Committee Reports to the 2013 Kansas Legislature

Supplement

Kansas Legislative Research Department
May 2013

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Kansas Legislative Research Department
300 SW 10th, Room 68-West, Statehouse
Topeka, Kansas 66612-1504

Telephone: (785) 296-3181
FAX: (785) 296-3824
kslegres@klrd.ks.gov
http://www.kslegislature.org/klrd

Supplement

Special Committee on Rural Broadband
Joint Committee on Energy and Environment
Joint Committee on Health Policy Oversight
Joint Committee on Information Technology
Health Care Stabilization Fund Oversight Committee

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Foreword

This publication is the supplement to the Committee Reports to the 2013 Kansas Legislature. It contains the reports of the following committees: Special Committee on Rural Broadband Services, Joint Committee on Energy and Environmental Policy, Joint Committee on Health Policy Oversight, Joint Information Technology, Health Care Stabilization Fund Oversight Committee.

This publication is available in electronic format at http://skyways.lib.ks.us/ksleg/KLRD/Committees.htm.

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Report of the Special Committee on Rural Broadband Services to the 2013 Kansas Legislature

CHAIRPERSON: Representative Sharon Schwartz

VICE-CHAIRPERSON: Senator Jay Emler

OTHER MEMBERS: Senators Pat Apple, Marci Francisco, Ralph Ostmeyer, and Mike Petersen; and Representatives Mike Burgess, Terry Calloway, Ramon Gonzalez, Mitch Holmes, Forrest Knox, Annie Kuether, and Jerry Williams

STUDY TOPIC

Examine how the Federal Communication Commission changes to the Universal Service Fund and changes to the Kansas Universal Service Fund will affect rural broadband, the accessibility of rural broadband services, as well as the progress and accuracy of mapping rural broadband service.

Special Committee on Rural Broadband Services

Report

Conclusions and Recommendations

The Special Committee on Rural Broadband Services agrees that broadband availability in rural Kansas is vital to the economic future of the State of Kansas, and that broadband for business, personal use, distance learning, access to e-government, and telemedicine is necessary for rural areas of the state. The Committee is concerned about the effect of federal funding changes on carriers' ability to support and extend rural broadband.

The Committee makes the following recommendations:

- The standing House and Senate Utilities Committees should conduct hearings during the 2013 Legislative Session to monitor developments in funding from the federal government;
- The standing committees on Utilities should review short-term and long-term planning and solutions for rural broadband;
- Consistent with the universal service principles in federal and state law, any plan considered should ensure that rural and urban consumers pay reasonably comparable rates for reasonably comparable services by providing adequate support in high-cost areas;
- Interested parties and local communities should bring possible solutions and suggestions for addressing the funding changes to the standing committees on Utilities during the 2013 Legislative Session;
- The Department of Commerce should report to the standing committees on Utilities with a broadband mapping update;
- The standing committees on Utilities should receive an update from the Kansas Corporation Commission during the 2013 Session on Docket No. 12-170 (General Investigation into the Kansas Universal Service Fund); and
- All members of the Legislature should receive electronic notification when updated broadband mapping information is released.

Proposed Legislation: None.

Background

In early 2009, Congress directed the Federal Communications Commission (FCC) to develop a National Broadband Plan to ensure every American has access to broadband capability. The Plan, released in March 2010, concluded that "broadband, like electricity, is a modern necessity of life, not a luxury. It ought to be found in every

village, in every home and on every farm in every part of the United States."

Both the Kansas House of Representatives and the Kansas Senate adopted resolutions during the 2011 Session urging the FCC to make substantive changes to the Plan to ensure rural areas have access to the same high-quality, affordable communication services that are available in urban areas, with a universal service support mechanism that would provide incentives for broadband network deployment and would keep broadband service affordable.

In November 2011, the FCC issued a 750-page order that reforms the Federal Universal Service Fund and Intercarrier Compensation (the fees that telecommunications carriers pay each other for use of their lines). Testimony received by the standing House and Senate Utilities Committees during informational hearings in the 2012 Session in Kansas regarding the effect of the FCC order raised numerous concerns and led to the creation of this Committee to address the following charge:

> Examine how the FCC changes to the Federal Universal Service Fund and changes to the Kansas Universal Service Fund will affect rural broadband, the accessibility of rural broadband services, as well as the progress and accuracy of mapping rural broadband service.

Committee Activities

At its meeting on November 14, the Committee received a briefing from the Kansas Corporation Commission (KCC) on the changes in the FCC Reform Order affecting rural broadband, and heard testimony from telecommunications carriers regarding how federal funding changes may affect carriers' ability to support and extend rural broadband service. In addition, a representative of the U.S. Department of Agriculture's (USDA) Rural Utility Service (RUS) discussed how the changes may impact broadband funding from that agency. The Committee received information from the State Librarian of Kansas on funding for broadband in libraries, and was provided an update and demonstration of broadband mapping by the Kansas Department of Commerce and the Kansas Geological Survey.

Overview of Changes to the Universal Service Fund Affecting Rural Broadband

Christine Aarnes, Telecommunications Chief, KCC, noted that both the Kansas Telecommunications Act of 1996 and the Federal Telecommunications Act of 1996 contained provisions to develop universal service funds to maintain and enhance universal service. Historically, this referred to universal telephone service; however, Congress' direction to the FCC to develop a National Broadband Plan to ensure ubiquitous access to broadband service has led to significant changes in the way federal universal service funds will be deployed in the future.

The current Federal Universal Service Fund (FUSF) has four component programs, described below along with the percent of funding allocated to each program nationally in 2011:

- The High Cost Program allows carriers to recover part of the cost of providing service in areas too sparsely populated or too remote to otherwise have affordable telecommunications service (50 percent);

- The Lifeline Program provides a discount on the cost of service for qualifying low-income households (22 percent);

- The Schools and Libraries Program, commonly referred to as E-rate, offsets the cost of telecommunications in eligible schools and libraries (27 percent); and

- The Rural Health Care Program helps pay the cost of telecommunications service necessary for the provision of health care in rural areas (1 percent).

The FCC's Reform Order creates the Connect America Fund (CAF) to support broadband and take the place of the legacy High-Cost Program; creates a Mobility Fund to support 3G or better wireless coverage; reforms Intercarrier Compensation; and expands the Lifeline Program to allow subsidies to be provided for broadband. Telecommunications providers must contribute to the FUSF through an assessment on their interstate and international revenues, and providers typically

recover the cost of FUSF contributions from their customers.

The FCC's Reform Order identified support for broadband-capable networks as an express universal service principle and set five performance goals with regard to reform of the FUSF, as follows:

- Preserve and advance availability of voice service;
- Ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses and community anchor institutions;
- Ensure universal availability of modern networks capable of providing advanced mobile and broadband service;
- Ensure that rates for broadband services and rates for voice services are reasonably comparable in all regions of the nation; and
- Minimize the universal service contribution.

The initial budget for the first six years of FUSF reform was set at $4.5 billion. Ms. Aarnes discussed elements of the reform that affect price cap carriers and rate of return carriers. For price-cap carriers (in Kansas, AT&T and CenturyLink), existing high-cost FUSF support was frozen at 2011 levels. An additional $300 million in CAF Phase I funding was made available, but to qualify for that support a carrier had to provide broadband with actual speeds of 4 megabits per second (Mbps) download and 1 Mbps upload, and to deploy broadband to at least one currently unserved location for each $775 in additional high-cost support it receives. Many elements of Phase II funding for price-cap carriers are under development. Rate of return carriers receiving high-cost support must offer broadband service with actual speeds of 4 Mbps download and 1 Mbps upload. In addition, new rules were adopted for rate of return carriers that contain such elements as elimination of FUSF support in areas overlapped by an unsubsidized competitor, capping total FUSF support at $250 per line per month, and elimination of, or new limits on, reimbursement of various other costs previously eligible for support.

The FCC adopted a Further Notice of Proposed Rulemaking along with the Reform Order. The Notice identifies a series of issues related to universal service and intercarrier compensation that remain to be resolved.

Effect of Federal Funding Changes on Carriers' Ability to Support and Extend Rural Broadband

Michael Foster, Twin Valley Telephone, Inc., described the changes from the perspective of a rural telephone company. Mr. Foster noted that the independent rural telephone companies in Kansas have invested hundreds of millions of dollars to deploy fiber for broadband services, often with loans from the USDA's RUS. As a result, nearly all customers of rural telephone companies have access to advanced services. He attributed the expansion of services in rural areas to rate of return regulation, which provides assurance of cost recovery for investments in areas that are too sparsely populated to support necessary infrastructure through affordable rates alone. He expressed concern that the FCC's reform efforts, which will cap overall support regardless of need, will be counterproductive, and that funding problems will be increased by the FCC's use of a regression analysis to limit a company's support based on other companies' costs, rather than on the reasonableness of the costs themselves. Reductions in funding could preclude companies from being able to repay their loans to the RUS. He stated the direct and necessary impact on the Kansas Universal Service Fund (KUSF) from federal support reduction is far from clear, but noted that reductions in KUSF support would hasten discontinuance of existing service and deprive rural business, families and institutions of communications opportunities. He encouraged the Legislature to refrain from overreaction to unresolved federal reforms when considering appropriate state policy on availability and affordability of communications services.

John Idoux, Kansas Government Affairs, CenturyLink, described the effect of the FUSF

reforms on price cap carriers such as CenturyLink and AT&T. The FCC established a two-phase implementation for the Connect America Fund. CAF Phase I included a one-time allocation of $300 million to subsidize broadband build-out in very rural areas served by the larger incumbent local exchange carriers. The subsidy, $775 per new location served, was based on flawed data from the National Broadband Map, and resulted in only $115 million of the $300 million being allocated. CenturyLink did not accept any CAF Phase I funds for Kansas because of FCC restrictions. CAF Phase II is expected to begin in late 2013 or in 2014. The FCC is considering various formulas for determining long-term subsidy amounts, based on the real costs associated with building out to high cost areas. The cost model selected will determine which communities benefit from CAF Phase II. Under Phase II, FUSF will support only high cost voice networks as a secondary component of broadband network deployment and only in specific targeted areas. In the highest cost areas, all FUSF support will be applied to satellite broadband service. In high cost areas in general, FUSF support will be available only for universal voice service in areas defined as unserved by broadband. Mr. Idoux stated that nearly 92 percent of CenturyLink customers have access to broadband with speeds greater than 782 kilobits per second (kbps) and 75 percent have access to download speeds of 4 Mbps or greater. As the company continues to expand its broadband network, the investment per incremental customer grows exponentially, making funding from CAF Phase II essential to continue the build out. With regard to the KUSF, Mr. Idoux noted that CenturyLink is just one of many competitors in most of its service areas; as such, the market rather than regulation should shape services and pricing in those areas. However, KUSF support is needed in areas where competition has not developed and, if KUSF is not continued in those areas, providers should be relieved of obligations such as price regulation and Carrier of Last Resort responsibilities.

Mike Scott, Legislative Director, AT&T Kansas, discussed the trend in the communications market from wireline-only households to wireless-only households. As a result, AT&T recently announced a three-year $14 billion national capital investment plan, called Project Velocity IP, to enhance and expand the company's broadband networks. Combined with previously planned investment, capital spending will be approximately $22 billion nationally for each of the next three years. At the end of this time AT&T expects to provide high speed Internet Protocol (IP) Internet access, through either IP wireline or 4G wireless, to 99 percent of customer locations in its service areas in the 22 states where it provides wireline service. Kansas-specific information is not yet available. In order to meet consumer demand, AT&T states it must move from a traditional voice network to a broadband network, which will help meet the national policy goal of ubiquitous broadband. The company chose not to participate in CAF Phase I because it was rolling out Project Velocity IP, which is not dependent on federal funding.

Broadband Funding Support from USDA's Rural Utility Service

Patty Clark, State Director for USDA Rural Development in Kansas, explained that Rural Utility Service is a "mission area" within the Rural Development agency, which began investing in rural telephone service in 1949. Currently, it has 2,337 active loans with $4.2 billion in outstanding principal. Its telecommunications borrowers build advanced networks and deploy fiber because it is less expensive to maintain and it delivers a higher through-put than copper, and because RUS wants to avoid investments that quickly become obsolete. In Kansas, more than $137 million in loans and grants for broadband infrastructure were awarded from Recovery Act monies in 2009 and 2010. All loan financing is dependent on sufficient, specific, and predictable revenue; and FUSF support has been a major factor in nearly every loan made. However, borrowers now report that under the FCC Reform Order, revenues from FUSF are unpredictable and possibly insufficient. In addition, the retroactive approach in the Order penalizes earlier investments. The USDA has discussed the concerns of its telecommunications borrowers with the Chairman of the FCC on two occasions. Conversations about the effects of the Order on rural borrowers are increasing and are being elevated to higher levels.

Bill and Melinda Gates Foundation Funding for Broadband in Libraries

Joanne Budler, State Librarian of Kansas, described $2.3 million in grant funding provided to Kansas libraries from the Bill and Melinda Gates Foundation (Foundation) in the early 2000s. The funding provided Kansas libraries with 499 computers for public use and 90 content servers in support of pubic access computing. The grant funding also included training of library staff at 233 libraries and provided networking services in 232 library buildings, which facilitated use of dedicated Internet connections in place of dial-up connections. In 2008, the State Library received a grant from the Foundation with work starting in 2010, which was intended to help libraries understand the value of connecting to KAN-ED or an alternative source of broadband, and to encourage librarians to apply for federal e-rate funding to defray the cost of broadband. A Broadband Advisory Council was formed and created a "Target Connectivity Table" to help libraries plan for their Internet connection needs. However, based on the changes to KAN-ED in the 2011 and 2012 Legislative Sessions, the focus of the grant changed to an emphasis on helping libraries with alternative broadband planning. These efforts culminated in the development of a workbook titled *Broadband Everywhere! Action Planning for High Speed Internet in Kansas Public Libraries* which was a the focus of a day-long planning session in which attendees at seven libraries across Kansas joined in via video-conference.

Broadband Mapping Update and Demonstration; Options for the Future

Stanley Adams, Broadband Planning Manager, Kansas Department of Commerce, and Shawn Saving, Broadband Data Manager for the Data Access and Support Center (DASC), Kansas Geological Survey, discussed the process used in broadband mapping and data collection across the State, and they provided several large maps showing access to broadband in Kansas. Initially, the Department contracted with Connect Kansas for data collection and mapping, but switched to a contract with DASC in January 2012. The National Telecommunications and Information Administration (NTIA) in the U.S. Department of Commerce is responsible for creating the National Broadband Map using data collected and provided by the states according to criteria developed by NTIA. In response to concerns that broadband mapping is inaccurate, Mr. Saving stated it will never be accurate to a house-by-house level, and explained that the data on broadband availability is submitted voluntarily by telecommunications providers in accordance with standards established by NTIA. He identified a number of ways in which the standards contribute to the perception of inaccuracy because they result in an exaggerated level of coverage:

- The standards define broadband as service speeds equal to or greater than 768 kbps download and 512 kbps upload. The low-end speeds are slower than many people would consider to be broadband;

- Providers can report an area as having broadband service if they would be able to provide service within seven to ten days upon request. They do not have to have actual customers receiving service;

- Mapping is done at the census block level if the block is less than two square miles, and by road segment if the census block is larger than two square miles. If there is at least one customer, or one address that could be served in the census block or road segment, the entire area is shown as having service; and

- The mapping captures both wireline and wireless service. The coverage areas of wireless providers are often reported as circles or cloud-shapes which do not reflect the fact that service actually may not be available in certain spots due to geographic conditions that prevent signal reception.

Mr. Saving stated the broadband map could be used for strategic planning and needs assessment, assessing broadband service potential, performing service gap analysis regarding the number of providers in an area, as well as served and under-served areas, and identifying trends in the broadband industry.

Additional Information Presented

Chairperson Schwartz discussed a conference she attended titled *Broadband Connection Nebraska* and provided copies of the conference agenda. She noted Nebraska was providing innovative interfaces to its broadband mapping data.

Ms. Aarnes, KCC, provided a map of the federal Mobility Fund Phase I Eligible Areas, as well as a glossary of telecommunications terms.

Dina Fisk, Verizon Wireless, discussed and provided handouts on Verizon's 4G LTE mobile broadband and the roll-out of that service in many mid-sized Kansas cities.

Conclusions and Recommendations

The Special Committee on Rural Broadband Services agrees that broadband availability in rural Kansas is vital to the economic future of the State of Kansas, and that broadband for business, personal use, distance learning, access to e-government and telemedicine is necessary for rural areas of the state. The Committee is concerned about the effect of federal funding changes on carriers' ability to support and extend rural broadband.

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- All members of the Legislature should receive electronic notification when updated broadband mapping information is released.

Report of the Joint Committee on Energy and Environmental Policy to the 2013 Kansas Legislature

CHAIRPERSON: Representative Forrest Knox

VICE-CHAIRPERSON: Senator Carolyn McGinn

OTHER MEMBERS: Senators Marci Francisco, Ralph Ostmeyer, Mike Petersen, and Mark Taddiken; and Representatives Dennis Hedke, Mitch Holmes, Annie Kuether, Tom Sloan, and Vince Wetta

STUDY TOPIC

Study energy and environmental policy in Kansas.

Joint Committee on Energy and Environmental Policy

REPORT

Conclusions and Recommendations

The Committee makes the following conclusions and recommendations:

- After hearing extensive testimony on the value of the Local Environmental Protection Program (LEPP) to counties, the Committee recommends the agriculture and natural resources standing committees in both the House and Senate evaluate the importance of the LEPP and make recommendations regarding the State's continued role in the program. Previously LEPP has been considered only in budget committees.

- High heat and drought in recent years, in combination with nutrient loading, have intensified algae blooms in Kansas waters. The Watershed Restoration and Protection Strategies Program (WRAPS) and similar programs are important parts of the response to algae problems and to addressing sedimentation.

- The Committee received information on numerous challenges related to water quality and quantity in Kansas, such as algae blooms, nutrient management, groundwater rights, sedimentation and its effect on water levels for power production and overall water supply, and the impact of the recent heat and drought. In recognizing the many water issues facing the state, and the importance of supporting programs such as WRAPS that can address those challenges, the Committee recommends the Legislature fully fund the $6.0 million statutory transfer from the State General Fund to the State Water Plan Fund each fiscal year.

- The Committee recommends that a joint meeting be convened with members of the appropriate House and Senate committees dealing with the subject matter of agriculture, utilities, and natural resources, and including members from the Joint Committee on Energy and Environmental Policy. The purpose of the joint meeting would be to hear a presentation from the Kansas Water Office on the State Water Plan. The meeting should be scheduled within the first two weeks of the 2013 Legislative Session.

