

# **Committee Reports to the 2016 Kansas Legislature**



## **Supplement**

**Kansas Legislative Research Department  
March 2016**

## **2015 Legislative Coordinating Council**

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# Supplement

Special Committee on Agriculture and Natural Resources  
Special Committee on Ethics, Elections, and Local Government  
Special Committee on Foster Care Adequacy  
Special Committee on Insurance

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

Clean Power Plan Implementation Study Committee



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# Foreword

This publication is the supplement to the *Committee Reports to the 2016 Legislature*. It contains the reports of the following committees: Special Committee on Agriculture and Natural Resources; Special Committee on Ethics, Elections, and Local Government; Special Committee on Foster Care Adequacy; Special Committee on Insurance; Legislative Budget Committee; Robert G. ‘Bob’ Bethell Joint Committee on Home and Community Based Services and KanCare Oversight; and the Clean Power Plan Implementation Study Committee.

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



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## ***Summary of Conclusions and Recommendations***

### ***Special Committee on Agriculture and Natural Resources***

The Committee encouraged legislators to continue looking for and implementing methods to improve on current practices related to water usage in the state. The Committee also recommended the Legislature review both 2015 HB 2245 (Kansas Water Appropriation Act, administrative hearings, and enforcement) and 2015 SB 134 (noxious weed law), and work with interested parties to compromise and make necessary changes to the legislation.

### ***Special Committee on Ethics, Elections, and Local Government***

The Committee considered five of the six topics assigned by the Legislative Coordinating Council, as well as an additional topic. The following recommendations were approved regarding campaign finance:

- The Committee recommends the Legislature adopt 2015 HB 2213, as amended by the House Committee on Elections, concerning increasing campaign contribution limits; and
- The Committee recommends the Legislature adopt 2015 HB 2215, as amended by the House Committee on Elections, concerning campaign finance transferability, with only an additional technical amendment to change the enactment date.

With respect to possible trailer legislation for HB 2104, testimony indicated no such legislation was needed at this time. No suggestions were considered regarding either the possible simplification or reduction of the number of local governments, or the question of whether to require governmental entities to report regarding publicly funded lobbying. With respect to the issue of school board members' conflicts of interest, after discussion the Committee voted to make no recommendation. The additional issue considered, that concerning the City of Frederick, can be addressed during the 2016 Legislative Session after additional research is provided by the League of Kansas Municipalities.

### ***Special Committee on Foster Care Adequacy***

The Committee recommended, in considering the best interest of a child, evidence-based peer-reviewed research on family structure be considered a high priority in making foster care placement decisions. The Committee also recommended legislation be introduced to create a foster care oversight committee; and in the alternative, should legislation creating a foster care oversight committee not be approved, recommended a Senate committee and a House committee each be charged with reviewing the topic of foster care. The Committee was supportive of legislation being introduced to create a foster care oversight committee but did not request a bill be drafted on behalf of the Committee.

### ***Special Committee on Insurance***

**Pharmacy benefits manager legislation.** The Committee reviewed 2015 SB 103 and the current registration requirements for pharmacy benefits managers (PBMs) in Kansas law; received comparative information on similar legislation in other states addressing PBMs and maximum allowable cost (MAC) pricing of generic drugs; heard an update from conferees to SB 103; and reviewed compromise language.

The Committee recommended the insurance committees of the Senate and House take up 2015 SB 103 or a compromise bill early in the 2016 Session.

**Minimum motor vehicle liability insurance limits.** The Committee reviewed the current minimum limits in Kansas law and received comparative information on the minimum limits in other states; received formal testimony on 2015 HB 2067; and held a roundtable discussion with representatives of State agencies, consumers, insurance agents, insurance companies, law enforcement associations, a vehicle leasing company, a plaintiff's attorney, and a legislator (proponent of the bill). Following discussion, the Committee recommended a bill to increase the minimum limit specified in KSA 40-3107 for property damage from the current \$10,000 to \$25,000. (The Committee made no recommendation on either bodily injury limit.)

With regard to the issues of uninsured and underinsured motorists identified, including the determination of penalties and consequences for drivers, discussed before the Committee and outlined in its report, the Committee requested its report be directed to the committee leadership of the House and Senate Judiciary Committees.

### ***Legislative Budget Committee***

The Legislative Budget Committee is statutorily directed to compile fiscal information, study, and make recommendations on the state budget, revenues, expenditures, the organization and functions of the state, its departments, subdivisions, and agencies with a view of reducing the cost of state government and increasing efficiency and economy. Additionally, the Committee is assigned to oversee the implementation of the Kansas Statewide Efficiency Study authorized by 2015 House Sub. for SB 112.

The Committee recommended that the consultant firm of Alvarez & Marsal Public Sector Services be retained to complete the Kansas Statewide Efficiency Study.

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

The Committee recommended the Kansas Department of Health and Environment (KDHE) do the following as it relates to prescription drugs: report the geographic region and type of provider over-prescribing anti-depressant and anti-psychotic drugs; adopt a policy allowing the Managed Care Organizations (MCOs) and providers to use step therapy on the non-waiver population; and review the preferred drug list (PDL) rules for non-waiver population and adopt a policy allowing the MCOs to determine the PDL for non-waiver population. In addition, the Committee recommended KDHE do the following as it relates to Health Homes: continue to evaluate the financial and health outcomes of the existing Health Homes program for individuals with serious mental illness (SMI); adopt a policy excluding the developmental disability population from the Health Homes program for individuals with SMI to remove duplication of case management services; adopt a policy that the automatic opt-in to the Health Homes program for individuals with SMI would not apply until the patient has utilized medical services with an annual minimum value of \$10,000 and, if a patient did not utilize Health Home services during the first 60 days, the patient would be automatically opted-out of the Health Homes program; adopt a policy requiring medical and surgical services in the Health Homes program for individuals with SMI to be provided by the lowest number of primary care providers required to provide the needed services; and adopt a policy holding any targeted case manager financially harmless for the value of services provided to an individual in a Health Homes program for individuals with SMI when notification of patient inclusion in the program has not been provided to the targeted case manager. Further, the

Committee recommended the Kansas Department for Aging and Disability Services review the Colorado Parent as Caretaker Program and determine the feasibility of introducing such a program in Kansas, and KDHE review the actual experience of the presumptive eligibility program for pregnant women to determine whether prenatal services are being delayed due to the presumptive eligibility policy not being appropriately implemented.

### ***Clean Power Plan Implementation Study Committee***

The Committee held an informational hearing to receive updates from the Kansas Department of Health and Environment, the Kansas Corporation Commission, and the Attorney General about the implications of the adoption of a state plan pursuant to docket EPA-HQ-OAR-2013-0602 (the federal Clean Power Plan) concerning the impact to electric ratepayers; electric utilities; the reliability of the electric grid in Kansas; and the overall sovereignty of the State. Following its review, the Committee made no conclusions or recommendations.



