments of HCSF revenue by the PMIB).

CONCLUSIONS AND RECOMMENDATIONS

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

The Committee considered information presented by the Board of Governors' representatives, including its required statutory report; the Board's actuary; and health care provider and insurance company representatives and other interested parties.

The Committee acknowledges its role to provide oversight and monitoring of the HCSF, including legislative actions and other contemporary issues affecting the soundness of the HCSF, and agreed on recommendations and comments on the following topics:

- Actuarial report; income and rate level indications; other Board reports;

- Marketplace conditions; present headwinds;
- Defined health care providers; and
- The Fund is to be held in trust.

The Committee requested its report to be directed to the standing committees on health, insurance, and judiciary, as well as to the appropriate subcommittees of the standing committees on appropriations.

Report of the Legislative Compensation Commission to the 2024 Kansas Legislature

CHAIRPERSON: Mark Hutton

OTHER MEMBERS: Steve Abrams, Kelly Arnold, Tom Hawk, Anthony Hensley, Mark Kahrs, Ed McKechnie, Clark Shultz, Kevin Timmons

CHARGE

Pursuant to provisions in 2023 Law (2023 Session Law, Chapter 69, Sections 1-2 [House Sub. for SB 229]), the Commission is directed to:

- Make a comprehensive study of the compensation, salary, and retirement benefits of the Kansas Legislature;
- Set the rates of compensation and salary for members of the Legislature, as directed by the legislation:
 - House Sub. for SB 229 (2023) requires the compensation rate and salary established by the Commission to become the rate of compensation and salary for legislators unless the Legislature rejects the rates through adoption of a concurrent resolution;
 - The Commission is required to establish the compensation rate and salary for members of the Legislature for a four-year period that commences on the first day of the 2025 Legislative Session on or before December 1, 2023; and
- Make recommendations related to retirement benefits for members of the Legislature.

*This report contains the contents of the approved [October 12, 2023, Commission Report](#) with technical and conforming edits to reflect KLRD style for this publication.

October 2023

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Legislative Compensation Commission

REPORT

Conclusions and Recommendations

Pursuant to the authority granted by 2023 Senate Bill 229, the Legislative Compensation Commission (Commission) sets the compensation and annual salary for members of the legislature. The Commission notes that legislative compensation was last adjusted in FY 2009 and has not kept pace with inflation. *The actions of the Commission setting compensation and salary for members of the Legislature are reflected without commentary in a separate document submitted to the Legislature by the Commission, “Order Setting Compensation for Members of the Kansas Legislature.”* [Note: See Appendix 1 for the Order Addendum.]

Details for implementation of the Commission’s proposal follows:

- **Salary calculation.** The base salary shall be increased to \$43,000 per year starting on the first day of the legislative session in January 2025.
- **Expenses.** In addition to the base salary, members of the legislature shall receive subsistence allowance as described in KSA 46-137a(b) and allowance for mileage as described in KSA 46-137a(d), in amounts determined pursuant to current law.
- **Pay period.** Members of the Legislature shall be paid according to the following schedule that provides Legislators the majority of their compensation while the Legislature is in session:
 - Payments during the first 30 calendar days of session shall comprise 7.75 percent of total annual compensation. Under state law, the first 30 days of the legislative session determines the basis for KPERs salary annualization for legislators. This will minimize the salary annualization benefit effect of the new rate of compensation set by the Commission;
 - During the subsequent four months, Legislators shall be paid a total of 52.28 percent of annual compensation, or 13.07 percent of annual compensation per month; and
 - During the final seven months, Legislators shall be paid a total of 39.97 percent of annual compensation, or 5.71 percent of annual compensation per month.
- **Salary indexing.** Beginning on the first day of the legislative session in January of 2026 and each year thereafter, the base salary shall be adjusted each year to match the percent change in wages for all Kansas employees as reflected in the U.S. Bureau of Labor Statistics (BLS) percent change in “Kansas All Employees Average Annual Wage”. The salary will be adjusted to match the three-year average percent change of the previous 3 full calendar years of available data. [Note: See Appendix 4 for referenced BLS charts.]
- **Compensation for special sessions and interim meetings.** In addition to the base salary, members of the legislature shall be compensated for special sessions and interim

committee meetings at a rate of \$172 per day. This amount is in addition to the interim daily rate of \$114.67 using a base salary of \$43,000. This amount shall be adjusted annually according to the salary indexing directive above.

- **Leadership salaries.** In addition to base salary, members of the legislature holding specified positions shall receive additional compensation. Current House and Senate leadership receive annual premium pay between 33 percent and 64 percent of the current daily rate of \$88.66. The following keeps the current salary premium percentage in place and adjusts for a new base salary. [Note: See Appendix 5 for compensation comparison.] Using the proposed \$43,000 base salary for 2025, the increases are as follows:
 - Senate President and Speaker of the House shall receive an additional 64 percent of their base salary, which would equate to \$70,520 in 2025.
 - Senate Vice President, Speaker Pro Tem, Assistant Majority and Minority Leaders shall receive an additional 33 percent of their base salary, equal to \$57,190 in 2025.
 - Senate and House Majority and Minority Leaders shall receive an additional 58 percent of their base salary, equal to \$67,940 in 2025.
 - House Appropriations and Senate Ways and Means Chairpersons shall receive an additional 50 percent of their base salary, equal to \$64,500 in 2025.