- The Committee reviewed the multi-year flex account program and legislation that was passed during the 2012 Session. The Committee believes it is a good program and provides a good option for water users in the state, although the program may need to be refined in the future with regard to its interaction with minimum desirable streamflow requirements (MDS).

- The Committee would appreciate updates during the 2013 Session and Interim regarding hydraulic fracturing, including recommendations currently under consideration by the Oil and Gas Advisory Committee and any rules and regulations approved by the Kansas Corporation Commission.

- The Committee acknowledged hearing divergent views from two reports on the cost of wind-

generated energy and Kansas' renewable energy standards. The Committee requested Legislative Research Department staff review the assumptions and sources used in each of the two reports, which may help inform discussion of why the studies arrived at different conclusions. The results of that review, along with the information this Committee heard during the Interim Session, should be provided to House and Senate committees that consider the Kansas Renewable Energy Standards in the 2013 Session.

The Committee acknowledged hearing testimony regarding the effect of the expiration of the New Renewable Electric Cogeneration Tax Credit (KSA 79-32,245 *et seq.*) in 2011. That testimony was very supportive of the credit, and the Committee understands the tax conference committee report in 2011 recommended continuation of the credit. The Committee recommends the House and Senate Assessment and Tax committees review the now-expired tax credit and consider reinstatement including broadening the renewable technologies eligible for the credit.

Proposed Legislation: The Committee recommends introduction of one bill, to direct the Kansas Water Office, in conjunction with the Kansas Water Authority, to create a plan to address dredging, streambank stabilization, sedimentation, identification of a funding source (including possible funding from the Expanded Lottery Act Revenue Fund), and future water storage issues.

Background

The Committee was established by enactment of 2008 SB 586 (KSA 46-3701) as an 11-member, bipartisan joint committee whose members serve two-year terms. The Committee's charge is to study energy and environmental policy in Kansas.

Committee Activities

The Committee met for three days in 2012: November 13, November 19, and November 20. The Committee discussed issues relating to water, including groundwater rights, updates on water litigation, funding, algae blooms and nutrient management, drought, water supply issues, and water levels for power production. The Committee also discussed issues relating to energy, including oil and gas production, severance tax, fracturing, the land spreading of drilling muds, updates on pipelines, U.S. Environmental Protection Agency (EPA) regulations, emergency management plans, Geographic Information Systems (GIS) mapping and remediation, and an update on the buyout of Treece, Kansas. In addition, the Committee heard updates regarding wind energy, expiration of the renewable cogeneration incentive, state trends in renewable energy standards and the Kansas Renewable Energy Standards, utility compliance with renewable portfolio standards (RPS) in future years, and retrieving energy from organic waste. The Committee also heard information from the Kansas Department of Wildlife, Parks and Tourism on land acquisition and reviewed the Local Environmental Protection Program (LEPP).

Non-perfected Groundwater Rights in Closed Areas. Lane Letourneau, Water Appropriation Program Manager, Kansas Department of Agriculture, reviewed legislation from the 2012 Session that removed the "use it or lose it" law with respect to water right abandonment in closed areas. He also discussed the process for developing a water right, stating that a person must obtain a permit to appropriate water, construct a point of diversion, and perfect the water right by putting it to beneficial use. At the end of the perfection period, a certificate of appropriation is issued by the Chief Engineer. The water right is for the amount that is lawfully used during the perfection period based on a year with the highest use. The agency determined there are 19,108 certificates issued for 5,545,984 acre-feet of annual authorized quantity. There are 349 permits to appropriate water that do not have certificates, many of which are issued to cities and sand pits that have a longer perfection period than other beneficial uses. These permits total 69,922 acre-feet. Mr. Letourneau stated the agency does not consider the 349 permits to be a problem, stating draft certificates are sent allowing comments, extensions are granted for time to perfect, and there is still time to perfect.

Republican River Update. Burke Griggs, Legal Counsel, Kansas Department of Agriculture, reviewed the status of the Republican River litigation. Mr. Griggs provided a background of the Republican River Compact that was signed in 1943 by Kansas, Colorado, and Nebraska, and violations of the compact since that time. The status of the current litigation was provided to the Committee, including an account of the hearing before the U.S. Supreme Court in August 2012. Mr. Griggs stated a decision for Kansas by the Court could include up to five forms of relief, including a finding of contempt, monetary damages, a permanent reduction in the basin's irrigated acreage, sanctions in the event of future non-compliance, and the appointment of a River Master to oversee the settlement. Mr. Griggs stated that Colorado has submitted a plan to address water usage and has taken steps to construct a pipeline to divert water to Kansas. Nebraska has not submitted a plan to address its water usage.

State Water Plan Funding. Abigail Boudewyns, Fiscal Analyst, Kansas Legislative Research Department, provided information on the State Water Plan Fund, including revenue sources and current and historical expenditures. In addition, Ms. Boudewyns discussed alternative funding mechanisms for the State Water Plan Fund by comparing other states' funding sources, including real-estate transfer tax (Illinois), lottery proceeds (Minnesota), sales tax (Missouri, Iowa, Texas), and bonding authority (Wisconsin).

Algae Blooms and Nutrient Management. Tom Stiles, Chief of Watershed Planning, Monitoring, and Assessment, Kansas Department of Health and Environment, stated the agency is developing a process to respond to algae blooms, which impair Kansas reservoirs, displace desirable aquatic life, and interfere with water supplies. As most Kansas water flows into reservoirs, excessive nutrient run-off causes the algae blooms. The agency is working with the Kansas Water Office to develop a plan to reduce the magnitude of nutrient flow, with special focus on reservoirs that provide drinking water. Tracy Streeter, Executive Director, Kansas Water Office, stated that restoring the statutory State General Fund transfer of $6.0 million to the State Water Plan Fund, adding a nutrient-sediment component to the Conservation Reserve Enhancement Program (CREP), and implementing the Watershed Restoration and Protection Strategies (WRAPS) Program will provide a foundation for nutrient and sediment reduction in Kansas reservoirs.

Update on Drought Issues. Mr. Streeter stated that all 105 Kansas counties were under a drought emergency as of the Committee's meeting date. While the drought is less severe than in 1934, it has been more severe than the drought in 1954. Currently, reservoirs hold less than 50 percent of storage capacity and the conservation pool has been reduced significantly. Mr. Streeter also commented on emergency and surplus water supplies and stated forecasts for the future are based on worst-case scenarios. Mr. Letourneau added information regarding the minimum desirable streamflow levels for all Kansas rivers and discussed multi-year flex accounts, which allow a water right holder to obtain a five-year permit that temporarily replaces that water right. Mary Knapp, State Climatologist, Kansas State University, provided written testimony stating drought conditions in Kansas are still severe and an additional nine inches of precipitation are needed to bring conditions back to normal.

Water Supply Issues. Earl Lewis, Assistant Director, Kansas Water Office, provided the Committee with background information on the agency's water supply program and explained the relationship between demand for water and water storage, noting demand in the Neosho Basin already has reached a critical stage where demand exceeds supply during extended droughts. Mr. Lewis explained there is an unfunded liability created at the Milford and Perry reservoirs. The State owes principal balances of $17.4 million and $17.3 million, respectively; however, because there is not demand at present to call the water into service from the reservoirs' conservation storage pools, the State pays only a portion of the principal, plus interest, and operations and maintenance costs each year, rather than paying the full principal balance. Mr. Lewis stated the Kansas Development Finance Authority (KDFA) evaluated the option of bonding to pay off both principal balances but determined that, due to program revenue limitations, the expected interest rate on a bond purchase would be higher than what is accrued currently through the U.S. Army Corps of Engineers.

Effect of Water Levels on Power Production. Wayne Penrod, Executive Director – Environment, Sunflower Electric Power Corporation, presented information on the effect of water levels on power production. Mr. Penrod stated that all water use is determined by the original specifications of the plant, citing the Garden City plant which uses 50 times more water than is being used at the newer Holcomb plant. Mr. Penrod stated that if cooling towers are used to meet new EPA regulations, water use will increase, resulting in cost increases to the consumer. He stated the general rule of water use for coal-fired plant production is 500 gallons of water per megawatt hour (MWH).

Brad Loveless, Director of Environment and Conservation Programs, Westar Energy, stated the addition of the scrubbers installed in one cooling tower at Jeffrey Energy Center uses an additional one billion gallons of water annually. Mr. Loveless noted water used at the Wolf Creek Generating Station comes from the 5,000- acre cooling lake next to the power plant. He stated the power plant also depends upon supplemental water from the John Redmond Reservoir. Mr. Loveless stated that although Wolf Creek seeks to purchase its additional water supply during periods of low demand, in most years, water use exceeds one billion gallons. Mark Schrieber, Westar Energy, provided information stating Wolf Creek uses 400 gallons per MWH; coal-fired plants use 300 gallons per MWH; and gas-fired plants use 100 gallons per MWH. Mr. Schrieber also noted cooling towers double or triple Westar's water usage.

Paul Ling, Director of Corporate Compliance, KCP&L, reported that, due to the drought conditions, the company pumped water for 92 continuous days during the summer from the Marais des Cygnes River to keep La Cygne Lake filled. Mr. Ling stated at Melvern Lake, KCP&L had nearly exhausted its allotment of industrial storage by October and had significantly drawn down its industrial allotment at Pomona Lake. If it is hot and dry next summer, KCP&L may be required to purchase water from the water marketing program or from the reserve pool at higher cost.

Written testimony provided by Joe Dick, Kansas City Board of Public Utilities (BPU), discussed issues including continued degradation of the Missouri River bed. Lowered river levels affect BPU's stationary cooling water intakes.

Agency Plans and Recommendations to Address Water Supply Needs. Mr. Streeter reviewed the recommendations of the Kansas Water Authority to address future water supply needs. The recommendations included:

- Increase by two feet the pool level at John Redmond Reservoir and determine a dredging plan;
- Continue watershed activities to reduce sedimentation;
- Complete the Reservoir Roadmap for all river basins;
- Continue implementation of the 2011 legislation for the Kanopolis Reservoir and request reallocation of storage for water supply, which could add 7,500 acre-feet; and
- Continue to explore additional revenue sources for the State Water Plan Fund.

In addition, Mr. Streeter stated the Kansas Water Office could consider adding a sustainability fee on top of the water marketing fee when customers currently under capped contracts are rolled into variable-rate contracts.

Oil and Gas Production Update. Doug Louis, KCC, presented an update concerning increases in oil activity in both eastern and western Kansas, with approximately 140 active drilling rigs and a recent average of 600 intent-to-drill permits monthly. Mr. Louis referenced the Mississippian Lime Play in western Kansas that has caused increases in both vertical and horizontal drilling, while eastern Kansas has experienced less activity. Mr. Louis noted gas production in the past five years has experienced a reduction, which is in reaction to lower prices. He stated the Hugoton field is declining at a seven percent rate and coal bed methane exploration is becoming non-existent in Southeast Kansas.

Ed Cross, Kansas Independent Oil and Gas Association, indicated the oil and gas renaissance has allayed fear concerning the scarcity of oil and gas reserves. Mr. Cross stated that currently, the U.S. has 26 percent of the world's technically recoverable oil reserves and 30 percent of the world's technically recoverable gas reserves. Mr. Cross stated there are key challenges for the industry in the future, including whether federal tax provisions and regulations are overreaching.

Severance Tax Changes. Chuck Reimer, Office of the Revisor of Statutes, discussed severance tax law changes that resulted from action taken during the 2012 Session. Mr. Reimer explained that the tax rate is eight percent, which is applied to the gross value of each barrel of oil and metered volume of gas severed. The Department of Revenue collects the tax and a credit of 3.67 percent of the gross value of oil or gas severed is applied. The tax credit is applied against the severance tax for each taxpayer who is liable for personal property taxes on oil and gas property. Mr. Reimer noted as a result of legislation passed during the 2012 Session, when monthly severance tax revenues are above consensus revenue estimates, transfers are to be made to the Board of Regents' special revenue funds for technical education tuition waivers and technical education incentives.

Water for Fracturing. Mike Tate, Kansas Department of Health and Environment (KDHE), informed the Committee that water needed for fracturing can be either surface or groundwater and approval for this use can be obtained from existing water right holders or from a temporary term-limit permit approved by the Division of Water Resources, Department of Agriculture. Mr. Tate explained that KDHE becomes involved when quality issues arise, such as the use of city or county lakes for water for fracturing, which requires special permits issued by KDHE. He stated KDHE advises operators upon safe practices that protect aquatic life and water supplies, re-use issues related to wastewater facilities and lagoons to eliminate bacterial growth, and the appropriate disposal of contaminants and toxins.

David Barfield, Division of Water Resources, described the Kansas Water Appropriation Act, which requires permitting from the agency with the exception of water for domestic use, salt water or brine produced incidental to operating an oil or gas well, use of less than 15 acre-feet stored in any reservoir with a total volume of less than 15 acre-feet, and withdrawal of water under contract with the State from federal storage. Mr. Barfield defined the term "water right" for the Committee and discussed water use for fracturing, along with other information on the state's water supplies.

Land Spreading of Drilling Muds. Bill Bider, KDHE, discussed oil and gas production wastes eligible for land spreading. Ineligible waste for land spreading includes produced salt water, fracking fluids, and petroleum-based drilling waste or produced petroleum products and wastes. Mr. Bider provided information on alternative disposal methods, the collaboration between the KCC and KDHE to modify solid waste legislation, land spreading eligibility criteria, applications required for land spreading, loading rate calculations, the implementation process of land spreading, and the benefits of land spreading.

Development of Fracturing Regulations. Mr. Louis updated the Committee on statutory requirements passed during the 2012 Session for the purpose of writing regulations for chemical disclosure and supervision on wells where hydraulic fracturing treatment is performed. Mr. Louis stated the Oil and Gas Advisory Committee heard testimony at one of its meetings where an industry representative proposed draft regulations requiring disclosure. He stated the Advisory Committee could not reach a consensus agreement; however, a motion passed to further discuss the issue at a subsequent meeting.

Keystone and Enbridge Pipelines. Ron Gaches, representing TransCanada and the Keystone Pipeline system, described the company's business operations, which include various pipelines in the U.S. One pipeline is the Keystone Pipeline, which has been in service since 2010 and crosses North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Missouri, and Illinois, as well as the Cushing Extension, which crosses Kansas, and a proposed extension to the Texas Gulf Coast. Mr. Gaches provided a regulatory timeline of the pipeline and discussed the pipeline's critical link to crude oil supply and demand, benefits to the U.S. economy, and its intense regulatory scrutiny.

Corey Carnahan, Principal Analyst, Kansas Legislative Research Department, reviewed the materials provided by Enbridge. The testimony included a status report on the proposed Flanagan South Pipeline and a map of the existing and proposed pipeline.

Update on EPA Regulations. Tom Gross, KDHE, updated the Committee on current air quality issues. He commented that the Clean Air Act requires the EPA to set air quality standards for six air pollutants, to review those standards every five years, and to designate which counties meet those standards. Mr. Gross announced the EPA is close to re-evaluating the standard for ozone. He discussed Kansas' petition for reconsideration of the Cross-State Air Pollution Rule, which affects power plant emissions contributing to ozone or fine particle pollution in downwind states. Mr. Gross noted a decision has not yet been made by the court. Mr. Gross also discussed the State Implementation Plan, which requires specific state-developed plans to ensure National Ambient Air Quality Standards (NAAQS) are met. Mr. Gross stated that for ozone, neither Kansas City or Wichita currently meet the standard of 75 parts per billion (ppb) due to recent extreme heat. However they do meet the standard based on older data EPA is using. He stated the EPA plans to re-evaluate the standard in 2013 and the county designation process will occur in 2014. If the standard is lowered to 65 ppb, no Kansas cities with monitors would meet the standard. Mr. Gross provided information showing that Kansas' particulate matter shows consistent declines over the past ten years. Kansas has 16 coal-fired electric generating units that are subject to the EPA's Mercury and Air Toxic Standards.

Bill Eastman, Westar Energy, stated the company has concerns about many of the air quality standards, particularly the sulfur dioxide NAAQS. The rule would set a one-hour standard of 75 ppb for sulfur dioxide, which would be challenging for Westar to attain. In addition, Mr. Eastman called attention to the proposed greenhouse gases rule, which would limit carbon dioxide emissions at 1,000 pounds per MWH on new units, stating the rule is too restrictive and could be the source of litigation for many years to come.

Wayne Penrod, Sunflower Electric Power Corporation, stated the company has appealed the EPA's Maximum Achievable Control Technology (MACT) rule for new coal-fired plants. Mr. Penrod stated compliance with the MACT rule was not achievable and the EPA responded to a reconsideration request filed by the various vendors. Mr. Penrod stated the entire reconsideration report has not yet been evaluated, but he anticipates the limitations contained in the rules could be achieved by new coal-fired units if vendors respond to the new requirements. In addition, he stated the EPA is reviewing a potential change to the rule which may impact the company's maintenance on combustion turbine components.

Paul Ling, KCP&L, stated the company is working toward compliance with the Cross-State Air Pollution Rule. Mr. Ling stated environmental emission control construction has begun at the La Cygne Generating Station, and the facility will be in compliance with the rule upon its completion. Mr. Ling highlighted significant clean air environmental investment in existing units, including Iatan, La Cygne, and Hawthorn, and noted the Montrose station is being examined for potential emission control retrofits that may be required. With regard to elevated ozone levels in Kansas City during the summer heat, Mr. Ling stated the magnitude of the ozone violation in Kansas City is improving. Mr. Ling added two significant water issues exist, including the "once-through" cooling issue that will impact the La Cygne station and other coal-fired plants, and the Effluent Limitation Guidelines. He stated these guidelines provide for stricter requirements for scrubber wastewater and wet sluicing for all types of ash and other discharges. Mr. Ling stated the final rule is expected in May 2014.