# Report of the Special Committee on Agriculture and Natural Resources to the 2016 Kansas Legislature

**CHAIRPERSON:** Representative Sharon Schwartz

**VICE-CHAIRPERSON:** Senator Garrett Love

**OTHER MEMBERS:** Senators Marci Francisco and Larry Powell; and Representatives Jack Thimesch, Ponka-We Victors, and Troy Waymaster

## STUDY TOPIC

Review the administrative hearing procedures of the Division of Water Resources, including a comparison with similar processes in other Department of Agriculture programs; review of the guidelines associated with the selection of the Chief Engineer; and study the current administration of the Kansas Noxious Weed Law and proposed legislation, 2015 SB 134. This review would include:

- ***Kansas Water Appropriations Act—Administrative Hearings and Enforcement.*** Study of 2015 HB 2245 which addresses the administrative process of the Division of Water Resources, including establishing injunctions and admissible evidence and the testimony and input at a hearing related to water right impairment filings; and
- ***Noxious Weed Law.*** Consider the issues associated with 2015 SB 134, which relates to the current administration of the law, the function and format of the proposed advisory committee, and potential efficiencies and financial savings which might be gained by passage of the bill or similar legislation.



# Special Committee on Agriculture and Natural Resources

## REPORT

### Conclusions and Recommendations

Water is and will continue to be an important and controversial issue in Kansas. While no single action will solve all the issues associated with water, it is important to continue to find ways to improve on current practices.

The Committee acknowledges that 2015 HB 2245 is not perfect, but it urges the 2016 Legislature to review the intent of the bill, make necessary changes, and move the bill forward during the upcoming Legislative Session. Potential issues recommended for discussion include requiring notification to be sent to water rights holders or landowners within a certain radius of a new drilling site when they might be impacted by the drilling, the use of telemetric monitoring of wells, and more timely evaluations of water use reports, resulting in more timely notice of violations and hearings.

The Committee also recommends the 2016 Legislature continue to consider changes to noxious weeds law contained in 2015 SB 134, to seek input from the Kansas Department of Health and Environment and persons potentially impacted by the proposed changes, and to work with these parties to compromise on the issues contained in the bill.

*Proposed Legislation:* None.

### BACKGROUND

The Committee was established by the Legislative Coordinating Council and authorized to:

- Review the administrative hearing procedures of the Division of Water Resources (DWR), Kansas Department of Agriculture (KDA), including a study of 2015 HB 2245, which addresses the administrative process, including establishing injunctions and admissible evidence and the testimony and input at a hearing related to water right impairment filings; and
- Study the current administration of the

Kansas Noxious Weed Law and related proposed legislation, 2015 SB 134, which relates to the current administration of the law, the function and format of the proposed advisory committee, and potential efficiencies and financial savings which might be gained by the passage of the bill or similar legislation.

The Committee was authorized to meet for one day.

### COMMITTEE ACTIVITIES

The Committee met on October 22, 2015. At this meeting, the Committee discussed the assigned study topics and received updates on other related issues.

## Water Impairments

**Current practice.** The Director of the DWR provided information on the procedures followed in the event of a alleged water impairment. Currently, there are two parallel procedures available to claimants in such situations: claimants may choose an administrative hearing at DWR with the Chief Engineer or proceed directly to the district court for an injunction. If a claimant proceeds directly to the district court, the court can request that DWR participate in the case as a “referee.” However, once a case is within the jurisdiction of the district court, DWR can take actions only as directed by the court.

The Water Appropriations Program Manager, DWR, also discussed how other programs created by the Kansas Legislature, such as Intensive Groundwater Use Control Areas, Local Enhanced Management Areas, and Water Conservation Areas (WCAs), were developed as a result of water impairments and subsequently have been used as tools to resolve such conflicts.

**2015 HB 2245.** The Chief Legal Counsel for the KDA appeared before the committee to discuss the legislation. He reviewed the dual processes available to claimants under current law: (1) administrative hearing by the Chief Engineer or (2) proceeding directly to district court to seek an injunction. He noted the bill contained additional steps for the Chief Engineer to follow to make the requirements of the current water impairment hearing procedures more complete and add certainty to the process by putting those required steps in statute, since there is no administrative hearing procedure in statute currently.

The Executive Director of Groundwater Management District (GMD) No. 3 stated the bill was an attempt to preserve the beneficial aspects of the current administrative hearing process, but also expressed some concerns about the bill, including the lack of notice requirements and the potential impacts on neighboring property owners, and the fact that the standards used in the administrative process might not be identical to the standards applied by the court. He also stated the GMDs were not involved in the drafting of the provision of the bill requiring GMD approval and expressed concerns that the GMDs would be

required to be involved in every court case that was filed.

**Governor’s Water Vision.** An Assistant Secretary for KDA appeared before the Committee to provide an update on the Governor’s Water Vision, a 50-year plan put together by state agencies and stakeholders concerning conservation and allocation of water resources in Kansas. The Assistant Secretary stated that 70.0 percent of the action items in the Water Vision document are being implemented currently, adding that two items in particular, the creation the Governor’s Water Resources Subcabinet and the establishment of a Blue Ribbon Task Force on funding for water-related projects, are current priorities of KDA. The KDA also is seeking input from stakeholders on potential changes to the civil penalties for exceeding authorized water use and failing to submit required annual water reports.

The Director of Public Policy for the Farm Bureau expressed concern about how penalties for overuse of water are assessed, stating that because it takes a great deal of time for DWR to evaluate water use reports, someone who unintentionally over-pumped could have committed two or three violations and have the water right suspended before receiving the first notice of a violation from DWR.

**Water conservation areas.** WCAs are voluntary programs water rights holders can enter into together in an effort to implement water conservation measures, created by the 2015 Kansas Legislature as part of the Governor’s Water Vision. The Assistant Secretary noted that KDA is currently in discussions with 10 to 15 potential WCAs, mostly in the western part of the state.

**Selection of the Chief Engineer.** The Chief Legal Counsel for KDA appeared to discuss the method by which the Chief Engineer is selected. The Chief Engineer is the chief administrative officer of DWR. The position of Chief Engineer is currently a classified employment, which means the Chief Engineer can be hired and fired by the Secretary of Agriculture, subject to the nature of classified employment. The Chief Legal Counsel also noted that the passage of 2015 HB 2391 allows classified employees to become

unclassified employees, which means the nature of the Chief Engineer position may change. If the position of the Chief Engineer becomes unclassified, the Chief Engineer could be hired and fired by the Secretary of Agriculture without limitation.

**Noxious weeds.** The Deputy Secretary of Agriculture appeared before the Committee to comment on 2015 SB 134, which would remove the state noxious weed list from statute and require the Secretary of Agriculture to adopt the list in rules and regulations. It also would establish the State Noxious Weed Advisory Board to recommend changes to the noxious weed list by using a science-based risk assessment. The bill also would strengthen the ability of county weed departments to enforce the law and would require the use of certified weed-free forage on state lands. The Deputy Secretary stated the proposed advisory committee would streamline the administration of noxious weeds law, would provide the Secretary of Agriculture with more flexibility, and also would allow the Secretary to make science-based decisions regarding noxious weeds.

A representative of the Kansas Cooperative Council and the Kansas Agribusiness Retailers Association stated support for moving the state noxious weed list into rules and regulations and proposed an amendment to the bill that would allow the Kansas Cooperative Council to appoint a member of the proposed advisory committee.

The Vice-president of the County Weed Directors Association voiced support for the creation of the advisory committee on noxious weeds and stated that the bill would give counties more flexibility in dealing with noxious weeds.