Legislative Coordinating Council (LCC) study requests. The Commission requests the LCC study the following items relating to legislative compensation:

- *Travel policy* – consideration of a policy that addresses the travel requirements for legislators that serve the larger-size (geographic) districts;
- *Additional Leadership position compensation matters* – consideration of additional compensation for committee leadership not addressed by this report; and
- *Daily rate for certain state board and committee members* – consideration of an adjustment to the daily rate compensation for non-legislative board and committee members.

Proposed Legislation: None.

BACKGROUND

The Legislative Compensation Commission was created pursuant to 2023 SB 229. The Commission is directed to:

- Make a comprehensive study of the compensation, salary, and retirement benefits of the members of the Legislature;
- Set such rates of compensation and salary; and

- Make recommendations related to retirement benefits.

Compensation of members of the Legislature has been set through the enactment of laws. The constitutionally based authority by which the Legislature may establish and direct a compensation commission to set compensation for members of the Legislature is contained in Section 3 of Article 2 of the Constitution of the State of Kansas. This provision provides that: “The members of the legislature shall receive such compensation as may be provided by law or such

compensation as is determined by law.” As part of a complete revision of Article 2 of the Constitution of the State of Kansas adopted by the electors on November 5, 1974, Section 3 of Article 2 was amended to include the phrase “or such compensation as is determined by law.” The Legislative Budget Committee stated in a report submitted to the 1974 Legislature that “[t]he latter phrase is new and is intended to permit the legislature, if it so desired, to create a compensation commission which would establish compensation subject to approval of, or veto by, the legislature.” Pursuant to this provision, the 2023 Legislature created the Legislative Compensation Commission.

Commission Membership

SB 229 provides that membership of the Legislative Compensation Commission shall consist of nine members, including one appointed by each of the Speaker of the House of Representatives, President of the Senate, Speaker *Pro Tempore* of the House of Representatives, Vice President of the Senate, Senate and House Majority Leaders, Senate and House Minority Leaders, and the Governor. The members appointed by the Speaker and the President must be former members of the Legislature. No Commission member may be a current member of the Legislature, current employee of the Legislature, or registered lobbyist. The member appointed by the Speaker serves as the first chairperson of the Commission, and the member appointed by the President serves as the first vice-chairperson.

Initial Commission

On or before December 1, 2023, the Commission shall establish and submit to the Legislature the rates of compensation and salary for legislators rendering services during the four-year period commencing with the term of office that coincides with the first day of the 2025 legislative session. Within 30 days of the commencement of the 2024 legislative session, the Legislature may allow those rates to take effect or reject the rates by adopting a concurrent resolution. In such a concurrent resolution, the Legislature may include a requirement that the Legislative Compensation Commission meet within 14 days to set and submit another rate of compensation and salary. If the Legislature rejects

the second rate of compensation and salary by adopting a concurrent resolution, the rate prevailing during the previous session shall remain in effect.

Future Commissions

SB 229 provides that appointments to the Commission end upon the completion of the Commission’s responsibilities. In 2026 and each four years thereafter, new members of the Commission shall be appointed in the same manner, except that the member appointed by the President serves as chairperson of the new Commission and the member appointed by the Speaker serves as vice-chairperson. The appointing authority for chairperson and vice-chairperson reverses for each successive Commission. A member may be reappointed to a future Commission, subject to the restrictions imposed on membership. The 2026 Commission and future Commissions are charged with the same duties, with rates of compensation and salary set by such commissions to be effective for the four-year period coinciding with the next commencing term of office of elected senators, subject to possible rejection by the Legislature.

Commission Powers and Duties

SB 229 provides that Commissions created under the law shall set rates of compensation for members of the Legislature after a comprehensive study of the compensation, salary, and retirement benefits. The Commission is limited to making recommendations related to the retirement benefits for consideration by the Legislature, and the Legislature must enact laws if such recommendations are to be effectuated.

COMMISSION ACTIVITIES

The Commission met four times in 2023, on September 7, September 21, October 5, and October 19. In general, Commission meetings followed a two-part structure: (1) review of background information or follow-up requests from prior meetings or communications, and (2) discussion on proposed decision points.

September 7–Determining Decision Points

At its September 7 meeting, the Revisor of Statutes provided an overview of the Constitutional authority for the Legislature to create the Commission and to direct the Commission to set compensation for members of the Legislature. Staff from the Office of the Revisor of Statutes discussed the current rates of pay for legislators and additional pay for leadership positions and briefed the Commission on the provisions of SB 229.