Energy Emergency Management Plans. Leo Haynos, KCC, updated the Committee on actions taken by the KCC to plan for and respond to energy emergencies. Mr. Haynos explained the role of the KCC in emergency management is preparedness. He explained that, after appearing before the Committee during the 2011 Interim, the KCC began the development of an emergency plan that not only meets statutory obligations, but also provides a detailed road map for the KCC related to gas or electric emergencies. Mark Schreiber, Westar Energy, indicated Westar has collaborated

with the Division of Emergency Management, Adjutant General's Department, to coordinate Westar's load shed blocks with the Division's maps, which show critical infrastructure, to reduce as many conflicts as possible in advance of any crisis. Mr. Schreiber stated Westar also has developed a load shed plan includes a public appeal to voluntarily reduce load, requires customers participating in interruptible rate plans to reduce their load either immediately or within several hours, and manual load shed. Mr. Schreiber indicated planned load shedding would be conducted between 12:00 noon and 8:00 p.m. following public notification. In a crisis, public notification would occur, if possible. Angee Morgan, Division of Emergency Management, described the Division's role relating to preparedness, which requires developing working relationships with private industry, other state agencies, and rural electric cooperatives. Ms. Morgan indicated the core component within that role includes the identification of critical infrastructures and circuits for restoration of services during a disaster.

Geographic Information Systems Mapping and Remediation Formula. Allan Pollom, The Nature Conservancy, discussed the protection of the state's natural assets while developing necessary energy infrastructure. Mr. Pollom briefed the Committee on the "Development by Design" approach, which is a commitment to designing necessary projects in the smartest way. He cited various projects in which his organization has been involved, and he encouraged the Committee to employ tools such as geographic information systems (GIS) and their applications to energy-related challenges. Mike Houts, Kansas Biological Survey, discussed the Natural Resource Planner, which was developed approximately three years ago as an online mapping tool to identify areas of wildlife habitat and vegetation. Mr. Houts stated the tool was created to serve as a proactive tool to assist developers and planners to know the locations of natural resources. Mr. Houts commented that his agency is a non-regulatory agency which was founded to distribute information for purposes of informed decision-making. Mr. Houts demonstrated the available data sets, including roads, wind farms, transmission lines, power stations, oil and gas wells, water bodies, sensitive species locations, and other specific types of data. Mr. Houts explained this information could be used as an internal planning tool to assess the impact of a potential development. Since the online tool was introduced, the website has seen approximately 200 users monthly. He stated that recently, the Kansas Aquatic Planner was introduced that focuses on aquatic species, fishing reservoirs, and waterways. Mr. Pollom commented that the Western Governors Association has been working to create a "west side" of the U.S. map of crucial habitat to assist with cross-state boundary issues.

Effect of Corn Prices on Ethanol. Greg Krissek, ICM, provided a map of current ethanol and biodiesel plants in Kansas and discussed the Renewable Fuels Standard and schedule, the future of ethanol blending, and waiver requests for the Standard. He indicated that 2012 was a difficult year for the ethanol industry with 15 percent of the plants being non-operational. Mr. Krissek stated the plants at Colwich, Pratt, and Garnett were not operating at the time of the meeting. Explaining federal level challenges, Mr. Krissek discussed the Standard of selling 36 billion gallons of ethanol per year, splitting renewable fuels into four categories, and capping corn starch ethanol at 15 billion gallons per year. He discussed the potential of sorghum, which is cheaper than corn per bushel, for ethanol production, as well as EPA's recent actions for E15 fuel. Mr. Krissek stated the next generation of ethanol production will involve cellulosic ethanol produced from existing facilities. ICM has a pilot plant in St. Joseph, Missouri, that is a food plant, a generation one ethanol plant, and a cellulose-to-ethanol production plant.

Treece Update. Bob Jurgens, KDHE, updated the Committee on the Treece Relocation Assistance Program. Mr. Jurgens stated that Treece is a small community in Cherokee County that was part of the Tar Creek Mining area that produced zinc, lead, and iron ore. Mr. Jurgens provided a timeline concerning funding, applications, and demolition. He stated it is anticipated that project completion would occur in mid-2013.

Wind Energy Update. Kimberly Svaty, representing The Wind Coalition, stated that in 2012, Kansas led the U.S. in wind development, which created a substantial economic impact through jobs creation. Ms. Svaty described various new wind projects and operating wind projects, By

the end of 2012, 19 operating wind projects will deliver 2,617 megawatts (MW) of installed wind generation, of which 67 percent is dedicated to in-state use and 33 percent is targeted for export. Ms. Svaty discussed turbine types and manufacturers, noting Siemens turbines are manufactured in Hutchinson. Because of uncertainly over the federal production tax credits, layoffs at the Hutchinson facility occurred in September 2012. However, Siemens recently announced that turbines supplied to California and Chile will be made at the Hutchinson plant. Ms. Svaty outlined 2013 planned projects and reinforced economic impacts to Kansas, including donation agreements, road and maintenance agreements, landowner agreements, local suppliers and contractors, lease payments, and jobs creation. Information on Kansas utilities' progress in complying with the Kansas Renewable Portfolio Standard (RPS) was reviewed. Data reported for each resource included contract expiration date, MW capacity, capacity with the 10 percent in-state production adjustment, and each utility's total 2011 benchmark percentage based on the projected load in 2012, 2016, and 2020.

Expiration of Renewable Energy Cogeneration Facility Tax Credit. The Department of Commerce provided written information regarding the tax credit, which expired December 31, 2011. The program was designed for agricultural, industrial, and commercial facilities, including home-based businesses that meet certain requirements. The program, which encouraged businesses to utilize renewable energy applications to off-set electricity use, took effect in 2007. It provided for a 10 percent tax credit on the amount of the total qualified investment taken in 10 equal annual installments and can be claimed over the course of 14 years. The Department noted that 16 agreements were finalized by the end of 2011, reflecting a total investment of over $3.0 million in wind and solar installations across the state.

Brad Estes, BTI Wind Energy, described his Greensburg, Kansas, company and its background. Mr. Estes also provided an overview of distributed generation and community wind generation. He described the use of the tax credit following the 2007 tornado that destroyed 95 percent of Greensburg. Mr. Estes explained the tax credit incentivized investors to spend taxable private investment dollars in Kansas. He provided examples of recent projects that generated a taxable investment of $2.29 million; the cogeneration tax credit was $229,062. The savings from these tax credits allows companies to reinvest in facilities, employee salaries, employee benefits, and other operational activities. If the credit is reinstated, the top 10 projects in the pipeline for 2013 would generate a private investment of $48.3 million with a credit of $4.83 million that could be reinvested.

State Trends in Renewable Energy Standards. Cindy Lash, Principal Analyst, Kansas Legislative Research Department, presented testimony concerning trends in Renewable Portfolio Standards (RPS). Ms. Lash explained that states continue to hone existing policies while enactment of new RPS policies is declining. Ms. Lash reviewed state-specific RPS developments and discussed legislation in 13 states that appeared to negatively impact a state's RPS. Matt Sterling, Assistant Revisor of Statutes, Office of the Revisor of Statutes, discussed the Renewable Energy Standards Act, including definitions, renewable portfolio requirements, cost recovery, annual reporting requirements, and other pertinent sections in the Act.

Cost of Renewable Energy Standards. Michael Head, Beacon Hill Institute, presented a study related to the 2009 legislation that defined a new RPS for Kansas, transforming a previously voluntary goal into a mandate. The RPS requires that electricity generation capacity equal to at least 10 percent of the peak load in Kansas will come from renewable sources between 2011 and 2015. Between 2016 and 2019, generation capacity equal to at least 15 percent of peak load will come from renewable sources and, from 2020 onward, generation capacity equal to no less than 20 percent of peak load must come from renewable sources. Mr. Head stated the Institute applied its State Tax Analysis Modeling Program (STAMP) to estimate the economic effects of the RPS. Mr. Head stated the result is an estimated increase in the cost of electricity by $644 million for consumers through 2020. According to Mr. Head, these increased energy prices would negatively impact the Kansas economy by lowering employment by an average of 12,110 jobs, reducing real disposable income by $1.5 billion, decreasing investments by $191 million, and

increasing the average household electricity bill by $660 per year. He stated that firms with high electricity usage will be incentivized to move their production and emissions out of Kansas to locations with lower electricity prices. In addition, Mr. Head stated the cost difference between wind-generated electricity and natural gas is likely to widen further due to the recent slump in natural gas prices.

Bob Glass, Chief of Economics, KCC, discussed the costs and effects to ratepayers of the Renewable Energy Standard (RES). Current regulations call for a calculation of the increase in retail utility rates caused by compliance with the Act's requirement for the year. Beginning March 1, 2013, the KCC will determine each year the annual statewide retail rate impact resulting from affected utilities meeting the renewable portfolio requirement. Mr. Glass indicated that, in Kansas, the best method for meeting an RPS or RES is with wind generation. He stated that two additional factors in evaluating Kansas wind generation should be considered: new wind generation compares favorably with new fossil fuel and nuclear generation, and existing coal generation is experiencing increasing cost pressures from environmental regulations. Mr. Glass stated that levelized cost of generation is the standard method for comparing costs for different types of generation. In general, the levelized costs of generation indicate the cost of wind is less than the cost of new coal generation, new natural gas generation, and new nuclear generation.

Dave Trabert, President, Kansas Policy Institute, provided testimony to the Committee, which stated the RES mandates the purchase of renewable energy which forces the consumption of a higher-priced product. In addition, he referenced the Beacon Hill Institute study, as presented by Mr. Head, and stated that Kansans will pay an average of 45 percent more for electricity by 2020 than would otherwise occur, as a result of the RES. Mr. Trabert encouraged the Committee to consider a repeal of the RES in the Kansas.

Alan Anderson, Vice-chair of the Polsinelli Shughart Energy Practice Group, Polsinelli Shughart PC, reported the findings of a study conducted jointly by his organization and the Kansas Energy Information Network titled "The Economic Benefits of Kansas Wind Energy." The study concluded new Kansas wind generation is cost-effective when compared to other sources of new intermittent or peaking electricity generation, wind generation provides a hedge against future cost volatility of fossil fuels, wind generation has created a substantial number of jobs for Kansans, and the Kansas RPS is an important economic development tool for attracting new businesses to the state.

Energy from Organic-Rich Waste. Bill Bider, Director of the Bureau of Waste Management, KDHE, discussed the concept of energy generation from organic waste. Organic-rich wastes may include mixed municipal solid waste, dairy and feedlot manure, waste tires, food waste, sawdust and wood scraps, agricultural crop residues, and other wastes. Mr. Bider discussed factors that affect project feasibility, and he provided an overview of the various technologies that generate energy from waste. Mr. Bider also stated that some landfills have produced large amounts of gas, which is marketed in California. He added that these types of gas-recovery systems may qualify for renewable energy incentives.

Kansas Department of Wildlife, Parks and Tourism Land Acquisition. Robin Jennison, Secretary, Kansas Department of Wildlife, Parks and Tourism, discussed the possibility of acquiring federal park land from the U.S. Army Corps of Engineers (USACE). In Kansas, nine federal reservoirs are governed under the Kansas City section of the USACE and eight federal reservoirs are governed by the Tulsa section of the USACE. The U.S. Bureau of Reclamation lakes are located primarily in the western half of the state. With regard to land acquisition, the State has begun discussions with the USACE to acquire park land at the reservoirs and lakes where both the state and the USACE have a presence. The State has no presence at Big Hill, Council Grove, Marion, or John Redmond reservoirs and lakes. The state parks are at a competitive disadvantage when both the state and USACE have a presence at a particular site, because the federal parks have no entrance fee. Discussions have begun with the Tulsa USACE, but no substantive discussions have occurred with the Kansas City USACE. Secretary Jennison discussed recent changes related to the potential development of lake resorts. He also suggested legislation could be introduced during the 2013 Session to construct parks at Marion,

Council Grove, or Big Hill, but that a clear plan for development must be created prior to bringing forward any proposed legislation.

Local Environmental Protection Program Update. Ms. Boudewyns provided background information on the Local Environmental Protection Program (LEPP), which was statutorily created in 1989. Ms. Boudewyns described the purpose of the program by stating it is particularly important to rural communities and contains core components relating to wastewater, solid waste management, hazardous waste management, non-point source pollution control, and public water supply protection. She added that KDHE administers the grants for the program and, during the 2012 Session, the Legislature added $750,000 for LEPP in FY 2012 and added $800,000 for the program for FY 2013. The Governor vetoed the FY 2013 appropriation. Ms. Boudewyns stated that according to *The FY 2012 Governor's Budget Report*, the LEPP originally was established to assist counties in environmental protection plan development; once those were adopted, the funding was to be discontinued. Ms. Boudewyns indicated that due diligence had been exercised to locate documentation of this statement and any additional information relating to legislative intent for the program funding, but no information was found. A Committee member provided additional background information, including a document from the 1989 report of the Kansas Water Authority, which indicated the intent was to establish environmental policy and decrease pollution particularly in rural counties. According to the Committee member, the State intended to fund the program and the LEPP was never intended to be a "study" program.

Aaron Dunkel, Deputy Secretary, KDHE, stated the first grants for the LEPP were awarded in 1990 and, through FY 2012, a total of $34 million in grant funds have been provided to 49 agencies representing 104 counties in the state. Mr. Dunkel stated a transition plan was drafted in 2012 in anticipation of the loss of the LEPP funding. The transition plan was mailed to county sanitarians, county LEPP grant signatories, county commissioners, and conservation districts. Mr. Dunkel stated KDHE would continue to provide technical assistance and resources as needed.

Mark Shriwise, Ford County Planning, Zoning, and Environmental Health, spoke about his county's LEPP activities and the increase of service fees to continue the program. He indicated various counties have merged into multi-county groups to better manage funding resources. In Ford County, oil and gas activity has significantly increased, leading to an increase in the number of inspections needed and an increase in environmental protection efforts. He stated the program is needed to protect the public and the state's water supply by monitoring septic systems and water wells and by remediating failing septic systems.

Todd Rogers, Johnson County Department of Health and Environment, discussed LEPP and its importance to Johnson County residents. He indicated the county has 10,000 septic systems, most of which are in 60 to 80 home subdivisions that were built between 1960 and 1980 on small acre lots. The Johnson County LEPP includes on-site inspection of septic systems for homes sold and purchased in the county, yearly commercial industrial site inspections, new construction complaint mitigation, and other vital programs to ensure public safety. Mr. Rogers stated the program has contributed to environmental health by providing the funding to assist counties in the enforcement and execution of their sanitary codes, and he urged the Committee to fund the LEPP.

Nathan Eberline, Kansas Association of Counties, provided information that members of the Association maintain that LEPP funding is an essential, efficient, and economically sound approach to ensure water safeguards are in place. Mr. Eberline urged restoration of the funding to the LEPP. Additional testimony in favor of restoring funding to the LEPP was provided by Shirley Weber, Northwest Local Environmental Protection Group.

Conclusions and Recommendations

The Committee makes the following conclusions and recommendations:

- After hearing extensive testimony on the value of the Local Environmental Protection Program (LEPP) to counties,

the Committee recommends the agriculture and natural resources standing committees in both the House and Senate evaluate the importance of the LEPP and make recommendations regarding the State's continued role in the program. Previously LEPP has been considered only in budget committees.

- High heat and drought in recent years, in combination with nutrient loading, have intensified algae blooms in Kansas waters. The Watershed Restoration and Protection Strategies Program (WRAPS) and similar programs are important parts of the response to algae problems and to addressing sedimentation.

- The Committee received information on numerous challenges related to water quality and quantity in Kansas, such as algae blooms, nutrient management, groundwater rights, sedimentation and its effect on water levels for power production and overall water supply, and the impact of the recent heat and drought. In recognizing the many water issues facing the state, and the importance of supporting programs such as WRAPS that can address those challenges, the Committee recommends the Legislature fully fund the $6.0 million statutory transfer from the State General Fund to the State Water Plan Fund each fiscal year.

- The Committee recommends a joint meeting be convened with members of the appropriate House and Senate committees dealing with the subject matter of agriculture, utilities, and natural resources, and including members from the Joint Committee on Energy and Environmental Policy. The purpose of the joint meeting would be to hear a presentation from the Kansas Water Office on the State Water Plan. The meeting should be scheduled within the first two weeks of the 2013 Legislative Session.

- The Committee reviewed the multi-year flex account program and legislation that was passed during the 2012 Session. The Committee believes it is a good program and provides a good option for water users in the state, although the program may need to be refined in the future with regard to its interaction with minimum desirable streamflow requirements (MDS).

- The Committee would appreciate updates during the 2013 Session and Interim Session regarding hydraulic fracturing, including recommendations currently under consideration by the Oil and Gas Advisory Committee and any rules and regulations adopted by the KCC.

- The Committee acknowledged hearing divergent views from two reports on the cost of wind-generated energy and Kansas' renewable energy standards. The Committee requested Legislative Research staff review the assumptions and sources used in each of the two reports, which may help inform the discussion of why the studies arrived at different conclusions. The results of that review, along with the information this Committee heard during the Interim, should be provided to House and Senate committees that consider the Kansas Renewable Energy Standards in the 2013 Session.

- The Committee acknowledged hearing testimony regarding the effect of the expiration of the New Renewable Electric Cogeneration Tax Credit (KSA 79-32,245 *et seq*.) in 2011. That testimony was very supportive of the credit, and the Committee understands that the tax conference committee report in 2011 recommended continuation of the credit. The Committee recommends the House and Senate Assessment and Tax committees review the now-expired tax credit and consider reinstatement and including broadening the renewable technologies eligible for the credit.

Proposed Legislation. The Committee recommends introduction of one bill that would do the following:

- Directs the Kansas Water Office, in conjunction with the Kansas Water Authority, to create a plan to address the following water issues:
    - Dredging;
    - Streambank stabilization, including upstream efforts that could lessen the future need for dredging;
    - Sedimentation;
    - Identification of a funding source, including possible funding from the Expanded Lottery Act Revenue Fund; and
    - Future water storage assurances.

Pursuant to the legislation, the plan would be presented in the beginning weeks of the 2014 Session.

Report of the Joint Committee on Health Policy Oversight to the 2013 Kansas Legislature

CHAIRPERSON: Representative Brenda Landwehr

VICE-CHAIRPERSON: Senator Vicki Schmidt

OTHER MEMBERS: Senators Pete Brungardt, David Haley, Laura Kelly, Roger Reitz, and Ruth Teichman; and Representatives Don Hill, Peggy Mast, Kelly Meigs, Louis Ruiz, and Jim Ward

STUDY TOPIC

The Committee has the exclusive responsibility to monitor and study the operations and decisions of the Division of Health Care Finance of the Department of Health and Environment. In addition, the Committee is responsible for overseeing the implementation and operation of the children's health insurance plans, including the assessment of performance-based measurable outcomes as set out in statute.