The Director of the Gray County Noxious Weeds Department stated support for the portions of the bill granting more flexibility to the counties, but expressed concerns about shifting the list of noxious weeds from statute to rules and regulations and thereby shifting control over noxious weeds from the Legislature to the Executive Branch.

## CONCLUSIONS AND RECOMMENDATIONS

Water is and will continue to be an important and controversial issue in Kansas. While no single action will solve all the issues associated with water, it is important to continue to find ways to improve on current practices.

The Committee acknowledges that 2015 HB 2245 is not perfect, but it urges the 2016 Legislature to review the intent of the bill, make necessary changes, and move the bill forward during the upcoming Legislative Session. Potential issues recommended for discussion include requiring notification to be sent to water rights holders or landowners within a certain radius of a new drilling site when they might be impacted by the drilling, the use of telemetric monitoring of wells, and more timely evaluations of water use reports, resulting in more timely notice of violations and hearings.

The Committee also recommends the 2016 Legislature continue to consider changes to noxious weeds law contained in 2015 SB 134, to seek input from the Kansas Department of Health and Environment and persons potentially impacted by the proposed changes, and to work with these parties to compromise on the issues contained in the bill.



# Report of the Special Committee on Ethics, Elections, and Local Government to the 2016 Kansas Legislature

**CHAIRPERSON:** Senator Mitch Holmes

**VICE-CHAIRPERSON:** Representative Mark Kahrs

**OTHER MEMBERS:** Senators Oletha Faust-Goudeau and Steve Fitzgerald; Representatives Keith Esau, Tom Sawyer, and John Whitmer

## STUDY TOPIC

The Committee is to review and study the following issues:

- The sections of 2015 HB 2104, relating to changing elections to November, with the purpose of determining if any trailer legislation is needed in order to make transition more seamless, correct any drafting errors, and avoid unintended consequences;
- Possible conflicts of interest of school board members including a hearing on 2015 HB 2345, which deals with this topic;
- Campaign finance laws of other states for the purpose of considering ways to modernize Kansas campaign finance statutes;
- Why Kansas has a disproportionate number of local governments and possible ways to simplify and reduce this number;
- Precinct and school district lines, and ways to simplify and/or standardize for the purpose of reducing ballot styles; and
- Whether governmental entities should be required to publish, with their budgets, an accounting of money spent for lobbying purposes (in addition to having required lobbyists to report similar information pursuant to 2015 HB 2183.) (Reference was made to 2015 SB 42, as amended by the Senate Committee of the Whole, for specific detail.)



# Special Committee on Ethics, Elections, and Local Government

## REPORT

### Conclusions and Recommendations

The Special Committee considered five of the six topics assigned by the Legislative Coordinating Council, as well as an additional topic. With respect to possible trailer legislation for HB 2104, testimony indicated no such legislation was needed at this time. No suggestions were considered regarding either the possible simplification or reduction of the number of local governments, or the question of whether to require governmental entities to report regarding publicly funded lobbying. The additional issue considered, that concerning the City of Frederick, can be addressed during the 2016 Legislative Session after additional research is provided by the League of Kansas Municipalities.

With respect to recommendations on the issue of school board members' conflicts of interest, three alternatives were offered: (a) take legislative action to define a 'bright line' applicable to all elected officials and not just school board members; (b) request the State Board of Education gather best practices from local school districts and apply them statewide; or (c) make no recommendation. After discussion, it was moved, seconded, and approved that no recommendation be made.

The following recommendations were approved regarding campaign finance:

- The Special Committee recommends the Legislature adopt 2015 HB 2213, as amended by the House Committee on Elections, concerning increasing campaign contribution limits; and
- The Special Committee recommends the Legislature adopt 2015 HB 2215, as amended by the House Committee on Elections, concerning campaign finance transferability, with only an additional technical amendment to change the enactment date.

**Proposed Legislation:** The Special Committee proposed no bills for introduction.

### BACKGROUND

The Legislative Coordinating Council (LCC), in 2015, created the Special Committee on Ethics, Elections, and Local Government, which was composed of seven members. The LCC charge to the Committee included the following:

- Review the sections of 2015 HB 2104, relating to changing elections to November, with the purpose of determining if any "trailer" legislation is needed in order to make transition more seamless, correct any drafting errors, and avoid unintended consequences;
- Examine possible conflicts of interest of school board members including a review

of 2015 HB 2345, which deals with this topic;

- Review campaign finance laws of other states for the purpose of considering ways to modernize Kansas campaign finance statutes;
- Study why Kansas has a disproportionate number of local governments and possible ways to simplify and reduce this number;
- Review precinct and school district lines, and ways to simplify and/or standardize them for the purpose of reducing ballot styles; and
- Examine whether governmental entities should be required to publish, with their budgets, an accounting of money spent for lobbying purposes, in addition to having required lobbyists to report similar information pursuant to 2015 HB 2183. This was in consideration of a Senate Committee of the Whole amendment to 2015 SB 42, which was not adopted in the Conference Committee Report to HB 2183.

The Committee was granted two meeting days by the LCC. It met on October 6 and November 20, 2015. The Committee studied the need for “trailer” legislation for 2015 HB 2104, campaign finance issues and government entities’ reporting of publicly funded lobbying on October 6. The issues of school board member conflict of interest and the number of local governments were addressed on November 20. Due to the lack of meeting time, the Committee did not study precinct and school district lines as they relate to ballot styles.

## COMMITTEE ACTIVITIES

### **The Need for “Trailer” Legislation for the Spring-to-Fall Elections Bill (2015 HB 2104)**

2015 HB 2104 moved election dates for cities, school districts, and some special districts from the spring to the fall. The bill created several new

statutes, modified many statutes, and repealed others.

To determine whether adjustments were needed to ensure a seamless transition from the previous statutory scheme, the Committee received information from Legislative staff and testimony from the Secretary of State’s Office, the Kansas County Clerks and Election Officials Association, the League of Kansas Municipalities (LKM), and the Kansas Association of School Boards (KASB) regarding this issue. All those offering testimony agreed there was no need for “trailer” legislation at this time. The sole issue noted was possible confusion regarding the effective date; although the bill stated clearly the change from spring to fall elections would commence January 1, 2017, the bill as a whole was made effective upon publication in the statute book (*i.e.*, July 1, 2015). This left in some minds a concern regarding the effective date of a number of attendant statutes, to which changes were made to related activities such as filing for office. However, the Secretary of State’s Office representative stated the Secretary of State had agreed to seek adoption of a regulation clarifying all changes necessarily commensurate with the change in 2017 from spring to fall would not begin until after January 1, 2017. Other conferees agreed this would address the question satisfactorily.

Also related to the effective date was reservation of comment until the change in election dates from spring to fall had taken effect. Several of those offering testimony indicated since HB 2104 will not be effective until 2017, possible changes might surface afterward.

Finally, some conferees noted a more general problem with elections of certain irrigation districts. This was not due to the change of election dates; rather, it concerned issues such as who is qualified to vote. Numerous complaints had been made to county election officers because no irrigation district residents except landowners are qualified to vote in these elections. The Committee Chairperson indicated this issue would be addressed later and not during this Committee’s deliberations.