The Director of Legislative Administrative Services (LAS Director) provided an overview of what an average legislator, who is not in a leadership position, earns during a normal 90-day session. The annualized amount was \$29,192 including the salary, subsistence, and legislative allowance. The subsistence rate would increase to \$166 per day on October 1, 2023, as it is based on the federal fiscal year. The LAS Director indicated some states have gone to an annualized salary for their legislators and that is an item the Commission may want to consider.

Staff from the Kansas Legislative Research Department (KLRD) provided a historical overview of legislative compensation, indicating compensation has not been adjusted since FY 2009.

The Executive Director of the Kansas Public Employees Retirement System (KPERs) provided an overview of retirement benefits for legislators. It was noted that legislators become members of the KPERs group at the time they join the plan.

The Commission also received testimony from the President of the Kansas Senate and the Speaker of the Kansas House of Representatives, as well as a representative from the Wichita Regional Chamber of Commerce.

The Chairperson of the Commission opened discussion acknowledging common ground on principles and values that may act as a frame of reference. Those include maintaining a citizen's legislature, balancing representation across economic and social demographics, encouraging participation from a broader range of citizens, fostering a higher level of retention, and

discouraging the development of professional politicians.

After discussion, the Commission recognized the following areas to be addressed:

- **Basis for compensation.** What should be the reference point for determining legislator compensation?
- **Salary calculation.** What should be the target salary range for legislators?
- **Compensation indexing.** Should salary changes be tied to an index, thereby potentially eliminating the need for a commission to meet regularly?
- **KPERs.** What impact to KPERs would the changes to legislator salaries have?
- **Per diem allowance.** What should the per diem rate be? The current rate (set by the Department of Administration) is indexed at the federal level.
- **Premium pay.** What should premium pay for leadership roles be, and should they be expanded to include additional committee chairs?

A Commission member suggested providing a stipend for Legislators in larger districts. During Commission discussion, a member requested if any other states provided a stipend for district size. KLRD staff indicated that Montana provided such a stipend. The Commission indicated a desire to further examine the issue and requested KLRD provide additional background information for the next meeting.

The Commission also recognized the State Employees Health Care Benefits Plan as an elective benefit that does not need to be addressed.

September 21–Starting Point Proposal

At its September 21 meeting, the KPERs Executive Director provided additional information on the impact to legislator retirement benefits if the Commission adjusts legislative compensation. In order to provide an estimate, several assumptions were made and varied based

on whether a legislator is in KPERS Tier 1, 2, or 3. [Note: See Appendix 2 for KPERS memorandum.]

The LAS Director responded to questions concerning the average length of service in the Legislature, indicating service averaged 5.5 to 6.5 years.

Staff from the Office of the Revisor of Statutes indicated, pursuant to provisions of SB 229, the 2024 Legislature would have to take action to reject the Commission's recommendations. If the Legislature takes no action, the recommendations would take effect in January 2025.

KLRD staff provided information on a variety of topics, including the area and population of Kansas legislative member districts, number of bills introduced by committees, history of salary increases, and average wage and income data.

The Chairperson opened discussion with a starting point proposal that included the following items:

- **Basis for compensation.** Use the U.S. Department of Labor–Mean Salary rate for Kansas Employees rate as the basis.
- **Salary calculation.** The annual salary would be approximately \$45,000 per year, with 60.0 percent paid during Session and the remaining balance paid out over the following seven months.
- **Salary indexing.** Tie salary changes to percent changes in the U.S. Department of Labor–Mean Salary rate.
- **KPERS.** Annualize the yearly legislator salary, excluding per diem and other reimbursed costs.
- **Per diem allowance.** Maintain allowance using the current per diem methodology.
- **Premium pay.** Increase the salaries of certain leadership and committee chairperson positions by a percentage of the base salary premium.

- **District size stipend (geographic area).** Allow for a \$1,000 to \$1,500 stipend each month for legislators that have mid-sized or large districts.

While there was a general consensus among Commission members on many of these items, there was not a consensus on district size stipends and compensation indexing. The Commission requested additional information from KPERS at its next meeting.

October 5–Preliminary Recommendation

At its October 5 meeting, the KPERS Executive Director outlined the impacts of a proposed \$42,000 annual salary. Based on calculations, this proposed salary would have minimal impact on KPERS benefits for most legislators.

KLRD staff provided information from the U.S. Bureau of Labor Statistics (BLS) Quarterly Census of Employment (QCEW) for Kansas state government and private establishment employees. Staff also discussed the method the Montana Legislature uses to provide an additional stipend or allowance to its legislators based on the geographic size of districts.