Joint Committee on Health Policy Oversight

REPORT

Conclusions and Recommendations

Based on the testimony heard and the Committee deliberations, the Committee reached the following conclusions and recommendations:

- The Committee recommends legislation be presented during the 2013 Legislative Session providing for legislative oversight of KanCare;

- The Committee commends the work of the Kansas Department of Health and Environment (KDHE) staff, under the direction of Rachel Berroth (Director for the Bureau of Family Health), for the smooth, seamless, and successful implementation of Lexie's Law;

- The Committee recommends the Committee report highlight the *2012 NACCRRA (National Association of Child Care Resource and Referral Agencies) Report of State Standards and Oversight of Small Family Child Care Centers,* which cites an improvement in the State's ranking from 41st in the nation in 2010 to 3rd in 2012, and recognize the support provided by Child Care Aware to providers;

- The Committee recognizes the importance of the enactment of 2012 HB 2660 to address concerns encountered by KDHE in implementing the requirement in Lexie's Law that each applicant for licensure as a day care provider be a high school graduate, by authorizing the Secretary of Health and Environment to grant an exception to the high school diploma requirement when an applicant for a day care facility is otherwise qualified and the exception is in the best interests of all children in the applicant's care. The Committee also noted KDHE expressed no concern with the current law;

- The Committee commends Kansas Child Care Training Opportunities (KCCTO), which has provided timely online training in response to Lexie's Law to more than 1,800 child care providers in 90 counties. The Committee requests the Committee report highlight the enthusiasm of KCCTO in providing training for child care professionals;

- The Committee recognizes KDHE staff for their timely work on new and amended regulations for day care homes, group day care homes, child care centers, and preschools, which became effective February 3, 2012; and

- The Committee requests consideration that, although the KDHE budget cuts have not affected the Child Care Licensing Program, other cuts have been made to entities providing training to child care providers and child care resources and referral services for families (such as a more than 60 percent budget cut to Child Care Aware of Kansas). The Committee also recognizes Lexie's Law was deemed by the Legislature to be worthy of the time and effort it took to enact the law, and that sufficient funding is needed to support the law adequately.

Proposed Legislation: One bill to provide for legislative oversight of KanCare was proposed.

Background

The Joint Committee on Health Policy Oversight operates pursuant to KSA 46-3501. The 2005 legislation that created the Oversight Committee also established the Kansas Health Policy Authority (KHPA) and transferred certain health-related functions to the new agency. The Committee is composed of 12 members: 6 from the Senate and 6 from the House of Representatives. Each member serves a two-year term ending on the first day of the regular Legislative Session commencing in odd-numbered years. The Oversight Committee is authorized to introduce legislation.

The Oversight Committee is charged with monitoring and studying the operations and decisions of the KHPA. The KHPA was charged by law with improving the health of the people of Kansas by increasing the quality, efficiency, and effectiveness of health services and public health programs. In addition, as part of 2008 House Sub. for SB 81, the Oversight Committee is charged with the responsibility to oversee the implementation and operation of the state's children's health insurance plans, including the assessment of the performance-based measurable outcomes as set out in subsection (b)(4) of KSA 38-2001. The legislation creating the Oversight Committee expires July 1, 2013.

The KHPA was abolished effective July 1, 2011, pursuant to Executive Reorganization Order No. 38 (ERO No. 38), transmitted to the Legislature during the 2011 Legislative Session. The Executive Order transferred all powers, duties, and functions of the KHPA to the Division of Health Care Finance within the Kansas Department of Health and Environment (KDHE).

Committee Activities

The Oversight Committee held three days of meetings during the 2012 Interim: December 6, 19, and 20. The Committee considered the following topics: overview and update on KanCare (the Kansas Medicaid Managed Care Reform Plan) including Aging and Disability Resource Centers (ADRCs), Home and Community Based Services (HCBS) Pilot Project; plans for KanCare implementation on January 1, 2013; the readiness of the KanCare managed care organizations; the Center for Medicare and Medicaid Services (CMS) approval of KanCare plan implementation; and a review of day care laws, including the impact of Lexie's Law, day care provider responses to changes in the law, and liability insurance for day care providers. The Committee made recommendations on specific topics, as described in the following sections.

KanCare Overview and Update. The Committee received testimony from Mark Dugan, Chief of Staff, Office of the Lieutenant Governor, at its December 6 and 20 meetings, who provided an overview of KanCare. Mr. Dugan began the December 6 meeting by reviewing the 2012 legislative outcomes. These included the Medicaid Management Information System (MMIS), on which he provided an update; Disability Employment from 2012 HB 2453 (a program described as providing an "off-ramp" for Kansans who want to move from a life of state dependency to a life of independence), which he said is proceeding well; and funding for the waiting list for home and community based services.

Mr. Dugan stated, to better coordinate services, the following state health and human services agencies have been realigned: the Kansas Department on Aging (KDOA) is now the Kansas Department for Aging and Disability Services (KDADS); the Department of Social and Rehabilitation Services (SRS) became the Department for Children and Families (DCF); and KDHE will be responsible for financial management and contract oversight of KanCare.

Information was provided by Mr. Dugan on the engagement of stakeholders in developing KanCare. He gave the dates of the statewide educational tours and said a teleconference option was made available for those unable to attend in person. He indicated the KDADS Informational Tour was August 23-31. He also mentioned the Governor's KanCare Advisory Council, public listening sessions, weekly stakeholder status calls, and monthly work group sessions. The monthly work group sessions involved providers and managed care organizations (MCOs) in discussions regarding member involvement and protections, as well as specialized healthcare and network issues.

Mr. Dugan urged legislators to contact the Lieutenant Governor's Office with any constituent questions or concerns about KanCare and stated continued collaboration is a requisite for the reform's success. In maintaining the spirit of a Medicaid system accountable to the people, the Office is interested in legislative KanCare oversight. Mr. Dugan encouraged continued legislative involvement, which he said has helped improve the system.

A Committee member inquired about a single point of entry for legislators with constituent questions and concerns regarding KanCare. Mr. Dugan indicated he or Ren Mullinix are the contact persons in the Lieutenant Governor's Office. Questions then would be forwarded to the appropriate agencies, as indicated by the nature of the request. Mr. Dugan indicated Ren Mullinix would be the primary contact person for constituent issues regarding KanCare.

KanCare readiness reviews. Kari Bruffett, Director, Division of Health Care Finance, KDHE, continued the KanCare overview. She reported the Administration announced on October 19 it was moving forward with activities to ensure readiness for a January 1 start date. As of the December 6 meeting, all the provider manuals were completed and approved, with the State reserving the right to require any changes as needs are determined. The initial assignment mailings were completed November 30. Contributing to that decision were a positive and productive meeting with CMS officials in Baltimore on October 18, completion of two rounds of readiness reviews, and ongoing monitoring of network development.

Provider network access. Concerning readiness reviews, Mercer Government Human Services Consulting worked with the State on the tool to assess MCO readiness. Reviews consisted of a desk audit followed by on-site visits in September for the three MCOs: United Healthcare Community Plan (UHC), Amerigroup, and Sunflower State Health Plan (Sunflower). Follow-up on-site visits were held in October for each of the MCOs. The second set of on-site visits included representatives from the Regional Office of CMS. Ms. Bruffett noted the reviews established the MCOs should be ready to begin enrolling members and providers and delivering Medicaid services upon federal approval of the State's KanCare demonstration application.

Concerning Provider Networks, Ms. Bruffett said the State received a new set of Geo Access Network reports from each MCO on November 16. Summaries and detailed information are available on the KanCare website (www.kancare.ks.gov.) The next set of reports was due December 17.

Shawn Sullivan, Secretary for Aging and Disability Services, was asked by a Committee member whether providers were accepting the KanCare system or, conversely, whether he foresaw issues with some of the providers dropping out of the system and not providing services. The Secretary indicated KDADS would be monitoring the providers closely to identify any problem areas. He also stated there were network adequacy requirements in the MCO contracts.

A Committee member asked about the number of dentists enrolled in KanCare. Members were referred to the Network Geo Access Report as of November 16, 2012, which will be updated again on December 17, 2012. Discussion clarified the numbers of specialty and sub-specialty providers can be duplicative between the three MCOs. Ms. Bruffett agreed to provide information on the unique number of dentists and where they are located.

With regard to questions about a specific number of providers who, if lost, could indicate KanCare was not working, Secretary Sullivan noted provider access is important and will be monitored.

During follow-up testimony at the December 20 meeting, Ms. Bruffett provided a copy of the KanCare Managed Care Organization Network Access report, as of December 10, 2012. She indicated KanCare participation by 100 percent of the current Medicaid providers had not been reached, but the expectation is MCOs will continue efforts to expand the network.

Ms. Bruffett stated she would provide the latest HCBS network access report, which is formatted to show information by county. The report was not provided to the Committee at the

meeting because the update was received the night before. A change from the report previously provided to the Committee resulted from conversations with CMS clarifying a requirement that two providers must be available in each county, but that could include two individuals working for one agency. As such, the earlier report provided to the Committee was under-counted, as it counted by agency instead of by provider. Ms. Bruffett noted the Geo Access report is available on the KanCare website on the "readiness activity page" under "network."

Stakeholder involvement. Ms. Bruffett provided information at the December 6 meeting regarding KanCare enrollment tours held across Kansas during the last week of November. The State continued to meet with consumers and other stakeholder groups as needed. In addition, four webinars were held for stakeholders and advocates to learn how to assist consumers. The State also held a consumer educational webinar in December for any consumers unable to attend the educational tour.

At the December 20 meeting, Ms. Bruffett mentioned the weekly stakeholder calls. She stated the agencies would provide daily calls with providers from December 26 through the first month of implementation, and then weekly calls through the first 180 days of implementation, to reduce problems during the transition.

Fee-for-service. At the December 6 meeting, Ms. Bruffett noted the MCOs must maintain the current fee for service (FFS). She also stated, concurrent with KanCare implementation, the primary care Medicaid reimbursement rate will be raised to the Medicare level and should assist providers in the transition. When asked what funded the primary care rate bump, Ms. Bruffett said Title XIX was federally funded, but Title XXI was not.

A Committee member asked what would happen if the federal "fiscal cliff" was not averted and the Medicare rates were reduced at the first of the year. Ms. Bruffett stated the fiscal cliff has other impacts, as well, and she would need to investigate this question further.

At the December 20 meeting, the issue again was raised regarding what would happen if Medicare rates were reduced after January 1, 2013, without some action from Congress. Ms. Bruffett indicated the rates were based on current Medicare rates, and there were no plans to change; however, adjustments may need to be made if the rates were reduced. She also mentioned the primary care physician rate bump the State already had submitted to CMS, which would raise the rate paid to primary care physicians providing Medicaid services to 100 percent of the Medicare rate.

KanCare discussions with CMS. Ms. Bruffett provided information regarding the Medicaid waiver application for KanCare (specifically, the Section 1115 Waiver Application). She said the State met regularly and intensively with CMS to discuss and resolve issues as they arose.

Among the issues discussed with CMS was the length of the "choice period" in the first year of KanCare implementation. Originally, consumers were allowed 45 days from January 1 to choose their MCO providers; the time frame was expanded to 90 days. In addition, any individual with a current plan of care not reevaluated within the first 90 days would have an opportunity to choose "for cause" for up to 180 days from January 1, 2013.

Another issue addressed was the formatting of safety net hospital pools. The State acceded to CMS's request for one single pool with three subparts, instead of the State's proposed three pools.

Ms. Bruffett also discussed the timing of the four pilots, two of which are disability employment pilots. One of those is for people not yet deemed Medicaid eligible. CMS requested a delay in implementation of the pilots because of their complexity; the State did not plan to implement them until March 1, 2013. The State would look to amend the waiver after January 1, 2013, for those pilots. Ms. Bruffett stated one set of waivers (HCBS 1915(c) waivers) was incorporated into the 1115 Waiver Application by reference. As the 1915(c) waivers expire, the 1115 waiver would be amended to include the necessary changes.

To supplement the information provided by Mr. Dugan, Ms. Bruffett and Secretary Sullivan,

the following KanCare Implementation Activity reports were provided to the Committee members at the December 6 meeting: Outreach and Communications, Returned Mail Tracking, Enrollment Verification, Call Center Coordination, Front End Billing Solution, KanCare Consumer Ombudsman, Report on KanCare Managed Care Organization Network Access as of November 16, 2012, and Report on KanCare Managed Care Organization Network Status by Waiver Service as of November 16, 2012.

HCBS consumer protections. At the December 6 meeting, Ms. Bruffett outlined the protections in place as HCBS programs are transitioned into KanCare. Some of these are included below. Education opportunities for beneficiaries and providers are being offered; also, MCOs are being held accountable. She stated functional assessments continued to be completed. Existing plans of care (POCs) would be extended up to 180 days if the new POCs had not been implemented within the first 90 days from January 1, 2013. Reductions in POCs must be reviewed by the State, so the plan would not result in savings due to cutting care.

Consumers would continue to have access to the State fair hearing process. They do not have to exhaust the MCO appeal process to begin the State fair hearing process.

Another protection discussed was the creation of a KanCare ombudsman. Ms. Bruffett also discussed the creation of an inter-agency monitoring group, allowing KDHE and KDADS to work together for quality assessment and performance improvement. The Intellectual and Developmental Disability (I/DD) waiver was included in KanCare, but only as to physical and behavioral health services.

Ms. Bruffett then discussed the next steps. The next round of network adequacy updates from MCOs was scheduled for December 17. MCO provider training was under way. Consumers would receive their final enrollment letter and a welcome packet from their MCO in late December. Finally, a Readiness Activities page was added to the KanCare website at: http://www.kancare.ks.gov/readiness_activities.htm

Continuity of Care Under KanCare. At the December 20 meeting, Ms. Bruffett discussed continuity of care in KanCare, which included the safeguards for consumers. The State wants to preserve continuity of care for members who have appointments and established relationships with providers prior to January 1, 2013. For all KanCare members, the three MCOs must honor all plans of care, prior authorizations, and established provider-member relationships during the transition to KanCare. Even if an established provider was not in an MCO's network, the provider still would be paid at 100 percent of the Medicaid FFS rate through the first 90 days.

Ms. Bruffett explained services provided to KanCare members currently living in Medicaid-reimbursed residential settings, such as a nursing facility, would be paid by the MCOs to the facilities at the Medicaid FFS rate for one year, even if the provider was not in the MCO's network.

Further, Ms. Bruffett noted individuals receiving HCBS through one of the HCBS waivers will be provided services up to an additional 90 days under existing plans of care and current providers if a new plan of care is not in place within 90 days of January 1, 2013. This would give HCBS members up to 180 days from KanCare implementation to continue with their existing services and providers, regardless of whether the providers are in an MCO's network.

KanCare members were pre-assigned to one of the three MCOs in November 2012. However, Ms. Bruffett explained, the members would have the rest of 2012 and 90 days after January 1, 2013 (until April 4, 2013) to choose the plan they prefer.

Ms. Bruffett stated the three KanCare MCOs must ensure specialty care is available to all members. The MCOs are required to meet federal and state distance or travel time standards. Members must be allowed to see out-of-network providers if an MCO does not have a specialist available to members within those standards. Ms. Bruffett explained, if a KanCare MCO is unable to provide medically necessary services in its network, it must cover those services out of network. Further, MCOs must have single-case arrangements or agreements with non-network

providers to ensure members have access to covered services. She also noted the payment rate would be negotiated between the plan and the non-network provider, and these providers cannot bill members for any difference.

According to Ms. Bruffett, emergency services under KanCare are not limited to in-network hospitals. As required by federal law, the State's KanCare contract requires each MCO to cover and pay for emergency services, including services needed to evaluate or stabilize an emergency medical condition, regardless of whether the provider who furnishes the service has a contract with the MCO.

For other out-of-network services after the transition, Ms. Bruffett noted the State KanCare contract allows MCOs to pay out-of-network providers who choose to provide services to Medicaid members 90 percent of the Medicaid rate. Under federal law, the Medicaid member cannot be made to pay the balance between the standard rates and those paid by the MCO.

Aging and Disability Resource Centers (ADRCs). Secretary Sullivan provided information on the status of ADRCs. Historically, Kansas has been slow to implement the ADRC concept, but the State has moved quickly over the past year and a half. Initially, two ADRC pilots were started, with one in Hays and one in Wichita. ADRCs opened statewide on November 1, 2012. Beginning January 1, 2013, ADRC activities would expand to include conducting functional level of care assessments for Medicaid waivers for physical disability, frail elderly, and traumatic brain injury. The ADRC website is www.ksadrc.org.

Secretary Sullivan provided a description of the statewide ADRC concept. The ADRC will be available to individuals of all ages, disabilities, and income levels (not only KanCare consumers), and will serve as a resource for both individuals eligible for publicly funded services and supports and individuals with private resources. Its focus is to serve as a primary entry to services, a one-stop shop approach to accessing home and community-based long-term care services and institutional care. The ADRC will ensure all individuals have access to information, assistance, referral, assessment, options, and counseling services. The ADRC also will assist individuals in making their KanCare or Program for All-Inclusive Care for the Elderly (PACE) selections.

Through a Request for Proposal process, a contract was established for a statewide ADRC with the Southwest Kansas Area Agency on Aging. This contractor will provide a statewide comprehensive call and walk-in center capable of making "warm" transfers (transfers directly to a person and not to a voicemail) to local ADRC sites, as well as to other agencies. The contractor subcontracted with other Area Agencies on Aging to provide services at the local level. Each ADRC site will have designated options counselors on staff. Multiple staff at each ADRC site will screen customers for the need for Options Counseling. KDADS will provide standardized training to staff at the ADRCs. This standardized training will include information about the ADRC project; Options Counseling; the Kansas ADRC website and Online Resource Manual; intake and referral procedures; KanCare; working with various disabilities, including traumatic brain injury; and the reporting, tracking, and evaluation processes. State staff will provide support and technical assistance to options counselors through regular conference calls and site visits.

Secretary Sullivan provided a timeline of important ADRC events. This included a January 1, 2013, requirement for ADRCs to begin conducting functional assessments for the Frail Elderly, Traumatic Brain Injury and Physical Disability HCBS Waivers.

HCBS Pilot Project. Secretary Sullivan described the HCBS I/DD Pilot Project, and clarified that individuals with I/DD still would be included in KanCare for medical health care starting January 1, 2013. I/DD waiver services would be included on January 1, 2014. The pilot would be effective from March 2013 through December 2013, and participation would be voluntary. He stated the initial start date was delayed from the original date of January 1, 2013, to ensure the roll-out was not only efficient, but effective. The pilot would seek to build coordination between Community Developmental Disability Organizations (CDDOs), MCOs, and the State in how I/DD waiver services would be delivered under KanCare, effective January 2014.