## Campaign Finance: Contribution Limits

An elections policy specialist from the National Conference of State Legislatures (NCSL) presented historical and comparative information regarding contribution limits. Noting first the distinction between campaign contribution and expenditure limits, the specialist then summarized relevant United States Supreme Court cases. She stated in *Buckley v. Valeo* (1976), the Court found setting contribution limits was constitutional, but setting expenditure limits was not. Contribution limits were upheld because they act as a deterrent to *quid pro quo* corruption. In *Randall v. Sorrell* (2006), the U.S. Supreme Court declared states cannot limit expenditures for “independent communications,” meaning those communications expressly advocating the election or defeat of a clearly identified candidate but not made in cooperation or otherwise coordinating with the candidate, any agent of the candidate, or any political party or party agent. The Court also found states must ensure their contribution limits are high enough to enable a candidate to run an effective campaign. *Citizens United v. Federal Election Commission* (2010) was the case in which the Court declared states cannot place limits on the amount of money corporations, unions, or political action committees (PACs, referred to in Kansas statutes as political committees) use for what are termed “electioneering communications” – those in which advocacy for or against a specific candidate is not present – as long as these groups do not coordinate with a candidate. The Court also ruled corporations, unions, and PACs may spend unlimited amounts of money on ads and other communications designed to support or oppose a specific candidate. The most recent Supreme Court decision in this area was *McCutcheon v. Federal Election Commission* (2014), wherein the Court declared as unconstitutional individual aggregate limits (limiting an individual to a specific total contribution amount for all candidates to which the individual contributes).

In summary, the specialist stated the Court had declared states may impose candidate contribution limits; however, they must not be too low to run an effective campaign, and there may be no individual aggregate limits. In addition, states may not impose limits on independent expenditures.

The NCSL elections specialist summarized current federal contribution limits to a candidate as follows:

- Individual – \$2,700;
- Candidate – \$2,000;
- Multicandidate PAC – \$5,000;
- Non-multicandidate PAC – \$2,700;
- State/local/district party – \$5,000; and
- National party – \$5,000.

In summarizing contribution limits from the states, the specialist stated 12 states have no limits on contributions to candidates, and 6 have no limits at all. Other states have various limits on contributions to candidates from individuals, state parties, PACs, corporations, and unions. Among the 25 states with individual contribution limits, Kansas was reported as having the fifth or sixth lowest limits, depending on whether the office sought was Governor, State Senator, or State Representative. The specialist also reported Kansas’ limits were below both the average and the median of the 25 states for Governor (average – \$4,509; median – \$3,500; Kansas – \$2,000) and State House (average – \$2,112; median – \$1,000; Kansas – \$500), and at the median for State Senate (average – \$2,182; median/Kansas – \$1,000). The NCSL specialist made a similar comparison for state party-to-candidate limits and summarized information about PAC and corporation/union-to-candidate limits as well.

Four neighboring states were highlighted in her presentation for comparison purposes. Nebraska and Missouri have no limits on individual, state party, PAC, corporation, or union contributions to candidates. Oklahoma’s limit on individual contributions is \$2,700 per candidate – higher than Kansas’ limit to any state candidate. Oklahoma’s other limits (from the state party to the candidate, and from a PAC to a candidate) were discussed as well; Oklahoma prohibits corporate and union contributions to candidates. Colorado’s limit on individual contributions to candidates is \$550 per election for statewide

candidates and \$200 per election for legislative candidates; the limits double for a candidate who accepts voluntary spending limits and meets certain specific conditions. Colorado's state party-to-candidate limits per election also were presented: for gubernatorial races – \$569,530; for other statewide offices – \$113,905; for Senate – \$20,500; and for House of Representatives – \$14,805. Other limits were discussed as well.

The specialist indicated 21 states adjust their contribution limits for inflation: Arkansas, Arizona, California, Colorado, Delaware, Georgia, Illinois, Maine, Maryland, Michigan, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Tennessee, and Washington.

With respect to general legislative trends, the specialist indicated most changes to contribution limits were to increase the limits. Alabama, Arizona, Connecticut, Florida, Maryland, Michigan, Minnesota, Nebraska, North Carolina, Vermont, and Wyoming raised contribution limits in the past two years, and legislation has addressed adjusting contribution limits based on inflation. Other trends in campaign finance legislative activity include electronic reporting and searchable databases, independent expenditure reporting, identification or disclaimers for electioneering communications, and regulating coordination between candidates and independent groups.

The Executive Director of the Kansas Governmental Ethics Commission (KGEC) summarized the history of campaign contribution limits in Kansas since 1974, when KGEC was established. The only change since 1990 was in 2012, when the limit for candidates for State Board of Education was increased from \$500 to \$1,000.

### **Transferability of Campaign Fund Balances**

Legislative staff reviewed recent Kansas legislative history and laws from other states on a candidate's ability to transfer campaign fund balances to a campaign account for a different office. Recent Kansas legislative attempts were prompted by a December 2003 Kansas Supreme Court decision, which ruled transfers from a

campaign account by a candidate to any account but the next one for the same office were prohibited. This decision contradicted opinions issued by the KGEC over a number of years.

Beginning with the 2004 Legislative Session, 11 bills addressing this issue have been considered as a result of the Supreme Court decision but none has been signed into law. The 11 bills (2 of which passed both chambers but were vetoed) have differed in their detail. The most recent of these bills is 2015 HB 2215, which was on General Orders in the House of Representatives when the Special Committee heard testimony on this issue, having been recommended for passage, as amended by the House Committee on Elections. This bill version was confirmed by the KGEC Executive Director to represent the KGEC's interpretation of the law as it related to transfers prior to the 2003 Supreme Court decision.

As amended by the House Committee on Elections, 2015 HB 2215 would allow a candidate to transfer campaign funds to a campaign account for any other office sought by the candidate, regardless of the campaign contribution limits associated with the new office. The transfer could take place only after all debts had been satisfied in the original campaign account. These transfers would not be included in the definition of "contribution" contained in the Campaign Finance Act. However, the bill would require transfers made in the current election cycle to be subject to the contribution limits, and any such amounts in excess of these limitations would have to be returned.

The staff member stated approximately half of states expressly address these transfers in statute and reviewed a sample of the various approaches, which include expressly disallowing such transfers, allowing transfers only under certain circumstances, and allowing such transfers subject to campaign limit restrictions.

### **Requiring Governmental Entities to Report Lobbying-related Expenditures**

Legislative staff presented a summary of informational meetings, held during the 2015 Legislative Session in the Senate Committee on Local Government, that addressed the issue of

publicly funded lobbying. The Special Committee addressed this issue because of the Senate Committee of the Whole amendment in 2015 to SB 42 and subsequent adoption of the bill's contents, without this amendment language, onto another bill during Conference Committee.

**General background.** Prior to the Senate Committee's informational meetings, the issue of publicly funded lobbying had appeared in several bills in 2013, 2014, and 2015. These bills (2013 SB 109 and Senate Sub. for HB 2141; 2014 SB 343 and Senate Sub. for HB 2231; and 2015 SB 42) were briefly summarized during the meetings. With respect to the last bill named, during the 2015 Legislative Session, the journey of SB 42 was bifurcated. The bill began with language similar to 2014 Sub. for SB 343, requiring lobbyists, instead of governmental entities, to report on all public funds received from any governmental entity. The bill received clarifying amendments in the Senate Committee on Ethics and Elections. Before Senate Committee of the Whole action on the bill, the Senate Committee on Local Government held its informational hearings.