The Chairperson opened discussion with a preliminary proposal that included the following items [Note: See Appendix 3 for referenced charts]:

- **Basis for compensation.** Use the BLS QCEW–Average Annual Wages for Kansas Employees data set and adopt assumptions to adjust for the legislative schedule.
- **Salary calculation.** Set legislative salaries at \$43,000 per year beginning on the first day of the legislative session in January of 2025. This amount was reached by applying a calculated modifier to the estimated average annual wage for Kansas employees for 2023. This salary would be all-inclusive and include allowances for non-session, reducing the salary to approximately 70 percent of that wage and then rounded that amount to \$43,000 per year. The indirect method

was used due to a reporting lag by the BLS.

- **Salary indexing.** Apply the QCEW wages percent change average from the previous three years to adjust the next year's salary.
- **KPERS.** Adjust the first 30-day pay period to 7.75 percent of the annual salary amount, the next four months at 52.28 percent, and the remaining seven months at 39.97 percent. Based on discussions with KPERS, this would result in a relatively small retirement compensation increase.
- **Compensation for special sessions and interim committees.** Compensate special session and interim committee work at a premium daily rate calculated using the difference between session and non-session salaries.
- **Per diem allowance.** Maintain allowance using the current per diem methodology.
- **District size stipend.** Use a similar approach used by the Montana Legislature to compensate legislators for the size of their districts. This would result in 22 percent of House members and 35 percent of Senate members receiving additional compensation that would range from \$15 to \$3,756 per year.
- **Leadership salary considerations.** Adjust the current structure and level of leadership pay with premium pay calculated from a percentage of total salaries.

By consensus, the Commission agreed to remove the proposal on district size stipends from further consideration and agreed on the remaining items. The Commission then adopted the draft report, as amended, to provide for public comment and final consideration at its next meeting.

October 19–Final Recommendation

[*Note:* The preliminary report reflecting the consensus agreement on the compensation proposal was published and made available for public comment on October 16, 2023.]

CONCLUSIONS AND RECOMMENDATIONS

Based upon the information reviewed and the Commission's deliberations, the Commission concluded that an increase to the compensation paid to Kansas legislators is appropriate. The Commission acknowledges that any proposal should maintain the value of a citizen's legislature, balance representation across economic and social demographics, encourage participation, foster retention, and discourage the development of professional politicians.

Current Package

Under current law, Kansas legislators receive a base salary of \$88.66 for each day the Legislature is in session (daily compensation) and a per diem allowance of \$166 per day to partially defray the costs for meals and lodging. Assuming a 90-day session, this totals to \$22,919 per Legislator per year.

Recommendations

The Commission directs the following changes to legislative compensation and retirement benefits:

- **Basis for compensation.** Legislative compensation should be based on the BLS QCEW–Average Annual Wages for Kansas Employees rate, adjusted for the legislative schedule.
- **Salary calculation.** Set legislative salaries at \$43,000 per year beginning on the first day of the legislative session in January 2025. This amount was reached by applying a calculated modifier to the estimated average annual wage for Kansas employees for 2023. This salary would be all-inclusive and include allowances for non-session expenses. This amount does not include per diem allowances for approved meetings and sessions.

- **Salary indexing.** Apply the BLS QCEW–Average Annual Wages for Kansas Employees average percent change for the previous three years to the prior year’s legislative salary.
- **KPERS.** Adjust the first 30-day pay period to 7.75 percent of the annual salary amount, the next four months at 52.28 percent, and the remaining seven months at 39.97 percent.
- **Compensation for special session and interim committees.** In addition to the base salary, members of the Legislature shall be compensated for special sessions and interim committee meetings at a rate of \$172 per day. This amount is in addition to the interim daily rate of \$114.67 using a base salary of \$43,000. This amount shall be adjusted annually according to the salary indexing directive above.
- **Per diem allowance.** Maintain the current per diem allowance methodology.
- **Leadership salaries.** In addition to base salary, members of the Legislature holding specified positions shall receive additional compensation. Current House and Senate leadership receive annual premium pay between 33 percent and 64 percent of the current daily rate of \$88.66. The following keeps the current salary premium percentage in place and adjusts for a new base salary. Using the proposed \$43,000 base salary for 2025, the increases are as follows:
 - Senate President and Speaker of the House would receive an additional 64 percent of their salary, for a total amount of \$70,520 in 2025.
 - Senate Vice President, Speaker Pro Tem, Assistant Majority and Minority Leaders would receive an additional 33 percent of their salary, for a total amount of \$57,190.
 - Senate and House Majority and Minority Leaders would receive an additional 58 percent of their salary, for a total amount of \$67,940.
 - House Committee on Appropriations and Senate Committee on Ways and Means chairpersons would receive an additional 50 percent of their salary, for a total amount of \$64,500.

In addition, the Commission recommends the LCC study the following items:

- Policies that address travel requirements for legislators that serve larger districts;
- Additional compensation for leadership positions not addressed by this report; and
- Adjusting the daily rate compensation for non-legislative board and committee members.