Written testimony provided by Secretary Sullivan included information about the primary goals of the pilot. He stated a 13-member I/DD pilot advisory committee was created and began meeting in July 2012. Secretary Sullivan reiterated the decision was made to delay the pilot beyond the originally planned date of January 1, 2013. The Secretary mentioned the agency was in the process of fleshing out additional options under the I/DD Pilot, which include employment and behavioral supports.

A Committee member asked about the success rate of getting providers to participate in the I/DD Pilot since the project is voluntary. Secretary Sullivan said a handful of providers had indicated a willingness to participate, while others preferred to wait and let the problems be resolved first.

KanCare Ombudsman. Committee members posed several questions focused on the KanCare Ombudsman position. Secretary Sullivan is responsible for hiring the Ombudsman, who would be located in and receive administrative and legal support from the Office of the Secretary in KDADS. He indicated this position was placed in KDADS because the agency would have other resources available, would have more information about KanCare and, if needed, would have staff available to help answer calls to the Ombudsman. The Secretary stated there were no plans to ask for appropriations for additional KDADS support staff.

Secretary Sullivan noted plans are for only one KanCare ombudsman position because there are a number of methods to address grievances in addition to the ombudsman position. KDADS does not anticipate many grievances being made to the ombudsman; instead, the position would be more informational and educational at the onset. However, the timeliness and quality of services provided by the Ombudsman would be monitored closely to ensure consumer needs were being met.

Secretary Sullivan was asked about the Long Term Care (LTC) Ombudsman in nursing facilities, which is a different ombudsman position. He stated there is one main LTC Ombudsman, who will continue to serve the nursing facility population, and seven to nine staff who assist. The role of the Ombudsman in a nursing facility is to serve as a liaison among the nursing facility staff, KDADS, a resident's family, and the resident.

The Committee requested the time frame to resolve issues that come to the agency or KanCare Ombudsman. Secretary Sullivan agreed to provide this information. He indicated the LTC Ombudsman is a stand-alone office in the Department of Administration, but the KanCare Ombudsman will be located in KDADS. A Committee member expressed concern that a conflict of interest could arise between the two agencies and the Ombudsmen. Secretary Sullivan indicated the LTC Ombudsman would have very little involvement with KanCare and, instead, is required by the nursing facility section of the Older Americans Act. He further stated, not knowing the volume of calls that could be received by the KanCare Ombudsman, having the position located within KDADS would allow for access to quality management and support staff. A Committee member noted the agencies might have to deal with a conflict, as some non-elderly individuals end up in nursing homes.

At the December 20 meeting, Secretary Sullivan introduced the new KanCare Ombudsman, James Bart, who was hired December 12, 2012. He explained the Ombudsman will help KanCare consumers to:

- Resolve service-related problems;
- Understand and resolve billing issues and notices of non-coverage; and
- Learn and navigate the grievance and appeal process.

The KanCare Ombudsman also will serve as a point of contact and resource for legislative and other inquiries into the provision of LTC Services and Supports (LTCSS). Additional responsibilities include advocating for the rights and proper treatment of KanCare consumers. Secretary Sullivan noted the Ombudsman will represent KDADS on consumer councils, focus groups, mediation with consumers, State policy divisions, and KanCare plans. The position will provide counsel to the Secretary and report to the Legislature on an annual basis.

At the December 20 meeting, Secretary Sullivan reiterated the KanCare Ombudsman position was placed under KDADS because of the administrative and legal support that would be available to the position from existing staff. The KDADS Office of the Secretary has nine legal staff who can provide legal research and information. Secretary Sullivan reported a commitment to a response to hotline calls within 48 hours. The call volumes and types of calls received will be monitored to determine whether one KanCare Ombudsman will be sufficient to handle the required duties.

There were several questions at the December 20 Committee meeting concerning the appropriateness of the KanCare Ombudsman position being located under KDADS, and how the Ombudsman would be able to maintain autonomy. Secretary Sullivan stated he would like to monitor the situation for a couple of months and then evaluate whether a change should be made. He stated he believed the level of support staff available to the Ombudsman from the KDADS staff would be very beneficial at this point in the process. The new Ombudsman relayed the convenience of having the KDADS staff readily available. Mr. Bart also shared his personal and work background, including both a business and a law degree and his advocacy for a son with autism.

Another question arose as to whether additional administrative staff, who might need to be added depending on the volume of calls to the KanCare Ombudsman, would respond to Mr. Bart or to Secretary Sullivan. Secretary Sullivan indicated he saw the current administrative support personnel as intake specialists who would not be used for the purpose of addressing problem solving and grievance procedures. If the calls required an advocacy or mediation role, additional resources would need to be brought in to assist. He noted the support staff assisting with answering telephone calls are in the Office of the Secretary and would not answer to Mr. Bart.

KanCare Front-end Billing. Secretary Robert Moser, M.D., KDHE, provided information at the December 20 meeting concerning front-end billing. He began by expressing his gratitude for the funding provided to start the KanCare Front-End Billing (FEB) solution and to the stakeholders who have been involved in the process. Secretary Moser stated there was concern about billing for services, and a request was made to the Legislature to continue providing FEB. He noted, as a result of legislative and stakeholder input earlier in 2012, $1 million was appropriated during the 2012 Legislative Session to implement a KanCare FEB solution. The funds were restricted pending release by the State Finance Council after the approval of the 1115 Demonstration Waiver by CMS. The State Finance Council approved the release of the funding December 12, 2012.

Secretary Moser stated the FEB solution was developed to aid providers, billing agents, and clearinghouses participating in KanCare. FEB would allow entities to continue submitting UB-304, CMS-1500, and dental KanCare claims directly to the State's fiscal agent, or to submit claims electronically to each MCO. Pharmacy point-of-service claims are excluded from FEB. He reported the FEB service would forward claims the same day to the beneficiary's KanCare MCO.

KanCare Performance and Accountability Enhancements. Ms. Bruffett shared information at the December 20 meeting concerning KanCare performance and accountability enhancements. She explained, under Pay for Performance (P4P), three percent to five percent of total payments to the MCOs would be withheld until certain quality thresholds were met. During the first year, three percent would be withheld. The thresholds would increase yearly to promote continued quality improvement. Ms. Bruffett stated there would be 6 operational outcomes measures in the first year and 15 quality of care measures in the second and third years. She indicated the P4P program would place new emphasis on employment rates for people with disabilities, person-centered care in nursing facilities, and resources to community-based care and services.

Ms. Bruffett further explained the issues addressed by first-year operational outcome measures would include timely claims processing (the KanCare contract requires payment within 30 days), encounter data submission, credentialing process in a timely manner using a standardized form, grievances, appeals, and customer service. There would be firm protections with a strong emphasis on data, outcomes, and performance benchmarks. She noted each contractor would be required to:

- Maintain a Health Information System;
- Report data to the State and CMS;
- Submit to an External Quality Review; and
- Write, and submit for approval, a Quality Assessment and Performance Improvement program.

According to Ms. Bruffett, the goal is to have more transparent and readily available data. The first quarterly report to CMS would be for the first calendar quarter of 2013. The quarterly reports would include:

- Enrollment information, by eligibility group;
- Outreach and innovative activities;
- Operational development and issues;
- Financial, budget neutrality development (the federal government caps KanCare expenditure to an amount equal to or less than the amount the State would have spent on Medicaid without KanCare), and related issues;
- Member month reporting, by eligibility group;
- Consumer issues;
- Quality assurance and monitoring activity;
- Managed care reporting requirements (network adequacy, customer service, appeals process, grievances, and Ombudsman activities);
- Safety net care pool; and
- Demonstration evaluation (design and planning) by an independent third party.

Ms. Bruffett provided a comparison of the performance measurements for the existing Medicaid program and the new KanCare program. She stated both programs included the following measures: Healthcare Effectiveness Data and Information Set (HEDIS), Consumer Assessment of Healthcare Providers and Systems (CAHPS), Performance Improvement Projects (PIP), and HCBS Waiver performance measures. However, KanCare includes six additional items in its year 1 P4P Initiative and an additional 15 items in years 2 and 3. She noted the frequency of measurements had been heightened to quarterly and monthly where applicable.

KanCare Oversight Committee. At the December 20 meeting, a Committee member asked about current plans for a KanCare oversight committee and whether the legislation to be considered mimicked the bill previously considered during the 2012 Legislative Session. Mr. Dugan indicated he believed the bill reviewed by the Joint Committee on Home and Community Based Services Oversight during the 2012 Interim was very similar to the bill passed out of the Senate during the 2012 Legislative Session.

Medicaid Expansion. A Committee member inquired as to the Governor's plan for expansion of Medicaid. Mr. Dugan stated the Governor would continue to study this issue and had not made a decision but, regardless of the decision, KanCare reforms would have a positive benefit. Mr. Dugan stated the Governor had no timeline to review the expansion.

There also were some questions and comments concerning the expansion of Medicaid and how the State might address the issue of uninsured persons. Mr. Dugan commented the Administration was continuing to study the issue and examine the latest federal administration requirements concerning 100 percent reimbursement based on certain poverty levels. He indicated, since the December 6 Committee meeting, the federal government had declared states would be eligible for 100 percent Medicaid reimbursement only if the State expanded Medicaid to 133 percent of the federal poverty level and not for Medicaid expansion to a lower federal poverty level. He also noted, regardless of Medicaid expansion, the need to address the issues of the uninsured and underinsured continues. Mr. Dugan expressed an interest in working closely with the Legislature to examine suggestions for solutions to these issues. He noted the State did not cut Medicaid by ten percent and instead took a long-term approach. He stated any changes must be examined for their long-term ramifications on the total budget of the State. Mr. Dugan also stated

the Administration was looking at Medicaid expansion cost studies completed by several entities and was preparing its own cost analysis.

Implementation of a Health Insurance Exchange. There was some discussion about the Administration's position on the implementation of a health insurance exchange in the State. There also was a question concerning whether the State would look at a health insurance exchange model similar to the one Utah was considering. Mr. Dugan indicated Utah was considering a very different model, more of an open marketplace, but the Administration would monitor what occurred with Utah and other states.

Committee Questions on KanCare. Following the conclusion of presentations at the December 6 and December 20 meetings, time was allotted to answer Committee questions. Several Committee members expressed their appreciation for the amount of work accomplished by the State agencies to plan and prepare for the implementation of KanCare.

When asked if payments for Disproportionate Share Hospital (DSH—a federal matching fund program for hospitals that treat a disproportionate share of the State's indigent population) would disappear in 2019, Ms. Bruffett indicated DSH payments would begin to decline slowly in 2019, unless Congress intervenes. She added DSH is not part of KanCare.

A Committee member asked whether the federal government required the State Children's Health Insurance Plan (CHIP) to be in managed care. Ms. Bruffett responded this was a State requirement and not a federal requirement, so CHIP could be in managed care without the 1115 waiver approval.

When asked if the only definition of success for KanCare was to cut the budget, Secretary Sullivan responded the budget would not be cut; rather, there would be a reduction in the growth of expenditures. Furthermore, if this were the only goal, there would be no way KanCare would be successful. He stated success consists of better outcomes through better coordination, better health care, fewer hospital emergency room visits, and decreased reliance on nursing facilities. The focus would be on better outcomes to achieve savings.

Upon being asked about the relationship between the MCOs and the Community Mental Health Centers (CMHCs), Secretary Sullivan stated the CMHCs would continue to serve as front-end gatekeepers, and MCOs would not be the gatekeepers for eligibility. There would be a partnership between the three MCOs and the CMHCs and frequent meetings would take place between these MCOs and the behavioral health staff. A Committee member noted there had not been much discussion on the mental health side of KanCare. It was indicated there would be a partnership between the MCOs and the mental health providers, and there would need to be a focused team effort to provide the services required.

When asked what the State would be authorized to do if KanCare was not approved, Ms. Bruffett indicated the State would do as much as it could in a capitated model, but the State was ready for KanCare. She responded the three MCOs still would be used.

A Committee member expressed concern there were no providers or advocates, no one on the "receiving end," on the December 6 agenda. The Chairperson stated the focus was to receive details from the Administration at this meeting, and there would be two more meeting days to hear from those individuals. The Chairperson indicated the hope was the State would have heard from CMS, and the plan would be to add providers on the agenda at the next Committee meeting.

A Committee member inquired as to whether Kansas Neurological Institute (KNI) would remain open, and Secretary Sullivan indicated there were no plans to close KNI.

At the December 20 meeting, one Committee member asked if there were any outstanding issues with the providers concerning the status of their contracts. Ms. Bruffett said there were still ongoing negotiations between the MCOs and various providers, but significant progress had been made. She noted this was one reason for the 90-day transition period. Ms. Bruffett stated there was no guarantee all MCOs would be able to

contract with all existing Medicaid providers, because providers could not be forced to participate. However, she indicated providers were entering KanCare in good faith.

Another Committee member asked for assistance in understanding the algorithm for the auto-assign process and how that process had evolved. Ms. Bruffett spoke in general terms and said the goal was to match an individual with an MCO that had the individual's main provider in the network. For a majority of individuals, the algorithm first looked for the network in which the individual's primary physician was located. The next goal was to keep all members of the same household in the same plan. Next, risk and morbidity factors also were taken into consideration when making provider assignments. For individuals in nursing facilities, she indicated the first consideration was whether the facility was in the network; then consideration was given to continuity of care. According to Ms. Bruffett, assignments differed by HCBS waiver, and program managers closely assisted in evaluating which providers would best meet the needs of the individual. For HCBS waiver services, the algorithm first looked at the residential provider, then continuity of care, and finally risk distribution. Risk was assessed using the Johns Hopkins tool. Those applying for Medicaid would have an opportunity to choose a plan at the time of application. If a plan was not selected, then the individual would be assigned using this process.

As a follow-up question, a Committee member asked whether the MCOs were guaranteed a minimum level of enrollees, and Ms. Bruffett indicated such was not the case.

A Committee member inquired whether all of the physicians who work for a hospital that has contracted with an MCO also would be included in the contract. Ms. Bruffett responded that would depend on how the hospital contracts with its physicians.

A Committee question arose as to the progress of the Kansas Eligibility and Enforcement System (KEES) project and the savings projections. In addition, a request was made concerning a report on the scope of the project, its accomplishments, and the milestones the project hoped to attain. Dr. Moser indicated he would provide the information to the Committee. There also was an inquiry as to the use of the KEES online system instead of paper applications for KanCare. Dr. Moser expressed his preference for use of the online system and noted a number of locations are available for those individuals without computer resources to input their information.

The importance of providing education concerning KanCare to the entire legislative body, particularly considering the number of new members in 2013, was noted by a Committee member. Secretary Sullivan reported a letter with summary information concerning KanCare would be distributed to the legislative members, and an educational summit for legislators would be held on January 16 at Memorial Hall.

Vice-chairperson Schmidt recognized Dr. Kelley Melton, Pharmacist, for her work in helping the pharmacy community navigate KanCare through the decisions that have needed to be made and with keeping pharmacists up to date on the program.

MCO Presentations. Presentations by representatives of the three MCOs were made at the December 6 Committee meeting. Each MCO representative provided a highlight of her company's program.

United Healthcare Community Plan presentation. Nan Thayer Kartsonis, Plan President, United Healthcare Community Plan (UHC), commended the State for having a well-thought-out plan and for being a dedicated partner by providing the support needed to achieve mutual goals. In addition to the new partnership with Kansas, UHC partners with 24 states and Washington, D.C., to provide Medicaid services to over three million Americans, two million of whom are children. She provided an update on the implementation plan, including providing a perspective on efforts to ensure UHC's readiness to serve the population.

Ms. Thayer Kartsonis stated UHC was working in conjunction with the State to ensure all relevant program aspects were on track and fully tested. UHC received its initial enrollment file, as well as all other necessary data and files, from the

State in order to test all its systems successfully, end to end. Daily education forums for both members and providers were held to ensure a smooth and successful transition for all stakeholders, members, members' families, and caregivers.

As reported by Ms. Thayer Kartsonis, as of the December 6 meeting, UHC had over 246,000 members in the State of Kansas in its Medicare and employer-sponsored health plans. Consequently, UHC had an existing network of providers in the State and was in the process of finalizing these contracts to include KanCare-related services. UHC also contracted with additional provider groups to serve the specific needs of the KanCare population, such as nursing facilities and HCBS providers. At the time of the meeting, providers were being added daily to UHC's network and the State recently had published the results of the three MCOs' network submission.

Beginning January 1, 2013, all current services and care plans would remain in place and all current providers would be automatically approved to continue providing services for the first 90 days, whether they had completed the contracting process or not.

At the time of the MCO presentation, UHC employed more than 2,000 staff in Kansas and intended to add 300 additional employees dedicated to KanCare consumers. Ms. Thayer Kartsonis provided position titles for key personnel already hired and located in Kansas. She stated the member call center was fully staffed and answering calls at the Lenexa, Kansas, location.

Sunflower State Health Plan presentation. Jean Rumbaugh, Chief Executive Officer, Sunflower State Health Plan (Sunflower), provided an update on the implementation progress with KanCare. Sunflower is part of Centene Corporation, which at the time serviced Medicaid beneficiaries in 18 states. Ms. Rumbaugh also shared Sunflower's key beliefs for building the organization.

With regard to staffing, Ms. Rumbaugh stated Sunflower had hired 96 percent of its KanCare staff and had been busy training them. The team is located throughout the entire State of Kansas with dedicated office space in Topeka, Wichita, and Lenexa. She noted, because of the significant care coordination needs of the organization's potential consumers, it recruited program experts statewide while working to ensure there was a smooth transition for members whose case managers might become MCO employees.

Ms. Rumbaugh provided updates regarding member services, the provider network, and its operations. She noted Sunflower's Member Services team was taking more than 250 calls each day from prospective consumers or their representatives.

Sunflower also had met the network standards set by the State, but was working to surpass those goals by contracting with as many current Medicaid providers as possible. Provider education sessions were being conducted to share information and assistance with providers and their offices. The names and contact information for the Sunflower Provider Relations team, as well as the approved Provider Manuals, are posted on Sunflower's website, www.sunflowerstatehealth.com. The Sunflower provider payment system was being tested with select providers to ensure providers were paid the correct amount on time.

In addition to the State Readiness Review, Ms. Rumbaugh stated Sunflower conducted internal reviews to identify and mitigate any potential problem for successful implementation. Sunflower continued to meet with leaders from KDHE and KDADS to understand issues, and the agencies were holding the MCO accountable for delivering quality services. Ms. Rumbaugh provided her contact information to the Committee.