**Information requests related to publicly funded lobbying.** Two information requests were made concerning the use of public funds to lobby. These information requests, which were detailed in the informational hearings held by the Senate Committee on Local Government, are described below.

On February 4, 2015, the Legislative Division of Post Audit (LPA) submitted a scope statement to the Legislative Post Audit Committee on behalf of the Chairperson of the Senate Committee on Local Government. The request was to determine how much money state and local governments spent on association membership fees and dues in FY 2014, and how much state and local governments (school districts, counties, townships, cities, and special districts) spent directly on lobbyists or to associations that provide lobbying services. Approximately two weeks later, on February 18, the LPA Committee considered but did not approve the request. The letter from the LPA (Division) indicated the LPA Committee would carry the request over to the next meeting when audit requests were to be considered.

The 2015 LPA Committee request was made in part because of what was learned from a 2013 Kansas Open Records Act (KORA) request. In 2013, the Chairperson of the Senate Committee on Ethics, Elections and Local Government (later the Chairperson of the reconstituted Senate Committee on Local Government) requested the Kansas Legislative Research Department (KLRD) survey as many local governments as possible, given time and budget constraints, to obtain information on the number of, and amount spent on, membership dues to various organizations fees other than membership dues to organizations; and lobbyist services procured either by employment or by contract.

Numerous data collection challenges resulted for KLRD, including extensive staff time spent gathering, entering, and reporting the information. Ultimately a small, nonrandom sample was selected of seven counties, along with the largest city in each of those counties, as follows: Brown County – Hiawatha; Johnson County – Overland Park; McPherson County – McPherson; Montgomery County – Coffeyville and Independence (tied for largest city); Reno County – Hutchinson; Sedgwick County – Wichita; and Shawnee County – Topeka.

Another challenge facing KLRD was cost. While some local governments provided the information at no charge to KLRD, others would have required fees ranging from approximately \$3 to approximately \$1,250. Due to budget constraints, the KLRD Director did not authorize payment of these fees, resulting in no information obtained from any of those charging KORA fees.

The results of the KORA request included reports of membership dues paid in 2012 to various organizations ranging from approximately \$5,600 (Hiawatha) to approximately \$442,000 (Wichita). Although Sedgwick County had provided information in response to the KORA request, due to its format KLRD staff could not distinguish between dues and fees without investing numerous additional hours. The Sedgwick County data were reported for 18 months in total (January 1, 2012 – July 30, 2013), instead of the two separate budget years (2012 and 2013) as requested; KLRD staff did, however, compute a total from the combined data spreadsheet. For the 18-month period from

January 1, 2012, through July 30, 2013, Sedgwick County reported spending a total of more than \$510,000 in membership dues and fees.

**Informational hearings.** In addition to receiving information such as legislative history and information requests, the Senate Committee on Local Government heard presentations regarding related actions in other states. Following is a summary of the information received.

The first presentation came from a representative of Americans for Prosperity (AFP)–Texas. The AFP–Texas representative summarized facts surrounding *Venable et al. v Williamson County and the Texas Association of Counties*. Texas law prior to the lawsuit (and afterward) prohibited the use of state funds by a political subdivision (or a private entity) to pay for lobbying expenses incurred by the recipient of state funds. Texas law also allowed county commissioners to spend county general fund money for membership and dues in a nonprofit state association of counties if (among other conditions) neither the association nor an association employee influences or attempts to influence the outcome of any pending legislation, either directly or indirectly.

AFP–Texas, after conducting a review, reported more than \$50 million was spent on lobbying by local taxing entities. It also discovered, despite the law prohibiting the use of county general fund money to lobby, the Texas Association of Counties (TAC) website listed representation before both the state and federal governments as one of the services provided to counties. After unsuccessfully seeking legislative reforms in 2005, AFP–Texas filed a lawsuit (Case No. 05-483-C277, *Peggy Venable, Janice Brauner, and Judy Morris vs. Williamson County and the Texas Association of Counties, 227th Judicial District*). The case was decided in favor of the plaintiffs, agreeing the TAC had violated existing law. However, the judge issued an opinion providing authority for the TAC to continue its lobbying activity if it segregated its funds (separating membership dues and fees from other funds, such as revenues from ads in its magazine) and used the nongovernmental funds for lobbying.

The AFP–Texas representative reported that, at the time of the court decision, TAC employed 15 registered lobbyists. At the time of her presentation, TAC employed 19 registered lobbyists, for a cost of “as much as \$530,000.”

After the opinion was issued, AFP–Texas asked the Texas Legislature for an interim study, conducted in 2006 by the House Committee on General Investigating and Ethics. In its report the study committee acknowledged existence of laws apparently restricting the use of publicly funded lobbying, but the study committee did not recommend “any new ban on local government officials expending taxpayer dollars to lobby Austin, or any new ban on them expending taxpayer dollars to hire lobbyists to do so for them.”

The study committee report did state the following:

- ...[T]his committee strongly believes that local governments can and should be required to fully disclose these lobbying activities, so that citizens can see and judge these lobbying activities for themselves, and then decide whether or not they want to support such activities when they cast [their next] vote. There is valid concern that, under the current disclosure system, citizens cannot obtain accurate information regarding how much of their tax dollars are used to lobby the legislature, and what positions are being advocated by their local governments using these tax dollars.
- ...[P]art of the problem is a flawed disclosure system, and part of the problem is the very definition of lobbying. Because local government officials are statutorily exempt from registering as lobbyists, they can technically argue that their activities are not lobbying and do not need to be reported. Because of this technicality, local officials can spend an unlimited amount of tax dollars in salary and expenses as lobbying....

The study committee recommendations included two requiring specific, detailed reporting

or accounting of public funds used for lobbying, both by lobbyists and by public entities:

- Change the lobby registration process to identify registrants who are paid with local taxpayer funds as well as those who may be paid by other entities but are retained for the benefit of a public entity. When a registration involves a public entity, additional information should be required including the exact amount of the contract (as opposed to just a range), and a more detailed listing of issues covered in the lobby contract.
  - Enact legislation requiring public accounting systems to contain a clear and concise line item which includes amounts expended on lobbying including contracts for lobbying services, direct lobbying expenses (such as travel expenses for public officials) and dues paid to organizations which engage in lobbying, and to include a detailed description of the issues and positions being advocated using taxpayer funds.

The AFP–Texas representative then summarized laws of other states, which range from outright prohibition of some or all such lobbying expenses to more limited laws, such as those requiring reporting of these expenses. Following is a summary of her presentation on other states’ laws:

- More restrictive states: Alaska, Connecticut, Florida, Illinois, Louisiana, North Carolina, South Carolina, Texas, Utah, and Virginia.
- Less restrictive states: Hawaii, Iowa, New Hampshire, and Washington.
- States that have begun working on the issue: Kansas, Oklahoma, and South Dakota.