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ORDER SETTING COMPENSATION
FOR MEMBERS OF THE KANSAS LEGISLATURE

Pursuant to the authority granted by 2023 Senate Bill No. 229, the Legislative Compensation Commission sets the compensation and salary as follows for members of the Kansas Legislature commencing on the first day of the legislative session in January of 2025:

Base salary. The base salary for members of the Legislature shall be \$43,000 per year. The base salary shall be paid in lieu of amounts set pursuant to K.S.A. 46-137a(a) and (c), and amounts set under those provisions shall be discontinued.

Expenses. In addition to the base salary, members of the Legislature shall receive subsistence allowance as described in K.S.A. 46-137a(b) and allowance for mileage as described in K.S.A. 46-137a(d), in amounts determined pursuant to current law.

Pay period. Members of the Legislature shall be paid according to the following schedule:

- During the first 30 calendar days of the legislative session, 7.75% of total annual compensation.
- During the subsequent four months, 13.07% of total annual compensation per month.
- During the subsequent seven months, 5.71% of total annual compensation per month.

Salary indexing. Beginning on the first day of the legislative session in January of 2026 and each year thereafter, the base salary shall be adjusted each year to match the three-year average of the percent change in wages for all Kansas employees as reflected by the U.S. Bureau of Labor Statistics percent change in “Kansas All Employees Average Annual Wage” for the previous three full calendar years of available data.

Special sessions and interim meetings. In addition to the base salary, members of the Legislature shall be compensated for special sessions and approved interim committee meetings at a rate of \$172 per day. This amount shall be adjusted annually according to the salary indexing directive above.

Additional leadership salaries. In addition to the base salary, members of the Legislature holding specified positions shall receive the following amounts:

- President of the Senate and Speaker of the House of Representatives, an additional 64% of the base salary.
- Vice President of the Senate, Speaker Pro Tem of the House of Representatives, Assistant Majority Leaders of the Senate and House of Representatives and Assistant Minority Leaders of the Senate and House of Representatives, an additional 33% of the base salary.

- Majority and Minority Leaders of the Senate and House of Representatives, an additional 58% of the base salary.
- Chairpersons of the Senate Committee on Ways and Means and the House Committee on Appropriations, an additional 50% of the base salary.

Approved by action of the Legislative Compensation Commission on October 19, 2023.

Mark Hutton, Chairperson

APPENDIX 2 - MEMORANDUM

To: Legislative Compensation Commission

From: Alan D. Conroy, Executive Director

Date: October 5, 2023

Subject: Proposed Legislative Salary Changes; KPERS Annualization Calculation

During the September 21 meeting, the Compensation Commission had several questions regarding the current statutory annualization formula (K.S.A. 74-4995) and how that calculation might be impacted by Legislative salary changes recommended by the Commission.

Current Proposal

KPERS received the outline of a new proposal with the following parameters relevant to KPERS annualization calculations:

- New Legislative salary starting in January 2025 of \$42,000.
 - This amount would encompass what is currently the daily rate (\$88.66/day) and non-session expenses (\$354.15 for 19 pay periods).
- The first 30 days of Legislative compensation would be 7.75% of \$42,000 (\$3,255 or \$108.50/day).
 - This is the amount that would be used in the statutory annualization formula in K.S.A. 74-4995.
- The remainder of the KPERS annualization calculation stays the same.

Legislator Election Levels

Legislators are given the opportunity to elect certain portions of their compensation to be included in the annualized salary calculation for KPERS purposes.

Current KPERS Election Levels:

- Level A: Daily compensation rate only (currently \$88.66/day)
- Level B: Daily compensation rate with Non-Session Expenses (\$88.66/day plus \$7,083)
- Level C: Daily compensation rate with Session Expenses (\$88.66/day plus \$166/day)
- Level D: Daily compensation rate with both Session and Non-Session Expenses

Legislators get a one-time election to select their participation level. This election cannot be revoked per K.S.A. 74-4995(c). The Internal Revenue Service (IRS) has also ruled in other cases that elections of this nature are not permissible in qualified 401(a) retirement plans like KPERS.

Impact on KPERS Annualization Calculation



The impact on the calculation of annualized salary for KPERS purposes will depend on which level a Legislator elected. Based on the parameters noted above, the impact is summarized in the following tables:

	Current KPERS Annualized Salary		Proposed KPERS Annualized Salary	
Annualized Daily Compensation Rate	(\$88.66/day)	\$32,360.90	(\$108.50/day)	\$39,602.50
Annualized non-Session expenses		\$7,083.00		\$0.00
Annualized Session Expenses		\$60,590.00		\$60,590.00
Total (All annualized portions)		\$100,033.90		\$100,192.50

	Current KPERS Annualized Salary	Proposed KPERS Annualized Salary	Percent Change	Number of Legislators Participating*
Level A - (Daily Compensation Rate only)	\$32,360.90	\$39,060.00	20.70%	18
Level B - (Daily Compensation Rate + Non-Session Expenses)	\$39,443.90	\$39,060.00	-0.97%	15
Level C - (Daily Compensation Rate + Session Expenses)	\$92,950.90	\$100,192.50	7.79%	9
Level D - (Daily Compensation Rate + Both Expenses)	\$100,033.90	\$100,192.50	0.16%	93

*Legislators as of January 2023.