Amerigroup Presentation. Laura Hopkins, Chief Executive Officer, Amerigroup, stated KDHE had done an excellent job planning for and developing the KanCare plan. At the time of the presentation, Amerigroup coordinated health care services for approximately 2.7 million members in 12 states (Kansas was the 13th state) and had 16 years experience dedicated to government programs.

Ms. Hopkins stated Amerigroup received a score of 93.7 percent on its KanCare Readiness

Review. Its Kansas call center was fully operational and was handling Kansas calls, with over 2,200 since automatic assignments began. Amerigroup's care management and service coordination staff were finalizing cross-training; more than 1,300 providers also had been trained. It planned to employ 327 Kansans with full benefits. Amerigroup's Kansas programs and services office would be relocating after December 17 to 9225 Indian Creek Parkway, Building 32, Suite 400, Overland Park, KS 66210. Contact information for Ms. Hopkins also was provided.

Ms. Hopkins indicated consumers assigned to Amerigroup would be sent a member ID card and welcome packets in mid- to late December, to be received no later than January 1, 2013. She described the contents of the welcome packet. Ms. Hopkins indicated a member health risk assessment (HRA) would be mailed separately and received no later than January 1, 2013; there are multiple ways to complete the HRA. Amerigroup planned to maintain ongoing interaction with consumers and provide support services for providers. Ms. Hopkins also provided information on the Provider and Member Web Portal and details of extra benefits provided for all KanCare members.

A question-and-answer session followed the conclusion of the three MCO presentations.

A Committee member asked for contact information on each group's lobbyist and medical director, and it was agreed the information would be provided to staff for distribution to the Committee members.

There was a question as to the total number of hospitals shown on the November 16, 2012, Geo Access Network Report. It was noted a number of hospitals were represented by one consultant group that entailed negotiations with all entities at once for one contract, and some of the outstanding contracts were near completion or were finalized since the November 16 report. MCO representatives indicated the next report due out in December would show significant increases as contracts were finalized.

A Committee member also inquired about the difference in the number of primary care providers and specialists between the three MCOs and whether some of the numbers were counted twice. MCO representatives indicated some numbers were duplicated, as when an internal medicine physician also practices in a specialized area. It was noted anesthesiologists were included in the hospital contracts, so practice specialty was not itemized in the Geo Access Network Report.

Discussion ensued as to why providers would sign up with one MCO or another. The MCO representatives indicated issues might include quality of service, rates offered, timeliness of response, and past relationship with a particular MCO.

A Committee member questioned the MCO representatives about how long-term services and support would be approached, since the MCOs did not have much experience in this area. The MCO representatives indicated they would utilize the experience of their companies in providing such services in other states and evaluate the best approach for Kansas. In the case of family members who provide long-term services, the rate of reimbursement would be what the State authorizes for such services (the standard rate for such services).

There were questions and discussion concerning how complaints would be addressed by each MCO, in particular, for cases in which a reduction of services had been recommended. It was noted the person receiving the reduced services would be notified of the reduction in writing. The written notices would be sent to the consumer or the legally responsible party for the consumer. Prior to such written notice, the care manager or care coordinator would have discussed the reduction with the consumer and appeal processes would be available as needed in such cases. Reductions in plans of care also would require approval by the State.

A Committee member inquired as to whether there would be a guaranteed response time for complaints, so consumers were not lost in the shuffle. Each MCO indicated there were guidelines for providing responses and, in many cases, they were required to respond in one day.

A scenario was shared by a Committee member in which a provider (such as a pharmacist) needed special authorization after

normal working hours. Customer service call center hours of operation were provided by the MCOs. It was agreed this issue needed to be addressed.

One Committee member inquired about the need for referrals to specialists. All three MCOs indicated no referral was required to access a specialist.

A question was posed regarding the Pharmacy Benefit Manager (PBM) used by each MCO and what challenges the MCOs would face if Medicaid expansion occurred in the state. The MCO representatives provided the names of the PBMs. In response to how Medicaid expansion would be handled, the MCO representatives indicated, if this were to occur, they would work with the State; key factors would be to work with the individual to provide quality care, eliminate duplication of services, and reduce avoidable incidents of care.

With regard to what was happening with CMHCs in KanCare, the MCO representatives stated they were working with CMHC leadership and all CMHCs had contracted with the MCOs. When asked if there was an issue with MCOs and CMHCs with regard to prior authorization, the MCO response was the contract addresses those requirements, and the key issue was not prior authorization, but to find the best way to support targeted case management, especially for individuals with complicated needs. Ms. Hopkins responded to a concern regarding what would occur if the CMHCs could not meet the behavioral health needs; she indicated a private office would be found to provide the services, if a need for therapy exists which could not be met by the CMHCs.

There was some discussion concerning the Risk Cost Sharing provision in the contract. The range would be 98 percent to 102 percent and, if higher or lower, then there would be a 50/50 split with the State. This would be for year one only, and it was yet to be determined what would occur after the first year.

A request was made for the percentage spent by each MCO on administrative costs. If administrative costs were not defined in the MCO contracts, the MCOs were to define what would be included in administrative costs.

Discussion ensued regarding what could be done to encourage dental provider participation in KanCare. One MCO representative expressed the need to educate the public about not missing dental visit appointments, keeping follow-up appointments, the importance of dental care for overall health, appointment reminders, and incentives to encourage preventive dental visits.

Day Care Update. Rachel Berroth, Director, Bureau of Family Health, KDHE, provided an update on Lexie's Law and the Child Care Licensing (CCL) program. Effective July 1, 2012, the CCL Program merged with the Bureau of Family Health. She said the merger had afforded the program with additional opportunities to promote policies and resources for the protection, health, and safety of children in out-of-home care settings and to support families in their efforts toward economic self-sufficiency.

Ms. Berroth stated the provisions of Lexie's Law were fully implemented within the past year. Passed by the Legislature in 2010, Lexie's Law increased health and safety protections for children in day care homes. The provisions included:

- Eliminating the category of "registered family day care home" and requiring the inspection of all child care facilities;
- Issuing licenses with an expiration date and sticker;
- Requiring the adoption of additional health, safety, and supervision regulations; and
- Developing an online information dissemination system, which provides survey findings.

According to Ms. Berroth, there were approximately 7,800 child care facilities prior to Lexie's Law, and 2,400 of these were registered homes. She reported the transition of registered homes to licensed homes (occurring from July 2010 to June 2011) had been successful, and the annual surveys confirmed previously registered providers were in substantial compliance. Ms. Berroth stated, as of December 2012, the total number of child care facilities was 6,400, with the capacity to serve 140,400 children. The majority of facilities were licensed as day care homes

(5,100). At the time of the presentation, the capacity to serve children in Kansas remained higher than the 2010 capacity (139,000).

Ms. Berroth indicated the transition from non-expiring child care licenses to expiring licenses also had been successful. The transition began with KDHE issuing initial and renewal licenses with an annual expiration date in January 2011; all owners licensed prior to that time received a new license by January 2012 with an expiration date and official sticker. She stated KDHE provided notice of the license renewal requirement by sending a renewal packet to licensees approximately 90 days prior to expiration. Approximately 30 to 40 days prior to the expiration, a second notice in the form of a yellow postcard was sent to facilities that had not renewed. According to Ms. Berroth, on average, only 6-10 licenses out of approximately 450 expire each month due to a failure to renew. The majority were reinstated within 30 days, prior to imposition of a late fee authorized by Lexie's Law, upon receipt of a completed renewal application. After 60 days, if the renewal application and fees were not received, the facility file would be closed and a closure letter would be sent to the licensee. She said the option to reapply always would be available.

Ms. Berroth stated regulations (effective February 3, 2012, for new applicants and May 1, 2012, for providers licensed prior to February 3, 2012) addressed the competent supervision of children in day care homes; orientation for applicants and staff; additional health and safety training for caregivers; and standards for safe sleep practices, daily activities for children, and nutrition. She reported that as a result of the new requirements, the Kansas ranking in the 2012 National Association of Child Care Resource and Referral Agencies (NACCRRA) Report of State Standards and Oversight of Small Family Day Care Homes rose from 41 (in the 2010 NACCRRA Report) to third in the nation. The 2012 full report is available at http://www.naccrra.org/sites/default/files/default_site_pages/2012/lcc_report_full_april2012.pdf.

According to Ms. Berroth, during State Fiscal Year 2012, local surveyors provided new regulation training to 2,734 individuals and applicant orientation to 2,534 individuals (2,285 home providers, 249 center staff). She stated the new supervision regulations apply only to the home day care providers, and it was not necessary to amend the regulations for day care centers. The intent of the expanded regulations was to provide additional guidance and direction to caregivers concerning the competent supervision of children, based on the age and development of the children in care.

Ms. Berroth said providing education and training are crucial to preparing applicants for operating a facility and reducing the predictable risk of harm to children. The new regulations require health department orientation for applicants and facility and regulatory orientation for new staff. In addition, health and safety training is required for all center-based staff and home providers, including training in these areas: recognizing the signs of child abuse, neglect, and abusive head trauma and the reporting requirements; basic child development; and safe sleep practices. She reported all caregivers now are required to maintain current certification in pediatric first aid and cardiopulmonary resuscitation (CPR).

The following statewide partners offering KDHE-approved training, in either classroom settings or online, were reported by Ms. Berroth: local health departments, Child Care Aware of Kansas and network child care resource and referral agencies, KS-Train, Kansas Child Care Training Opportunities (KCCTO), Kansas Children's Service League (KCSL), Kansas Infant Death and SIDS (KIDS) Network, and local community colleges. During fiscal year 2012, local surveyors provided or co-sponsored 1,400 clock hours of child care training delivered to 9,212 participants. In addition to external training course approvals, KDHE reviewed and approved 310 course offerings. She stated all of the required six hours of coursework are available online and provided at the local level in communities across the state.

A Committee member asked which organizations provide the training. Ms. Berroth referred to the list in her testimony, but she added a number of private individuals and organizations also provide training resources. The same Committee member expressed concern as to whether financial support was being provided to

accomplish what needed to be done. Ms. Berroth replied the Bureau was underfunded and deals with vacancies, but staff are passionate and committed. However, she also noted the work cannot be completed in an eight-hour work day, and KDHE relies on its partners to work together and share resources. The agency continually reviews priorities and mandates to determine what has to be shelved when adequate funding is unavailable. She stated she has been very impressed with what has been accomplished with the available funding. A Committee member expressed concern about the movement in Kansas to not fund programs adequately and emphasized the importance of informing legislative members of program funding issues needing to be addressed.

A Committee member asked for information concerning the type of background checks and mental health evaluations being performed on day care providers and staff. Ms. Berroth reported the current regulations require a Kansas Bureau of Investigation background check (including juvenile records), a check by DCF of the Child Abuse Registry, and a health assessment completed by a physician. Individuals are not licensed until all of those checks are clear. A review of the individual's mental health is part of the health assessment and is required at the time of opening a child care facility. She stated the health assessment never has to be reviewed or renewed. The Adult Health Assessment form used is available online for review. Child care regulations require a person be of sound judgment. If an issue of fitness to care for children arises, additional information is gathered. A formal process is in place and involves a review by the legal department. If KDHE had authority to deny the license and the information gathered supported a denial, the license would be denied.

Ms. Berroth stated the Child Care and Early Education Portal system is part of a larger joint technology initiative between DCF and KDHE, known as the Customer and Provider Portal (CAPP). The information displayed online is made possible through an interface with the KDHE licensing database (CLARIS). Facility addresses and phone numbers are not displayed unless applicants and licensees authorize it. Lexie's Law requires inspection findings be made available.

According to Ms. Berroth, KDHE has been accepting feedback related to the usability and information displayed on the portal from providers, users, and the Budget Efficiency Savings Team since March 2012 and has submitted information on defects, enhancements, and change requests to DCF. As of February 2012, annual inspections are done online through the use of tablets out in the field. The only specific citings on the portal would be those since February 2012; earlier citings would be noted on the portal, but specific details would not be available. Ms. Berroth indicated every facility soon would have its most recent annual inspection online for review. Use of the portal has grown steadily, averaging 4,000 "hits" per month. Ms. Berroth said she has been tracking all e-mails with suggestions, questions, and other information related to the portal system.

Ms. Berroth stated all concerns with the child care law were addressed by 2012 HB 2660, which became law July 1, 2012. The bill amended laws concerning maternity center and child care facility licensure, including the 2010 amendments referred to as Lexie's Law. She noted the following changes were made by the bill and were consistent with the interests of the State, providers, and parents in protecting children, while assuring access to child care:

- The new law defines a "day care facility" as a type of child care facility; the term is used when provisions of the Act, including the requirement for a high school diploma or the equivalent, apply to day care facilities, including day care homes, preschools, child care centers and school age programs; and

- The new law authorizes the Secretary of Health and Environment to grant an exception to the high school diploma requirement when an applicant for a day care facility is otherwise qualified, and the exception is in the best interests of all children in care.

Ms. Berroth reported administrative regulations for child care centers and preschools require the licensee to carry liability insurance in the event of negligence as a recourse for parents. No similar requirement exists for day care homes,

group day care homes, or school age programs. She cited the National Association for Regulatory Administration 2008 Child Care Licensing Study, which reported six states require small family day home providers to carry general liability insurance and only eight states require large and group day care homes to have coverage. She stated a bill was introduced in 2006 to require licensed day care home providers to carry liability insurance, but it did not pass. The bill had proposed a minimum coverage of $100,000.

A Committee member asked for the 2006 cost of $100,000 general liability insurance coverage. Ms. Berroth recalled it was about $350 per year.

Ms. Berroth testified the online child care application (available February 2013) would allow providers the option to enroll with DCF to serve families receiving child care subsidies, thereby eliminating the need to submit separate paper applications to each agency. She noted completion of the project would significantly reduce the length of time necessary to submit and process an initial or renewal application, reducing the time it takes to issue a license.

Ms. Berroth submitted the following two documents:

- New and Amended Regulations for Day Care Homes, Child Care Centers and Preschools effective February 3, 2012; and

- Child Care and Early Education Portal screen shots.

A Committee member asked whether the agency had received feedback regarding the portal that had led to interactions, interventions, or investigations. Ms. Berroth stated she had not received any feedback of this nature. She indicated the questions received from parents related to the need for basic information, such as how to use the system to review a prospective child care home.

Another question raised by a Committee member concerned the security of the information available on the portal. Ms. Berroth reported the portal is only a placeholder for data and only KDHE has access to the system for editing purposes. KDHE surveyors cannot make changes in the licensing system.

Linda Logan, Curriculum and Training Consultant, Kansas Child Care Training Opportunities (KCCTO), Manhattan, presented her testimony. Ms. Logan reported KCCTO was incorporated in 1986 and is governed by a board of directors representing state agencies and organizations concerned with quality child care for Kansas children. Its mission is to help promote quality child care by providing training for child care professionals that is comprehensive, low-cost, and accessible. She stated she personally has over 30 years' experience in the field of child care services.

In response to Lexie's Law, Ms. Logan reported, KCCTO began offering Child Development and Child Abuse and Neglect: Identification, Reporting and Prevention online courses. She indicated the design of the three-hour course was intentional because KCCTO wanted to include prevention, not just identification and reporting. Since January 2012, over 1,800 child care providers from 90 counties had participated in the online courses. She noted participants in the online courses included center-based staff, new and existing family child care providers, and staff from Head Start, Early Head Start, and an early childhood staffing agency. As of January 2013, KCCTO would begin offering a course on Infant Safe Sleep Practices to meet Lexie's Law requirements. Other courses also are available on topics extending beyond the requirements of Lexie's Law and include Healthy Routines, Behavior and Guidance, Signs and Symptoms of Childhood Illness, Nutrition and Oral Health.

Ms. Logan indicated she initially had concerns with the online courses replacing the face-to-face training courses. However, with the level of interaction being provided in these courses, she stated connections were being made and the results had been very positive. She also indicated participants were appreciative of the online availability and low cost of the courses. The flexibility of the online format and schedule had allowed participants to meet the 30-day requirement for applicants seeking new licensure. She further noted new providers and experienced providers train together in the classes, resulting in good learning and sharing experiences for the new providers.

When the courses initially were offered in January 2012, Ms. Logan noted, the courses were unfunded and funding was accomplished through course fees. As of October 1, 2012, KCCTO entered into a contract with DCF to provide early childhood workforce development. According to Ms. Logan, many of the participants shared they had learned new terms, such as "shaken baby syndrome" and the "period of purple crying." She stated, because the online courses are instructor led, there are good opportunities for the instructor to address issues and answer questions as they occur.

A Committee member asked if the instructor had the ability to follow up with course participants and whether participants could contact the instructor. Ms. Logan indicated she provides her e-mail and phone number, and she also has all of the participants' e-mail and phone information, which enables effective communication. She further noted post-facilitation and training information is provided, as initiated by the providers.

Another Committee member inquired as to the availability of course information to non-English-speaking providers. Ms. Logan responded the option was not available at this time, but KCCTO was moving in that direction. KCCTO had made an initial contact with the Language Department at Kansas State University regarding options available to provide courses for non-English-speaking providers. The Committee member offered to provide information on other groups that may be interested in assisting with the project.

A question was raised by a Committee member concerning the cost of the training classes. Ms. Logan responded the cost generally is $20 per class. In some cases, for every five courses taken, the provider receives one course free of charge.

A Committee member asked about funding. Patty Peschel, KCCTO Program Director, stated KCCTO is a sponsored program of Kansas State University. Kansas State University provides the space for KCCTO and some of the funding, a grant was provided by DCF in October 2012, and some funding has been provided by non-profit entities.

Leadell Ediger, Executive Director, Child Care Aware of Kansas, provided testimony before the Committee. Ms. Ediger stated the goal of Child Care Aware is to ensure children in Kansas have access to safe child care that promotes healthy development. She explained Child Care Aware is the state network that supports six child care resource and referral agencies serving all 105 counties in Kansas by:

- Ensuring families have access to affordable, high-quality child care across the state, through child care referrals and consumer education. Over 17,000 families had been helped in 2012;
- Supporting child care providers, including assistance with starting and operating a child care business, ongoing professional development and training both in person and through online classes, and information and support about how to make quality improvements that positively impact the children in their care; and
- Networking with employers and community partners to provide information about family-friendly policies and programs that benefit employees, child care supply and demand data, and how to support the development of high-quality child care programs in their communities.