Also testifying regarding other states’ experiences were a Texas State Representative, the Chief of Staff for a Texas State Senator (the staff

member himself a small-town mayor), a former California Assemblyman, and a former Texas city council member. The Texas Representative described the bill he introduced to prohibit certain political subdivision governing bodies from using public money for lobbying. The Texas Senator’s staff person described the Senator’s new policy to not meet with publicly funded lobbyists, communicating instead with the elected officials instead of their lobbyists, and he described his own experience as a mayor with positions often opposite of those of the TAC. The former California Assemblyman described the extent of publicly funded lobbying among California local governments, indicating in FY 2007 California counties and cities spent \$40 million in taxpayer money on lobbyists to influence the state legislature. The Texas city council member described a 2011 situation in which he found himself testifying on a controversial annexation bill in opposition to his own staff. He then pointed out the difference between the two types of advocacy – “an elected official versus a government” – where taxpayer dollars are used to lobby for more power or more money versus an elected official lobbying as the elected representative of the entity. Finally, the city council member stated governments do not possess the First Amendment right of free speech; individuals have rights and are the ones who must tell governments what their role is. It is a question of what the proper roles are of governments and of elected officials.

**SB 42 and HB 2183 action after the informational hearings.** SB 42 was considered in the Senate Committee of the Whole after the informational hearings held by the Senate Committee on Local Government were concluded. During the Committee of the Whole meeting, the Chairperson of the Senate Committee on Local Government proposed an amendment to add a requirement for governmental entities to report on public funds used for lobbying purposes. The amendment, which was adopted by the Committee of the Whole, mandated the reporting of information by any governmental entity required to publish any appropriation or budget pursuant to one budget statute, namely KSA 2015 Supp. 79-2925b(c). The report was to include the following:

- An itemized listing of all public funds used by the governmental entity for (a)

employing or contracting for lobbyist services; (b) paying membership dues or other financial support to any association that employs a lobbyist; and (c) paying membership dues or other financial support to an association with an affiliated organization (organization name included) that employs a lobbyist; and

- An itemized listing of (a) all lobbyists who received public funds from the governmental entity; (b) all lobbyists hired by any association that receives public funds from the entity; and (c) all lobbyists hired by associations and affiliated organizations that receive public funds from the entity.

SB 42 passed the Senate by a 38-0 vote, whereupon it was assigned to the House Committee on Elections and no further action was taken in 2015. However, a compromise was reached on this issue during Conference Committee on HB 2183 in the 2015 Session. The Conference Committee for HB 2183 agreed to delete the Senate Committee of the Whole amendment language to SB 42, requiring governmental entities to report, and incorporate modified SB 42 language mandating only lobbyists to report regarding publicly funded lobbying expenses, beginning January 10, 2017. The HB 2183 Conference Committee report was adopted by both chambers and approved by the Governor.

### **School Board Members—Conflict of Interest**

The Special Committee’s purpose was to discuss 2015 HB 2345, and not to hold a hearing. The Special Committee received a summary of the bill, which would create new law prohibiting a person from serving as a local school board member or a member of the State Board of Education if the person had a conflict of interest. A conflict of interest is defined in the bill as a person who:

- Has a substantial interest (also defined in the bill) in any business that works directly with or provides services to this state or the school district in which the person resides;

- Holds a position of administrator, teacher, or employee of a school district or the State Department of Education;
- Resides in a home where an employee of a school district or the department of education also resides; or
- Has a spouse, sibling, or parent who is an employee of a school district or the Department of Education.

Legislative staff presented information on the laws currently governing local school boards with respect to conflicts of interest. There are three main legal restrictions on school board members in regard to conflicts of interest. First, a board member may not be a teacher, superintendent, assistant superintendent, deputy superintendent, associate superintendent, supervisor, or principal in the district they serve. (KSA 72-8202a and KSA 72-8202e) Second, a board member must disclose all of his or her financial and business “substantial interests” (defined differently in current law than in the proposed bill). (KSA 75-4301a) Third, a board member may not make a contract with a business in which the board member or spouse has a substantial interest and must abstain from any action regarding that contract. (KSA 75-4304) The second and third restrictions apply to all local government officials. Legislative staff also summarized current Kansas laws regarding the responsibilities and legal status of local school boards. Local school boards are supervised by the State Board of Education, and their powers and duties are granted by the Legislature.

Staff then presented information regarding a survey of local school board members, which was for the purpose of determining how many current members would be disqualified under the bill’s original language. With the assistance of both the Kansas State Department of Education (KSDE) and the KASB, staff distributed a confidential survey to all members of local school boards in Kansas. Survey questions were as follows, with instructions to answer each and every condition for which the answer was affirmative:

- \_\_\_\_\_ I am employed by a (any) Kansas school district.

- \_\_\_\_\_ I am employed by the Kansas State Department of Education (KSDE).
- \_\_\_\_\_ My spouse, sibling, or parent is employed by a (*any*) Kansas school district.
- \_\_\_\_\_ My spouse, sibling, or parent is employed by KSDE.
- \_\_\_\_\_ I reside in a home where an employee of any Kansas school district or the KSDE also resides.
- \_\_\_\_\_ I have a substantial interest [defined in the survey] in a business that works directly with or provides services to the State of Kansas or my own school district of residence.
- *Optional*: I am a member of USD # \_\_\_\_\_.

A total of 1,136 responses, or 56.9 percent of a total possible from 1,998 board members, were received as of October 22, 2015. The percentage of respondents out of the total number of *filled* board positions might be higher, as it is unknown how many of the 1,998 possible positions were vacant at the time of the survey.

Staff noted these survey results should not be generalized to the entire population of Kansas school board members because it is unknown why those who did not respond did not do so.

A majority (59.1 percent) of respondents reported having none of the listed conflicts. The remaining 40.9 percent of the respondents reported having at least one of the conflicts. Detail was provided on staff analyses by specific area of conflict and by number of conflicts per respondent. A summary of the detail follows.

- A total of 685 “Yes” responses were received to the 6 items listed above. This does not represent 685 separate respondents, as some respondents reported more than 1 conflict.

- The data revealed school district employment by a relative (*i.e.*, spouse, sibling, or parent) is the area for which most of the 1,136 respondents (339, or 29.8 percent) reported a conflict. These numbers do not reflect those board members who have adult children who work for a school district. The affirmative responses to Item 5, which generated the next highest number of affirmative responses (173, or 15.2 percent), relate to school district and KSDE employment of someone living in the same household.
- Third highest in the number of affirmative responses was Item 6, where a member has a substantial interest in a business that works directly with or provides services to the State of Kansas. A total of 122 respondents, or 10.7 percent, responded affirmatively to this item.
- Of the total 1,136 respondents, 671 reported no HB 2345 conflicts and 465 individuals reported at least 1 HB 2345 conflict. Of these, 186 reported multiple conflicts.
- The most frequent combination involved affirmative answers to item 3 (a spouse, sibling, or parent is employed by any Kansas school district) and item 5 (member resides in a home where a school district or KSDE employee also resides). Of those who answered “yes” to two or more questions, 84.4 percent said “yes” to those two. Of 154 who answered “yes” to only 2 questions, 126 (81.8 percent) said “yes” to questions 3 and 5.