Because of the shift from a daily legislative rate plus non-session rate to an annual legislative compensation without non-session expenses:

- Legislators who elected Level A would see the largest impact to their annualized salary.
- Legislators who elected to participate at Level B would see a slight decline (about 1%) in their annualized salary.

Most Legislators who elect to participate in KPERS elect to include all parts of Legislative compensation (Level D). The proposed annualized salary would increase the annualized salary for this group of Legislators by less than 0.2%.

Benefit Estimate

Using the parameters above, KPERS completed a KPERS 2 and KPERS 3 benefit estimate for a Legislator who elected Level D using the same set of assumptions as used in the September 21, 2023 memorandum to the Compensation Commission. The benefit estimates are summarized in the following table:

	Baseline	Proposed	Annual Difference	Percent Change
Estimated KPERS 2				
Annual Benefit	\$14,805 (\$1,234/month)	\$14,828 (\$1,236/month)	+\$23 (+ \$2/month)	0.16%
Estimated KPERS 3				
Annual Benefit	\$7,248 (\$604/ month)	\$7,260 (\$605/month)	+\$12 (+ \$1/month)	0.16%

I would be pleased to respond to any questions the Commission has.

Legislative Compensation Commission Preliminary Report

September 28, 2023

Basis of Compensation

As I mentioned in previous emails I'm urging the commission to use a recognized index as our benchmark for establishing the salary as well as indexing it for future years. I continue to believe that the best and most reliable data we have is from the Bureau of Labor Statistics so I'm going to use that for my example. If the commission elects to go another direction we can adjust the calculations.

Previous discussion around this index included whether to use the Public or Private data as well as concern over accuracy and potential policy changes that could affect our intent. After reviewing past history I'm convinced that this data set is as stable and accurate as we can get. This is reinforced by KLRD's reluctance to provide this information, sighting consistency of data concerns and the Office of the Revisor that is concerned about KLRD's involvement being interpreted as KLRD making a salary determination via a link to data they prepare which would be illegal. Since most of BLS adjustments relate to reclassification of employment sectors from Public to Private or vice versa, any administrative changes made by BLS will most likely cancel out if we use the composite of both the Public and Private sectors. The graph I've included with this email reflects how closely each of these tracks to the composite and how administrative changes cancel each other out.

The composite data set comprised of both Private and Public sectors of the Bureau of Labor Statistics (BLS) "Average Annual Wages, Kansas" is finalized every year in May for the prior year. After that date the data is never changed for that year. As an example if we elect to have this policy take effect on January 1st of 2025 we would be using data for 2023 to set the salary because the final 2024 data wouldn't be available until May of 2025.

Assumptions used to arrive at the proposed annual salary:

- 100% of a legislators time dedicated to the 5 months of session.
- 50% of a legislators time dedicated to office responsibilities when not in session.

Calculation:	5 months at 100% =	5.0 months
	7 months at 50% =	3.5 months
	Total	8.5 months which is 70.83% of the year

Salary Calculation

Since we won't have the average salary for 2023 until May of 2024, we must estimate what that average wage will be to establish the starting salary for the 2025 session. The average of the Percent Growth over the past 5 years is 4.5%. Applying a 4.5% increase to the 2022 average salary of \$57,644 brings the estimated 2023 salary to \$60,238. 70.83% of that wage is \$42,667. **I propose we round that up to \$43,000 as the base salary beginning January 1, 2025.** This salary would be all inclusive and include allowance for non-session expenses. The daily per diem paid for approved meetings and sessions would be paid separately and apart from this salary. All other expenses other than the proposed district size stipend proposed below would be considered included in the annual salary.

Compensation Indexing

Going forward I propose using the same BLS data set as the index for future years adjustments by applying the "Percent Growth" to the prior year's legislative salary. For example – If the 2024 Percent Growth, reported in May of 2025, is hypothetically 3.5%, then the salary for the 2026 legislative year would be 1.035 times \$43,000 (2025 legislative salary) for a 2026 legislative salary of \$44,505. This approach would allow the use of real data, not estimated albeit a year behind due to reporting lag.

KPERS Annualization

As we have discussed, in order to prevent the salary increase from creating a KPERS annualization windfall the first 30 day pay period will need to be adjusted to 7.75% of the Annual Salary. The subsequent 4 months would be paid out at 13.07% per of the Annual Salary/month and the remaining 7 months paid out at 5.71% of the Annual Salary. Going forward since the Annual Salary will be indexed that will mean the first 30-day amount used to calculate the annualized salary for KPERS will increase slightly each year. I've spoken to Alan Conroy about this and since the increase is very small, he does not believe that this will result in any stress on the KPERS fund.