Ms. Ediger reported, since 2007, Child Care Aware of America (formerly NACCRRA) has produced annual rankings of State Standards and

Oversight, alternating years for Child Care Centers and Small Family Child Care Homes. She noted Kansas had made significant progress to ensure all children in child care are safe and well cared for by trained providers. Her testimony included score and ranking information, which showed the State's improvement from a ranking of 42 in 2008 to a ranking of third in the nation in 2012 in the category of Small Family Child Care Homes. Ms. Ediger reviewed the following strengths identified in the 2012 report:

- All family child care homes caring for one or more unrelated children are required to be licensed;
- All family child care homes are inspected once per year;
- Routine and complaint-based inspections are unannounced;
- Child care licensing staff are required to have a bachelor's degree in early childhood education or related field;
- Inspection and complaint reports are available online;
- Providers are required to have comprehensive initial training, including first aid and CPR certification;
- Providers must offer toys and materials in all developmental domains;
- Providers must offer activities addressing all developmental domains;
- Health standards address ten of ten basic standards; and
- Safety standards address ten of ten basic standards.

Ms. Ediger commented on the positive impact on the number of child care providers attending professional development offered by the child care resource and referral agencies. A chart was provided reflecting the increase in professional development events and the number of providers attending from July 2009 through November 2012. A second chart showed professional development events offered from April 2012 through November 2012 to fulfill Lexie's Law requirements and the number of providers attending. She noted since Lexie's Law was passed, training had been provided to nearly 9,200 providers.

Ms. Ediger provided the following additional measures, supported by Child Care Aware of America, which she would like to see included:

- Require the use of fingerprints for checking an individual's state and federal criminal history and include a review of the sex offender registry for background checks;
- Increase the initial training requirements for providers from 15 hours to 40 hours of comprehensive initial training, including CPR and first aid;
- Increase the annual training requirements for providers from 10 hours to 24 hours, including CPR and first aid; and
- Limit providers to caring for not more than two infants when older children are present.

Several questions were posed by Committee members related to funding sources for the program. Ms. Ediger indicated Child Care Aware of Kansas receives federal grants and funding from DCF, has partnerships with various foundations, and receives membership fees on a voluntary basis with a minimum of $25 (with some members donating $500 per year). She indicated reductions in funding have affected the agency's ability to provide services.

Ms. Ediger reported Child Care Aware has an online presence with 15 hours of professional development. It also offers 120 hours to obtain a Child Development Associate (CDA) credential, and the courses are available in both English and Spanish. CDA renewal courses also are available in both languages, as are multi-lingual staff who can assist with questions.

A copy of the 2012 NACCRRA Report of State Standards and Oversight of Small Family Day Care Homes was provided by Ms. Ediger. She noted Kansas received 111 of the 140 total possible points.

A Committee member commented when Lexie's Law was being proposed, there were a number of opponents and inquired as to what happened with these opponents. Ms. Ediger responded they probably either have accepted the law or are no longer in the child care business.

There were several questions and concerns expressed by Committee members regarding the amount of funding being provided and whether the funding has been adequate to provide the needed services. Ms. Ediger expressed appreciation for the questions and concern. She stated Child Care Aware had received the same level of funding for the past seven years from DCF. The $2.2 million received each year was shared with other resource and referral agencies; Child Care Aware kept only eight percent of the funds. As a result of not being awarded a contract under a Request for Proposal, Child Care Aware would see an approximately $30,000 funding cut from DCF. Due to a Children's Cabinet decision to spend Children's Initiative Funds on other priorities, Child Care Aware would see a $6 million reduction in grant funding as of December 31, 2012. Beginning in January 2013, Child Care Aware's budget would be cut by nearly two-thirds, and eight permanent staff members would lose their jobs. The budget would go from $10.3 million to about $4 million. Ms. Ediger stated she would continue to work with the Child Care Aware Board of Directors on alternative funding sources.

Ms. Ediger reported Child Care Aware is not involved in the licensing of child care providers. However, the agency has been implementing the Kansas Quality Rating Improvement System (KQRIS) for the past seven years. Ms. Ediger explained DCF must submit a state plan every two years to the federal government outlining how the Child Care Development Block Grant funds will be used. The last state plan was submitted in August 2012 and included a quality rating system, professional development plan, and resource and referral system. Ms. Ediger stated, though KQRIS is required under this state plan, parts of these state plan requirements are not being funded by DCF. Child Care Aware had obtained support from two foundations to fund KQRIS in one county, and Douglas County Smart Start received funding from the Children's Cabinet for KQRIS. Ms. Ediger said the rating system has been decimated and funding for projects within KQRIS is being discontinued. To illustrate, she stated DCF discontinued funding for the college scholarships through Teacher Education and Compensation Helps (T.E.A.C.H.) Early Childhood Project under KQRIS three years ago; funds also are being discontinued for education-based salary supplements to child care providers and early education staff (Child Care WAGES), which provided a wage bonus to help reduce staff turnover in child care facilities and improved quality of care.

Several Committee members expressed concern about the reductions in funding and the ability of the agencies to provide the required services. The members emphasized the importance for presenters to inform legislators of the funding issues, so they could be addressed. One Committee member noted legislators cannot do their job if they are not informed of funding problems. Several members agreed Lexie's Law is a good tool, but it had not been funded to the level required to fully implement it. However, it also was noted due to Lexie's Law, far fewer children are at risk because all day care homes now are being inspected.

A Committee member referred to a previous question and asked what opposition had been expressed concerning Lexie's Law when the bill was being considered. The responses provided by Committee members included opponent concerns with government interference in people's lives, the applicability of the bill to family members providing child care services, and related concerns.

Another Committee question related to the impact of the 10 percent cut in agency budgets requested by the Governor. Ms. Ediger indicated she did not expect another cut over what she had already explained.

A Committee member asked whether child care licensure fees had been raised. Ms. Berroth reported the fees were raised as a result of Lexie's Law, from $10 to $85 for licensed day care homes and from $12 to $87 for group day care homes. The fees are set in statute and the Legislature would need to approve any changes. A fee fund (funded by licensing application fees from new licenses and renewals) supports inspection and staffing.

Ms. Berroth shared information about the sources of funding for the Bureau of Family Health and stated the Bureau's funding has been fairly well protected from reductions. She agreed to provide more detailed information on funding to staff for Committee members.

Committee members expressed appreciation for all the work the agencies have done to implement Lexie's Law successfully and in a timely manner.

Written testimony was provided by parents, day care providers, a day care director, and a sales manager for an insurance company.

Discussion of Committee Recommendations. It was noted the Joint Committee on Health Policy Oversight would terminate on July 1, 2013. A recommendation was offered that the Committee terminate only if a substitute oversight committee was established, and that the Committee support legislation creating a committee to oversee KanCare. Vice-chairperson Schmidt, referencing a memorandum prepared by Committee staff, suggested items for inclusion in the Committee report to the 2013 Legislature. She asked the Committee to consider other possible recommendations. It was suggested and agreed the Committee report would include a recommendation for legislative committee oversight of KanCare.

Conclusions and Recommendations

Based on the testimony heard and the Committee deliberations, the Committee reached the following conclusions and recommendations:

- Recommend legislative oversight of KanCare;
- Commend the work of KDHE staff, under the direction of Rachel Berroth (Director for the Bureau of Family Health), for the smooth and successful implementation of Lexie's Law;
- Highlight the *2012 NACCRRA Report of State Standards and Oversight of Small Family Child Care Centers* which cites an improvement in the State's ranking from 41st in the nation in 2010 to 3rd in 2012, and recognize the support provided by Child Care Aware to providers;
- Recognize the importance of the enactment of 2012 HB 2660 to address concerns encountered by KDHE in implementing the requirement in Lexie's Law that each applicant for licensure as a day care provider be a high school graduate, by authorizing the Secretary of KDHE to grant an exception to the high school diploma requirement when an applicant for a day care facility is otherwise qualified and the exception is in the best interests of all children in the applicant's care;
- Commend Kansas Child Care Training Opportunities (KCCTO), which has provided timely online training in response to Lexie's Law to more than 1,800 child care providers in 90 counties. The Committee wishes to highlight the enthusiasm of KCCTO in providing training for child care professionals;
- Recognize the KDHE staff for their timely work on new and amended regulations for day care homes, group day care homes, child care centers, and preschools, which became effective February 3, 2012; and
- Consider that although KDHE budget cuts have not affected the Child Care Licensing Program, other cuts have been made to entities providing training to child care providers and child care resources and referral services for families (such as a more than 60 percent budget cut to Child Care Aware of Kansas). The Committee also recognized Lexie's Law was deemed by the Legislature to be worthy of the time and effort it took to enact the law, and sufficient funding is needed to support the law adequately.

Proposed Legislation

- The Committee recommended legislation be presented during the 2013 Legislative Session providing for legislative oversight of KanCare.

Report of the Joint Committee on Information Technology to the 2013 Kansas Legislature

CHAIRPERSON: Senator Mike Petersen

VICE-CHAIRPERSON: Representative Joe McLeland

OTHER MEMBERS: Senators Marci Francisco, Tom Holland, Garrett Love, and Vicki Schmidt; and Representatives Mike Burgess, Terry Calloway, Nile Dillmore, and Harold Lane

STUDY TOPIC

The Committee is directed to study computers, telecommunications, and other information technologies used by state government, and to review new acquisitions of information technology.

May 2013

Joint Committee on Information Technology

Annual Report

Conclusions and Recommendations

- The Committee made no conclusions or recommendations.

Proposed Legislation: None.

Background

The Joint Committee on Information Technology (JCIT) met for a two-day meeting in December 2012. The JCIT did not make any recommendations to the 2013 Legislature, nor did the Committee approve a final report. This summary describes the activities of its two-day meeting.

The duties assigned the Joint Committee by its authorizing legislation in KSA 46-2102 are noted below, and these three duties also defined its general areas of interim activity:

- 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 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.* in submitting such information for review by the Joint Committee.

- Monitor newly implemented technologies of state agencies and institutions.

Review of Technology Initiatives and Projects

The Executive Chief Information Technology Officer (CITO) and Director of the Office of Information Technology Services (OITS) provided an update on 25 agency technology and software initiatives. The initiatives were approved by the three CITOs (Executive, Legislative and Judicial) and by the Governor in July 2012. The initiatives fall into seven categories:

- Strengthening the Information Technology (IT) shared-services model;

- Validating and consolidating state IT applications;

- Creating a transparent and efficient IT organization;

- Improving access to state systems;

- Improving IT portfolio management and governance;

- Strengthening IT security; and

- Developing an efficient and skilled IT workforce.

The Legislative CITO reviewed the status of the Legislative Office of Information Services. He stated staff members are able to provide day-to-day support for the Kansas Legislative Information Systems and Strategies (KLISS) and that the

project's vendor Propylon is needed only for major projects.

The Chief Information Officer, Kansas Department of Revenue, reviewed the Division of Vehicles (DOV) Modernization Project, which rolled out Phase I (motor vehicle registration, a county treasurer function) in May 2012 and will implement Phase II (driver's licenses) in August 2013.

The Kansas Broadband Program Director, Kansas Department of Commerce, explained the Kansas Broadband initiative was begun in 2010 through a grant from the National Telecommunications and Information Administration to foster increased availability and utilization of broadband in Kansas. The project involves data collection, mapping, and strategy development.

The Judicial CITO outlined two current IT projects. He reported a Request for Proposals resulted in selection of the vendor Tybera Development Group for an electronic filing project. A pilot project will be launched early in 2013, with statewide roll-out in July 2013. The other project, a centralized case management system, is presently at the needs-assessment stage using the vendor Gartner Group. A centralized system will integrate the separate databases in 104 counties, will improve court efficiency and access to court information, and will reduce administrative costs at the local level.

The Chief Information Officer, Kansas Department of Health and Environment (KDHE), reviewed progress on the Kansas Eligibility Enforcement System (KEES). He reported the Online Application and the Presumptive Eligibility Tool went live on schedule and the design process is on schedule. The Electronic Content Management hardware has been procured, and the change from a waterfall style approach to an iterative style approach (adopted in August 2012) has been productive. He noted the Road Map/Phase 2 Design (interface design) is slightly behind schedule, but does not affect the Build phase critical path. He explained working out interface agreements with the 11 state agencies, federal partners, and other entities has taken longer than expected. He acknowledged the tight schedule in order to meet the project's October 2013 completion deadline.

Conclusions and Recommendations

Due to the lack of a quorum and the absence of the Chairperson, the 2012 Interim was concluded with no formal recommendations or report to the 2013 Legislature.

Report of the Health Care Stabilization Fund Oversight Committee to the 2013 Kansas Legislature

Chairperson: Mr. Dick Bond

Legislative Members: Senators Laura Kelly and Vicki Schmidt; and Representatives Eber Phelps and David Crum

Non- Legislative Members: Mr. Darrell Conrade, Dr. Steven C. Dillon, Mr. Dennis George, Dr. Paul Kindling, Dr. Terry "Lee" Mills, Jr., and Dr. James Rider

Study Topic

The Committee must review the operation of the Health Care Stabilization Fund and report and make recommendations to the Legislative Coordinating Council regarding the financial status of the Fund, including any recommendations for legislation necessary to implement recommendations of the Committee.

May 2013

Health Care Stabilization Fund Oversight Committee

Annual Report

Conclusions and Recommendations

The Committee addressed the two statutory questions posed annually to the Oversight Committee. The Health Care Stabilization Fund Oversight Committee continues in its belief that the Committee serves a vital role as a link among the Fund Board of Governors, the providers, and the Legislature, and should be continued. Additionally, the Committee recognizes the important role and function of the Health Care Stabilization Fund in providing stability in the professional liability insurance marketplace, which allows for more affordable professional liability coverage to health care providers in Kansas.

Actuarial Review. The Committee reviewed the need to contract for an independent actuarial review in 2013. While the Committee continues in its belief that the ability to contract for an independent actuarial review is necessary for the safety and soundness of the Fund, the Committee does not see, at this time a need for such review in 2013.

Other Recommendations. The Committee agreed to the following recommendations:

- *Obligation to reimburse the Health Care Stabilization Fund for administrative services provided to self-insurance programs for the University of Kansas Foundations and faculty and residents at the University of Kansas Medical Center (KUMC) and the Wichita Center for Graduate Medical Education (WCGME).* The Oversight Committee requests the Fund be reimbursed pursuant to the time line created by 2010 SB 414: funds required to be transferred to the Health Care Stabilization Fund for the payments specified in law (KSA 2009 Supp. 40-3403(j)) for state Fiscal Years 2010, 2011, 2012, and 2013 shall not be transferred prior to July 1, 2013. The law allowed for a deferral of payments for these fiscal years and allowed payments to be made, 20.0 percent per year, beginning on July 1, 2013, and on an annual basis through July 1, 2017. The Board indicated that, as of June 30, 2012, the total accrued State General Fund reimbursements receivables to the Fund totaled $5,748,058.85. Of that total, the following amounts were not reimbursed for FY 2010 - $2,147,376.22; FY 2011 - $1,139,840.04; and FY 2012 - $2,460,842.59.

  Additionally, the Committee notes the amount the Fund, pursuant to the law and a prior allotment, did not receive as reimbursement for services rendered in FY 2009: $2,919,600.31.

- *Miller v. Johnson decision*. On October 5, 2012, the Kansas Supreme Court upheld the $250,000 cap on noneconomic damage awards. The Committee notes the following from the Court's findings about the *quid pro quo* relationship between the purposes of the Health Care Provider Insurance Availability Act (HCPIAA) and the requirement for certain health care providers to carry professional liability insurance and participate in the Health Care Stabilization Fund and the guaranteed source of recovery for persons seeking to recover pain and suffering damages (limited by the cap, as set by the Legislature):

- "As noted in several of our prior cases, the legislature's expressed goals for the comprehensive legislation comprising the Health Care Provider Insurance Availability Act and the noneconomic damages cap have long been accepted by this court to carry a valid public interest objective."

- [The statute was enacted] "in an attempt to reduce and stabilize liability insurance premiums by eliminating both the difficulty with rate setting due to the unpredictability of noneconomic damage awards and the possibility of large noneconomic damage awards."

The Committee notes the long-term impact the Fund and its stability has on young physicians and health care providers entering the Kansas health care workforce. Additionally, the Committee encourages the Kansas Medical Society and other interested parties to continue the conversation about the cap on noneconomic damages and the larger role of the HCPIAA in the wake of this significant decision. The Committee looks forward to being a partner in this discussion and having further communication on this matter at its meeting next year. The Committee further notes the *Watts* decision and requests updates on the impact on Kansas health care providers practicing in Missouri.

- *Fund To Be Held in Trust.* The Committee recommends the continuation of the following language to the Legislative Coordinating Council, the Legislature, and the Governor regarding the Health Care Stabilization Fund:

  - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the State General Fund. 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 the behalf of each individual health care provider. Those payments made to the HCSF by health providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the Health Care Provider Insurance Availability Act, the HCSF is required to be ". . . held in trust in the state treasury and accounted for separately from other state funds."

  - Further, this Committee believes the following to be true: All surcharge payments, reimbursements, and other receipts made payable to the Health Care Stabilization Fund shall be credited to the Health Care Stabilization Fund. At the end of any fiscal year, all unexpended and unencumbered moneys in such Health Care Stabilization Fund shall remain therein and not be credited to or transferred to the State General Fund or to any other fund.

Proposed Legislation: None.

BACKGROUND

The Health Care Stabilization Fund Oversight 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 public at large, with no affiliation with health care providers or with the insurance industry; and the Chairperson of the Board of Governors of the Health Care Stabilization Fund (HCSF) 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

Fund. The reports of the Committee are on file in the Legislative Research Department.

The Committee met November 30, 2012.

Committee activities

Report of Towers Watson

The Towers Watson actuarial report serves as an addendum to the report provided to the Fund Board of Governors dated March 13, 2012. The actuary first addressed forecasts of the Fund's position at June 30, 2012, and June 2013. The forecast of the Fund's position at June 30, 2012, is as follows: the Fund held assets of $253.37 million and liabilities (discounted) of $189.75 million, with $63.62 million in reserve. The projection for June 2013 is as follows: assets of $259.33 million and liabilities (discounted) of $193.05 million, with $66.28 million in reserve. The report notes the forecasts were based on a review of Fund data as of December 31, 2011. The actuary highlighted developments following the issuance of the report in March: assets at June 30, 2012, were $5.4 million higher than anticipated; the Kansas Supreme Court issued its ruling on *Miller v. Johnson*; and the Missouri Supreme Court ruled caps on non-economic damages are unconstitutional.