The Special Committee then received testimony from several current and former local school board members, a retired school district superintendent, a member of the Kansas State Board of Education, and a representative of KASB. Board members stated checks and balances exist in the current system; for example, voters generally knew relevant information about the board members’ situations (*e.g.*, one’s wife was a teacher; another owned a business that had done business with the district). Board members also stated their integrity has served to guide their

behavior with respect to whether to act on an issue in which there might be a conflict. Board members and other conferees testified the pool of candidates already is limited, and the bill would limit it to a much greater extent. The KASB representative indicated KASB conducted training sessions annually with new local board members regarding conflict of interest. Current law does not require a board member to recuse himself or herself when a conflict exists, nor can another member force such recusal. However, KASB training alerts members to conflict situations and advises the members to be cognizant of potential conflict areas as they determine whether to engage in action on a particular issue. Another point made was the bill singled out school board members, although every elected official faces the same or similar potential conflicts and generally has no stronger conflict laws under which to operate.

### **Number of Local Governments**

Legislative staff summarized information obtained from 2012 U.S. Census data, which ranked 48 of the 50 states regarding size of local government. (Two states did not provide data.) Kansas ranked (a) third among the 48 states with respect to the number of “general purpose” governments (county, municipal, town, or township) per 100,000 people; (b) seventh on the number of “special purpose” (school district and special district) governments per 100,000 people; and (c) fourth overall for the total number of local governments per 100,000 people.

Five conferees provided historical and comparative information regarding Kansas’ local governments: representatives of the Kansas Association of Counties (KAC), LKM, a member of the Stafford County Board of County Commissioners, the Legislative Post Auditor, and a former speaker of the House of Representatives.

According to the KAC Executive Director, 32 Kansas counties preceded statehood. Another 44 were established between 1861 and 1879. The remaining 44 were established in 1880 or later. A map was provided indicating dates of establishment; in most cases, the counties established earliest were farthest east, and those established latest were farthest west. A United States map of county boundaries showed that

counties are generally more numerous, and often smaller in area, in the states farther east. The *Kansas Constitution* requires each county to have at least 432 square miles. Wyandotte County, established prior to statehood, does not have 432 square miles but has been allowed to continue as a county. Butler County is the largest county, having 1,431 square miles.

With respect to county commissioner board size, current law allow boards to have three, five, or seven members. A county’s board size can change, either increasing or decreasing in size, by way of election. At one time all 105 counties’ boards had 3 members. Over the past several years there has been some gradual increase in the sizes of boards though not necessarily related to county population; now, there are 12 counties with 5-member boards.

There are three different road systems, established in statutes, and a fourth system, established under the Interlocal Cooperation Act, that is used in some counties. The 3 statutory systems are the non-county unit road system, operating in 35 counties, in which the county maintains the main roads and townships maintain the local roads. The second, the county unit road system, in which townships have no road maintenance responsibilities and all roads are maintained *via* a county-wide tax, is used in 67 counties. The third system, the general county rural highway system, is similar to the county unit road system but under this system city residents do not pay taxes for former township roads. It is used in Clay, Pottawatomie, and Leavenworth counties.

Townships were discussed by three conferees: an LKM representative, the KAC Executive Director, and a Stafford County Commissioner, who is a former township board member. The LKM representative indicated there are approximately 1,268 townships. The KAC Executive Director discussed townships through his explanation of road maintenance systems and mention of the additional township duties of fire suppression, cemetery maintenance, and noxious weed control. The KAC Executive Director stated some counties have totally eliminated townships. The Stafford County Commissioner stated Stafford County has 21 townships; 3 small and 3 other, extremely small, towns; and 4,300 people. Each of the 21 townships has a road grader. One of the 21

townships has only 7 people, yet the township board must have 3 members. Filling the positions, including filling vacancies, has been problematic. The County Commissioner also questioned the efficiency of spending \$250,000 for a road grader to maintain 50 miles of road. Some townships turn over road maintenance to the county, pursuant to statute. Other townships have followed dissolution procedures, whereupon road maintenance falls to the county.

The LKM representative indicated 15 cities existed prior to Kansas statehood, and a few new cities have been added in the past 2 decades. The last was the City of Parkerfield in Cowley County in 2004. Two cities have become unincorporated, the most recent being Treece in Cherokee County in 2012.

Cities in Kansas are deemed either first, second, or third class, generally based on population. Kansas has 25 first class, 98 second class, and 503 third class cities, for a total of 626. Approximately 82 percent of the state's population resides in incorporated cities.

Cities change class as they grow in population. First class cities have 15,000 or more people. Once a city's population reaches 25,000 it must become a first-class city. Second-class cities have a population of at least 2,000 but less than 15,000 people. When a city's population reaches 5,000, it must become a second-class city. Cities of the third class have populations under 2,000. To incorporate, a new city must have either 250 residents or 250 platted lots served by water and sewer lines.

The LKM representative briefly mentioned school districts and special districts. She stated there are 306 "school districts" (including community college districts) and 1,523 special districts.

Two prior studies were discussed. The issue of special districts was addressed in the 1993 Interim by the Senate and House committees on local government, in terms of the duties and functions of special district governments and their accountability to taxpayers. The Senate Local Government Committee deferred to the House Local Government Committee in regard to specific

recommendations on this topic. The House Committee (a) agreed to conduct a survey of recreation commissions in conjunction with the Kansas Recreation and Park Association and have the data tabulated for review during the 1994 Session; (b) concluded all special districts that are supported by tax moneys should be brought under the cash basis law and recommended the introduction of legislation (HB 2565) to accomplish this; (c) agreed to pursue the drafting of legislation at the start of the 1994 Session to provide a means for all fire districts to consolidate; and (d) agreed to continue to investigate the possibility of drafting legislation to establish uniform procedures for the creation, consolidation, and dissolution of special districts.

In 2003, the LPA studied the issue and produced a report titled "Local Governmental Reorganization: Assessing the Potential for Improving Cooperation and Reducing Duplication." The audit report addressed two questions related to reorganizing and improving cooperation among (a) city and county governments and (b) townships and special districts.

The report stated numerous opportunities existed to streamline city and county governments through (a) merging whole units of government; (b) consolidating departments from two or more cities or counties into a single department; and (c) sharing staff, facilities, equipment, and other resources, and using cooperative purchasing agreements.

Regarding townships and special districts, the report stated the following:

- Townships, cemetery districts, and drainage districts comprised more than half the State's units of local government.
- A potential existed for eliminating township governments, cemetery districts, and drainage districts and reassigning their duties and funding to city or county governments, largely because cities and counties generally already provided the same types of services.

## **Lack of Governing Body for the City of Frederick**

The Special Committee addressed one topic in addition to those assigned by the LCC: that of the absence of a City of Frederick governing body and the laws governing the dissolution of cities.

The City of Frederick, though it still is incorporated, apparently has no governing body. This is despite the LKM representative's statement that the last people elected to the city council would, according to law, continue to serve. According to the LKM representative, League staff have tried to communicate with the last city clerk of which LKM was aware, in an attempt to determine what could be done to assist in the situation.

It was noted no one filed as a candidate for the city council in the last election. Additionally, no 2016 budget was filed.