Compensation for Special Sessions and Interim Committees

Compensation for the legislative session would be included in the salary regardless of the number of days the session runs. Compensation for Special Sessions and Interim Committees would be paid the daily rate, calculated using a 90 day session divided into the session salary of 60% of the total compensation less the non session rate calculated by the non session salary by the number of non session days for a daily premium rate. Based on the proposed \$42,000 Salary the calculation would be:

Base Salary of \$43,000

Session salary is 60% of Base = \$25,800 / 90 Day session = \$287/Day

Non Session Salary is 40% of base = \$17,200 / 150 days = \$115/Day

Premium paid for Special Sessions and Interim committees is \$287 - \$115 = \$172/day.

Compensation for all other office time, meetings and events would be considered to be included in the Annual Salary.

Per Diem Allowance

Maintain the current daily Per Diem Allowance as set by the Department of Administration. Per Diem will be paid for all session days, special session days, interim committee meetings and other days as designated by the LCC.

District Size Stipend Proposal

Using a similar approach used by Montana the District Size Stipend I'm proposing would be calculated using the following variables:

- Use ½ mile of annual travel allowance per Square Mile of a district.
- For illustration purposes I've used the current rate of .655 per mile. This rate would be adjusted whenever the milage rate was adjusted by the Department of Administration.
- This proposal is based on the expectation that an Annual Travel Allowance of \$250 for House members and \$500 for Senate members is included in the base salary to cover travel costs not reimbursed for official business (i.e. Session, interim meetings, etc.)
- Referring to the attached spreadsheets the amount calculated to be above the expected Annual Travel Allowance would be reimbursed to the member as a stipend.

This approach would result in 22% of the House members and 35% of the Senate members receiving additional compensation that ranged from \$15 to \$3,756 per year.

Why this approach?

- It establishes a reasonable expectation for travel that is built into the salary.
- It is based on non-arbitrary data (Square Miles of District).

Why This approach (continued)

- It falls in line with what Montana does but does not draw lines that need to be reset when redistricting effects a district's size. If a district size changes then the spreadsheet adjusts automatically.
- The base Travel Allowance is indexed with the Salary so it stays current.
- This stipend is indexed to the milage reimbursement rate set by the Department of Administration so it insures it stays current and fair.

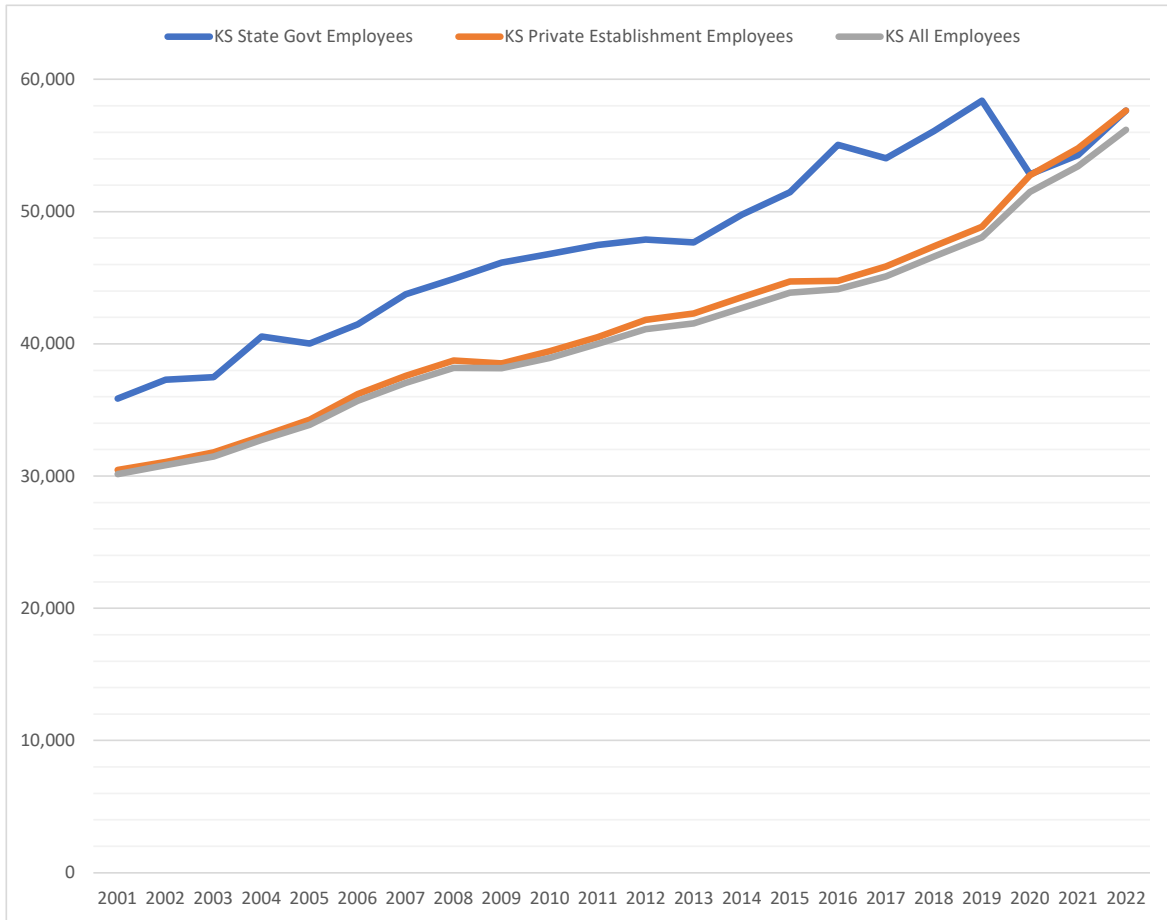
Overall, the annual cost to the State for this stipend is calculated at \$33,715.