The actuary then offered some general conclusions: the forecasts assume an average 5.0 percent decrease in surcharge rates for FY 2013; $25.4 million in surcharge revenue in FY 2013; continued full reimbursement for KU/WCGME claims, but reimbursement from the state delayed until FY 2013; and no change in current Kansas tort law. The actuaries had suggested the Board either maintain current rates or make a slight decrease (the Board opted to change FY 2013 surcharge rates at an average rate decrease of 5.0 percent). The actuary commented on the financial position of the Fund stating, given the Fund's FY 2012 results and the recent state Supreme Court decision, the firm believes the Fund is in the strongest financial position in its 36-year history.

The actuary also reviewed the Fund's liabilities at June 30, 2012, highlighting future claims against inactive providers—future claims and inactive providers' tail coverage. The actuary clarified "tail coverage" generally includes claims that occurred while providers were actively practicing and in Kansas. The actuary next reviewed the Fund's rate level indications for FY 2013; the indications assume a break-even target. The actuary commented on the investment income item noting the assumption of a reasonably high yield. The actuary also provided observations on Fund loss experience, noting its claim volumes have decreased over time while the cost per provider has been relatively stable.

The actuary made further observations for the Committee's consideration:

- From 1999 to 2010, the Fund's surcharge revenue ranged from 23 percent of basic coverage premium (2005) to 36 percent of premium (2010). The FY 2011 ratio was 37.7 percent and the sixth consecutive year with an increase;

- Availability Plan insureds increased from 251 in FY 2001 to 674 in FY 2006, but have dropped since then. In FY 2011, there were 438 Plan insureds;

- The Fund's investment income continues to show a reasonably high yield (4.6 percent effective yield in July 2011 – June 2012), given market rates; and

- Fund assets have increased from $215 million at December 31, 2008, to $248.3 million at December 31, 2011.

The actuary's presentation next addressed the findings by provider class. The actuary noted analysis continues to show differences in relative loss experience among classes. Classes identified as relatively underpriced included Class 11 [Surgery Specialty—Neurosurgery] and Class 15 [Availability Plan]. The actuary described the experience of Class 2 [Physicians, No Surgery], noting it is the largest group of providers and has a relatively stable experience. For FY 2013, Classes 2 and 5 [Surgery Specialty – urology, colon/rectal, GP-Major] will see a 5.0 percent reduction in the surcharge rates. Under the option approved by the Board, some classes will see a 10.0 percent

reduction, with the goal to achieve an overall 5.0 percent reduction and provide for some rate equity.

Following the presentation, the actuary responded to questions and provided further comment. In response to a question about the drop experienced in average claims per year for FY 2011, the actuary indicated a similar pattern is seen in a majority of states and reflects improvements in patient safety and the costs associated with bringing an action. A Committee member asked the actuary to comment on the Missouri Rate Modification Factor and any consideration for adjustment following the Missouri Supreme Court decision. The actuary indicated the factor had been increased from 20 percent to 25 percent a few years ago, and there will not be new claims data for one to two years. It is an item the Board will need to consider in the future.

Comments

In addition to the report from the Board of Governor's actuary, the Committee received an overview of recent legal and legislative activities provided by Committee staff. The analyst reviewed a memorandum outlining the October 5, 2012, *Miller v. Johnson* decision upholding the $250,000 cap on noneconomic damage awards. The decision specifically cited the Health Care Provider Insurance Availability Act, the analyst noted, by stating, "As noted in several of our prior cases, the legislature's expressed goals for the comprehensive legislation comprising the Health Care Provider Insurance Availability Act and the noneconomic damages cap have long been accepted by this court to carry a valid public interest." The opinion also stated the Legislature enacted the HCPIAA "in an attempt to reduce and stabilize liability insurance premiums by eliminating both the difficulty with rate setting due to the unpredictability of noneconomic damage awards and the possibility of large noneconomic damage awards." The analyst next reviewed a recent medical malpractice decision in Missouri, *Watts v. Lester E. Cox Medical Centers*, noting the Missouri Supreme Court struck down a 2005 law that had capped noneconomic damage awards at $350,000. This action could have implications for Kansas providers in Missouri. The analyst also reviewed other pending court cases on noneconomic damage awards and provided an update on medical malpractice and medical liability legislation in other states. Other items in the staff review included an updated article for the *2013 Legislative Briefing Book* on the Fund and Kansas medical malpractice laws and the budget and subcommittee reports for FY 2012 and FY 2013. The analyst also briefly reviewed the Committee's report to the 2012 Legislature.

The Committee then reviewed the current marketplace for medical malpractice insurance. The Executive Director of the Kansas Medical Society (KMS), Jerry Slaughter, began his remarks by speaking to the critical need for the work of the Oversight Committee to continue and the vital role it provides for the provider community and the Legislature. Mr. Slaughter then spoke to the recent *Miller v. Johnson* decision, indicating the constitutional questions – construct of the Fund, adequate statutory remedy for the cap, mandatory insurance, and the Plan – have been answered. Describing this "most significant decision for the health care community," Mr. Slaughter noted the decision allows the state to maintain relative tranquility and stability, and liabilities can be adequately funded. Mr. Slaughter next addressed the issue of responding to the decision, as a representative of health care providers in Kansas. The KMS Board intends to engage in conversation about the adequacy of the cap, with a possible comprehensive package rolled out during the 2014 Session. The President of the Kansas Hospital Association, Tom Bell, was then recognized. Mr. Bell addressed the *Miller v. Johnson* decision. Mr. Bell spoke to the positives from the decision – it helps with recruiting of young physicians and helps health care providers who participate in the Fund. Mr. Bell noted the care that was taken in crafting the law and the roles of the Oversight Committee and the Fund. Mr. Bell indicated the conversation regarding the cap was needed and work would need to be done on how to best address the issue.

The CEO of the Kansas Medical Mutual Insurance Company (KaMMCO), Kurt Scott, addressed the medical malpractice marketplace in Kansas. Mr. Scott noted *Miller v. Johnson* and its references to the Plan and the mechanism for providing professional liability insurance coverage in Kansas. Mr. Scott characterized the Plan as "financially responsible," noting the Plan returned moneys to the Fund. Mr. Scott noted there are just

under 400 individuals in the Plan, and there is a competitive marketplace and a reasonably affordable rate available to participants. Mr. Scott noted the Missouri opinion and spoke to two different environments: a cap in Kansas and no cap in Missouri. Mr. Scott addressed the broader context of health care: health care is being more integrated, has a quality focus, and different payment methods are emerging. Mr. Scott also addressed macroeconomic factors to consider in the medical malpractice environment, including inflation, claim frequencies, and the fiscal cliff/ monetary policy.

Committee discussion followed, and Mr. Scott indicated, with more people accessing care, focus is being placed on outcomes and patient safety, as well as on how health care is delivered and reimbursed. Mr. Scott, in response to a question from the Committee, indicated there are more medical malpractice insurance companies in the market, with some six to seven "very active" for physicians and four to five for hospitals. The market was characterized as a soft cycle. In response to an inquiry about the volume of claims filed after the *Miller v. Johnson* decision, Mr. Scott indicated there likely would be an increase in claim frequency. Another Committee member asked the conferee to comment on the number of Plan insured. Mr. Scott indicated the number of participants is decreasing from around 630 health care providers during 2003-2004. Mr. Scott also generally discussed the future for the cap on noneconomic damage awards, saying stability is absolutely essential.

The Deputy Director and Chief Attorney for the Health Care Stabilization Board of Governors, Rita Noll, next addressed the FY 2012 medical professional liability experience (based on all claims resolved in FY 2012 including judgments and settlements). Ms. Noll began her presentation by noting jury verdicts. Of the 21 cases involving 28 Kansas health care providers that were tried to juries during FY 2012, 18 cases were tried to juries in Kansas courts and three cases were tried to juries in Missouri. The largest numbers of cases were tried in the following jurisdictions: Johnson County (6); Jackson County, MO (3); Wyandotte County (3); and Sedgwick County (3). Of those 21 cases tried, 19 resulted in complete defense verdicts and one case resulted in a mistrial. The remaining case returned a verdict in the amount of $8,700. Ms. Noll noted the three claims in Jackson County, Missouri, and the implications of the *Watts* decision and the prior cap in Missouri; in 2005, with the new cap in place, the number of cases involving Kansas health care providers practicing in Missouri doubled. Ms. Noll's testimony also included a 13-year history of total cases, defense verdicts, plaintiff verdicts, split verdicts, and mistrials.

The Chief Attorney then highlighted the claims settled by the Fund, noting in FY 2012 there were no jury verdicts or settlements involving the Fund. During FY 2012, 67 claims in 62 cases were settled involving HCSF monies. Settlement amounts for the fiscal year totaled $21,431,000—these figures do not include settlement contributions by primary or excess insurance carriers. Ms. Noll spoke to trends for claims: increasing medical costs and a decline in the number of claims filed. Of the 67 claims involving Fund monies, the Fund provided primary coverage for inactive health care providers in eight claims. The Fund also "dropped down" to provide first dollar coverage for five claims in which aggregate primary policy limits were reached. In addition to the $21.4 million incurred by the Fund, primary insurance carriers contributed $10.8 million to the settlement of these claims. Six additional claims involving contributions from a health care provider or an insurer whose coverage was excess of Fund coverage totaled $5,083,500.

The Committee members and Ms. Noll then discussed the application of Kansas law and the cap on non-economic damages. Ms. Noll responded by saying the federal courts recognized the law of the state in which the tort arose and also noted the coverage of the Kansas Tort Claims Act for medical students. Ms. Noll's report also included FY 1995 to FY 2012 settlement contributions by primary carriers, the HCSF, and excess carriers; claims settled by primary carriers (FY 2000 to FY 2012); a report of HCSF total settlements and verdict amounts, as well as new cases opened for FY 1977 to FY 2011.

The Chief Attorney next addressed the self-insurance programs and reimbursements from the University of Kansas Foundations and Faculty and residents. Ms. Noll highlighted the FY 2012 KU Foundations and Faculty, and KUMC and

WCGME program costs, noting 12 settlements in FY 2012. Eight of those settlements were for amounts less than $100,000. In FY 2011, there were six settlements. Ms. Noll indicated it is anticipated there will be an increase in settlements due to increased activity in Missouri and the location of KUMC (serving as a regional institution).

The Committee and the Chief Attorney then discussed the issue of reimbursements to the Fund, pursuant to provisions enacted by the Legislature in 2010 SB 414. [SB 414 provided that the funds required to be transferred to the Health Care Stabilization Fund for the payments specified in law (KSA 2009 Supp. 40-3403(j)) for state Fiscal Years 2010, 2011, 2012, and 2013 shall not be transferred prior to July 1, 2013. The Director of Accounts and Reports is required to maintain a record of the amounts certified by the Health Care Stabilization Fund Board of Governors for the specified fiscal years. The bill established a process for the repayment of the deferred SGF payments, as follows: beginning on July 1, 2013, and annually through July 1, 2017, 20.0 percent of the total amount of the SGF deferred transfers is to be transferred to the Health Care Stabilization Fund. No interest will be allowed to accrue on the deferred payments.]

The total reimbursable amounts not reimbursed for FY 2010, FY 2011, and FY 2012 are as follows: KU Foundations and Faculty – FY 2010 ($945,658.21), FY 2011 ($684,218.79), and FY 2012 ($1,259,733.60); and KUMC and WCGME Residents – FY 2010 ($1,201,718.01), FY 2011 ($455,621.55), and FY 2012 ($1,201,108.99). Ms. Noll's testimony provided a total of the accrued SGF reimbursements receivables to the HCSF: as of June 30, 2012, the accrued amount was $5,748,058.85.

In discussion with Committee members, the Executive Director of the Health Care Stabilization Fund, Charles Wheelen, indicated the FY 2009 reimbursements would not be paid. Those amounts were subject to an allotment order and 2010 SB 414 made changes to disallow future allotments. The Committee and Mr. Wheelen then discussed the concept of placing a cap on the Fund; Mr. Wheelen reminded the Committee this approach was taken in the late 1970s and liabilities began to far exceed reserves and surcharges had to be increased to meet the shortfall.

Statutory Report and Fund History. The Executive Director, Health Care Stabilization Fund, then provided the Board's statutory report (as required by KSA 40-3403(b)) for FY 2012. Among the items provided in the report:

- The Fund has a balance sheet as of June 30, 2012, indicating assets amounting to $258,803,104, and estimated liabilities amounting to $221,335,885;

- Net premium surcharge revenue collections amounted to $29,145,143, with the lowest surcharge rate of $50 (chiropractor, first year of Kansas practice who selected the lowest coverage option) and the highest surcharge rate of $16,552 (neurosurgeon, five or more years of Fund liability exposure who selected the highest coverage option); and

- The average compensation per claim in the medical liability cases previously reviewed (62 cases involving 67 claims were settled) was $319,866, an 11.4 percent increase compared to FY 2011. These amounts are in addition to the compensation paid by primary insurers (typically, $200,000 per claim). The amounts reported for verdicts and settlements, the report indicates, were not necessarily paid during FY 2012. Total claims paid during FY 2012 amounted to $21,910,074.

Mr. Wheelen also submitted historical information about the creation of the HCPIAA and the Legislature's responses to liability crises. Three principle features of the HCPIAA have remained intact since 1976:

- A requirement that all health care providers, as defined in KSA 40-3401, maintain professional liability coverage as a condition of licensure;

- Creation of a Joint Underwriting Association, the "Health Care Provider Insurance 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 Health Care Stabilization Fund to:
  - Provide supplemental coverage above the primary coverage purchased by health care providers; and
  - Serve as the reinsurer of the Availability Plan.

The Executive Director also noted 1989 SB 18 and the efforts to ensure actuarial integrity through the creation of three distinct levels of coverage. The bill would have phased out the Fund; interim studies and further consideration by the Legislature continued the Fund and the goals of the HCPIAA. Mr. Wheelen addressed Committee questions regarding electronic forms, noting the Board can receive entire batches of compliance records and will be 50 percent "paperless" next year. He also commented about the reimbursement issue, estimating SGF transfers of $4 million per year for the next five fiscal years.

Following the formal presentations, the Chairperson asked if anyone had any suggested changes to the Health Care Provider Insurance Availability Act. No plan amendments were suggested by those present.

Conclusions and Recommendations

The Committee addressed the two statutory questions posed annually to the Oversight Committee. The Health Care Stabilization Fund Oversight Committee continues in its belief that the Committee serves a vital role as a link among the Fund Board of Governors, the providers, and the Legislature, and should be continued. Additionally, the Committee recognizes the important role and function of the Health Care Stabilization Fund in providing stability in the professional liability insurance marketplace, which allows for more affordable professional liability coverage to health care providers in Kansas.

Actuarial Review. The Committee reviewed the need to contract for an independent actuarial review in 2013. While the Committee continues in its belief that the ability to contract for an independent actuarial review is necessary for the safety and soundness of the Fund, the Committee does not see, at this time, a need for such review in 2013.

Other Recommendations. The Committee then considered information presented by the Fund representatives and health care provider and insurance representatives. The Committee agreed to make the following recommendations:

- **Obligation to reimburse the Health Care Stabilization Fund for administrative services provided to self-insurance programs for the University of Kansas Foundations and Faculty and residents at KUMC and the WCGME.** The Oversight Committee requests the Fund be reimbursed pursuant to the time line created by 2010 SB 414: funds required to be transferred to the Health Care Stabilization Fund for the payments specified in law (KSA 2009 Supp. 40-3403(j)) for state Fiscal Years 2010, 2011, 2012, and 2013 shall not be transferred prior to July 1, 2013. The law allowed for a deferral of payments for these fiscal years and allowed payments to be made, 20.0 percent per year, beginning July 1, 2013, and annually through July 1, 2017. The Board indicated that, as of June 30, 2012, the total accrued State General Fund reimbursements receivables to the Fund totaled **$5,748,058.85**. Of that total, the following amounts were not reimbursed: for FY 2010 - $2,147,376.22; FY 2011 - $1,139,840.04; and FY 2012 - $2,460,842.59.

  Additionally, the Committee notes the amount the Fund, pursuant to the law and a prior allotment, did not receive as reimbursement for services rendered in FY 2009: $2,919,600.31.

- ***Miller v. Johnson* Decision.** On October 5, 2012, the Kansas Supreme Court upheld the $250,000 cap on noneconomic damage

awards. The Committee notes the following from the Court's findings about the *quid pro quo* relationship between the purposes of the HCPIAA and the requirement for certain health care providers to carry professional liability insurance and participate in the Health Care Stabilization Fund and the guaranteed source of recovery for persons seeking to recover pain and suffering damages (limited by the cap, as set by the Legislature):

- "As noted in several of our prior cases, the legislature's expressed goals for the comprehensive legislation comprising the Health Care Provider Insurance Availability Act and the noneconomic damages cap have long been accepted by this court to carry a valid public interest objective."

- [The statute was enacted] "in an attempt to reduce and stabilize liability insurance premiums by eliminating both the difficulty with rate setting due to the unpredictability of noneconomic damage awards and the possibility of large noneconomic damage awards."

The Committee notes the long-term impact of the Fund and its stability on young physicians and health care providers entering the Kansas health care workforce. Additionally, the Committee encourages the Kansas Medical Society and other interested parties to continue the conversation about the cap on noneconomic damages and the larger role of the HCPIAA in the wake of this significant decision. The Committee looks forward to being a partner in this discussion and having further communication on this matter at its meeting next year. The Committee further notes the *Watts* decision and requests updates on the impact on Kansas health care providers practicing in Missouri.

Finally, while the Committee makes no formal recommendations for changes in the statutes governing the work of the Board of Governors, it does recommend continuing the following language:

Fund to Be Held in Trust. The Committee recommends the continuation of the following language to the Legislative Coordinating Council, the Legislature, and the Governor regarding the Health Care Stabilization Fund:

- The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the State General Fund. 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 the behalf of each individual health care provider. Those payments made to the HCSF by health providers are not a fee. The State shares no responsibility for the liabilities of the HCSF. Furthermore, as set forth in the Health Care Provider Insurance Availability Act, the HCSF is required to be ". . . held in trust in the state treasury and accounted for separately from other state funds."

- Further, this Committee believes the following to be true: All surcharge payments, reimbursements, and other receipts made payable to the Health Care Stabilization Fund shall be credited to the Health Care Stabilization Fund. At the end of any fiscal year, all unexpended and unencumbered moneys in such Health Care Stabilization Fund shall remain therein and not be credited to or transferred to the State General Fund or to any other fund.