Leadership Salary Considerations

In keeping with the Commissions desire to keep the current structure and level of leadership pay I propose to extrapolate the current premium pay structure. Using \$21,900 as the annual compensation a legislator currently receives, Senate and House leadership currently receive a 64% premium, Majority and Minority leaders receive a 58% premium, and Other Leaders and Committee Chairs receive from 33% to 52% premium. I suggest we apply the same percentage premium to each of the following positions:

- Senate President and Speaker of the House would receive an additional 64% of their salary for a total amount of \$70,520.
- Senate Vice President and Speaker Pro Tem would receive an additional 33% of their salary for a total amount of \$57,190.
- Senate and House Majority and Minority Leaders would receive an additional 58% of their salary for a total amount of \$67,940.
- Appropriations / Ways and Means Chairman would receive an additional 50% of their salary for a total amount of \$64,500.

Appendix 4



QCEW Average Annual Wage

Year	KS All Employees	Percent Growth	KS State Govt Employees	Percent Growth	KS Private Establishment Employees	Percent Growth
2001	30,153	--	35,851	--	30,468	--
2002	30,825	2.23%	37,285	4.00%	31,061	1.95%
2003	31,489	2.15%	37,491	0.55%	31,794	2.36%
2004	32,738	3.97%	40,557	8.18%	33,013	3.83%
2005	33,864	3.44%	40,014	-1.34%	34,265	3.79%
2006	35,696	5.41%	41,487	3.68%	36,201	5.65%
2007	37,044	3.78%	43,748	5.45%	37,579	3.81%
2008	38,178	3.06%	44,924	2.69%	38,735	3.08%
2009	38,154	-0.06%	46,155	2.74%	38,519	-0.56%
2010	38,936	2.05%	46,809	1.42%	39,431	2.37%
2011	39,989	2.70%	47,474	1.42%	40,507	2.73%
2012	41,118	2.82%	47,889	0.87%	41,817	3.23%
2013	41,548	1.05%	47,680	-0.44%	42,297	1.15%
2014	42,716	2.81%	49,786	4.42%	43,530	2.92%
2015	43,878	2.72%	51,483	3.41%	44,729	2.75%
2016	44,142	0.60%	55,057	6.94%	44,771	0.09%
2017	45,116	2.21%	54,047	-1.83%	45,848	2.41%
2018	46,607	3.30%	56,094	3.79%	47,375	3.33%
2019	48,060	3.12%	58,381	4.08%	48,852	3.12%
2020	51,490	7.14%	52,822	-9.52%	52,749	7.98%
2021	53,422	3.75%	54,281	2.76%	54,784	3.86%
2022	56,178	5.16%	57,644	6.20%	57,640	5.21%

Comparison of Legislator and Leadership Compensation under Current Law and Commission Proposal

Current Legislator Compensation based on a 90-Day Session and a Per Diem rate of \$157 per day.

	Current Base Salary	Per Diem	Compensation Base	Annual Allowance	Total	Percent Allowance
Legislator	\$ 7,979	\$ 14,130	\$ 22,109	\$ -	\$ 22,109	0.0%
Senate President and Speaker of the House	7,979	14,130	22,109	14,039	36,149	63.5%
Senate Vice President, Speaker Pro Tem, Assistant Majority and Minority Leaders	7,979	14,130	22,109	7,165	29,275	32.4%
Senate and House Majority and Minority Leaders	7,979	14,130	22,109	12,666	34,775	57.3%
House Committee on Appropriations and Senate Committee on Ways and Means chairpersons	7,979	14,130	22,109	11,290	33,399	51.1%

Proposed Legislator Compensation under the Commission Plan - Note Allowance is based on Base Salary Only

	Adjusted Salary	Allowance Percent	Allowance Dollars	Total
Legislator	\$ 43,000	0.0%	\$ -	\$ 43,000
Senate President and Speaker of the House	43,000	64.0%	27,520	70,520
Senate Vice President, Speaker Pro Tem, Assistant Majority and Minority Leaders	43,000	33.0%	14,190	57,190
Senate and House Majority and Minority Leaders	43,000	58.0%	24,940	67,940
House Committee on Appropriations and Senate Committee on Ways and Means chairpersons	43,000	50.0%	21,500	64,500



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