The LKM representative summarized three general categories of city dissolution law among states: passive, involuntary, and voluntary dissolution. Passive and involuntary dissolution are solely in the power of the state, while voluntary dissolution requires affirmative action or consent by the city. Kansas law provides only for voluntary dissolution *via* KSA 15-111, with one limited exception noted in KSA 2015 Supp. 15-111a. The former statute requires (a) a petition of the majority of voters in a city of the third class and then (b) an order for an election by the city council. This statute was adopted in 1872, codified in 1923, and has not been changed since. KSA 2015 Supp. 15-111a, adopted in 2012, provides for automatic dissolution for any city having received public money in 2010 or 2011 from the U.S. Environmental Protection Agency through the Kansas Department of Health and Environment relating to the buyout and relocation of its residents (Treece).

## **CONCLUSIONS AND RECOMMENDATIONS**

The Special Committee considered five of the six topics assigned by the LCC, as well as an additional topic. With respect to possible trailer legislation for HB 2104, testimony indicated no such legislation was needed at this time. No suggestions were considered regarding either the possible simplification or reduction of the number of local governments, or the question of whether to require governmental entities to report publicly funded lobbying. It was noted the issue concerning the City of Frederick could be addressed during the 2016 Legislative Session after additional research is provided by the LKM, the purpose of which would be to determine whether legislation could be drafted to define a trigger that would precede implementation of a passive dissolution process.

With respect to recommendations on the issue of school board members' conflicts of interest, the following three alternatives were offered by the Chairperson: (a) take legislative action to define a 'bright line' applicable to all elected officials and not just school board members; (b) request the State Board of Education gather best practices from local school districts and apply them statewide; or (c) make no recommendation. After discussion, it was moved, seconded, and approved that no recommendation be made.

The following recommendations were approved regarding campaign finance:

- The Special Committee recommends the Legislature adopt 2015 HB 2213, as amended by the House Committee on Elections, concerning increasing campaign contribution limits; and
- The Special Committee recommends the Legislature adopt 2015 HB 2215, as amended by the House Committee on Elections, concerning campaign finance transferability, with only an additional technical amendment to change the enactment date.

# Report of the Special Committee on Foster Care Adequacy to the 2016 Kansas Legislature

**CHAIRPERSON:** Senator Forrest Knox

**VICE-CHAIRPERSON:** Representative Connie O'Brien

**OTHER MEMBERS:** Senators Laura Kelly and Mary Pilcher-Cook; and Representatives Erin Davis, Willie Dove, and Annie Tietze

## STUDY TOPIC

### *Review Issues Pertaining to Foster Care Adequacy:*

- Review the level of oversight and supervision by the Department for Children and Families (DCF) over foster care contractors;
- Evaluate whether a working group consisting of attorneys in the area of family law, judges, foster parents, and parents with reintegrated children would aid in addressing foster care concerns;
- Study the proper selection of foster parents and the qualifications of foster parents; and
- Review the duties of those individuals responsible for foster children, the Safe Families Act, the disconnect between DCF and foster care contractors, and the Grandparents Rights Law.



# Special Committee on Foster Care Adequacy

## REPORT

### Conclusions and Recommendations

The Committee makes the following conclusions and recommendations:

- In considering the best interest of a child, evidence-based peer-reviewed research on family structure be considered a high priority in making foster care placement decisions; and
- Legislation be introduced to create a foster care oversight committee similar to the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight; and should legislation creating a foster care oversight committee not be approved, a Senate committee and a House committee each be charged with reviewing the topic of foster care.

**Proposed Legislation:** The Committee was supportive of legislation being introduced during the 2016 Legislative Session to create a foster care oversight committee, but did not request a bill be drafted on behalf of the Committee

### BACKGROUND

The Legislative Coordinating Council (LCC) in 2015 created the Special Committee on Foster Care Adequacy, which was composed of seven members. The Committee was tasked by the LCC to review issues pertaining to foster care adequacy as follows:

- Review the level of oversight and supervision by the Department for Children and Families (DCF) over foster care contractors;
- Evaluate whether a working group consisting of attorneys in the area of family law, judges, foster parents, and parents with reintegrated children would aid in addressing foster care concerns;
- Study the proper selection of foster parents and the qualifications of foster parents; and

- Review the duties of those individuals responsible for foster children, the Safe Families Act, the connection between DCF and foster care contractors, and the grandparents rights law.

The Committee was granted one meeting day by the LCC. After the November 17, 2015, meeting, a request for another interim day was made to the LCC, but the request was not granted. The Committee met on January 11, 2016, for the purpose of deliberating and making recommendations for inclusion in this Committee report.

### COMMITTEE ACTIVITIES

The Committee held an all-day meeting on November 17, 2015. After making introductions and reviewing the charge to the Committee, the Chairperson commented on a bibliography he had prepared, titled "Chairman's Notes"; he noted the

far-reaching effects of family structure on children's lives.

## Overview of the Kansas Foster Care System

The Committee received an overview of the Kansas foster care system from Kansas Legislative Research Department (KLRD) staff. Staff began by reviewing a historical timeline of the foster care system, including the establishment of the State Board of Social Welfare in 1937, enactment of the Kansas Code for Care of Children in 1982, privatization of the foster care system in 1996 and 1997, and transfer of foster care licensing responsibilities from the Kansas Department of Health and Environment (KDHE) to DCF in 2015.

Staff presented information on the role of various entities in the Kansas child welfare system, including DCF, the federal Department of Health and Human Services, the judicial system, and foster care contractors. Staff reviewed the child in need of care (CINC) process, which may lead to the initiation of foster care services, and those individuals who are required to report to DCF any suspicion that a child may be a CINC ("mandatory reporters"). Next, the CINC investigation and placement process was reviewed, followed by general information on Kansas foster care contractors, statewide statistics, and payments and funding.

Staff then reviewed the authorizing statutes for DCF related to the foster care system and provided additional details related to the privatization of foster care in Kansas, a 2001 performance audit of foster care contracts (staff noted the contracts in effect at the time of this audit are no longer in effect), and privatization efforts in other states, including system-wide privatization in Florida, large-scale privatization in Illinois, and small-scale privatization in Missouri, Nebraska, and Texas. Staff then provided a summary of the 11 audit reports produced by the Legislative Division of Post Audit (LPA) between 2001 and 2015 that include topics related to the foster care system.

Next, staff presented a chart summarizing legislation involving foster care and related issues introduced from the 2011 Session through the 2015 Session, as well as related studies by the Kansas Judicial Council and some agency and

other stakeholder actions during that period. Staff presented additional detail regarding 2015 SB 37 (Foster Parents' Bill of Rights Act) and 2015 SB 148 (Safe Families Act), including some testimony that had been offered at the hearings on those bills.

Staff then presented an overview of existing Kansas workgroups, task forces, and committees that address Kansas foster care issues and additional detail regarding the makeup of the Kansas Judicial Council's Juvenile Offender/Child in Need of Care Advisory Committee.

Finally, staff presented a summary of foster care data that had been requested of and received from DCF based upon categories outlined by the Chairperson. The data include information from 2011 through 2015 (except as noted below) in the following categories:

- General and demographic information;
- Out-of-home placement settings;
- Permanency goals;
- Average length of stay by placement type before reunification;
- Length of stay information;
- Foster home licensing and inspection data (including a separate list of prohibitive offenses for foster home licensure);
- Substantiated maltreatment;
- Foster home alcohol and tobacco use regulations;
- Foster care and adoption;
- Latest quarterly reports from foster care contractors; and
- Crossover youth report examining the number of youth exiting home placement who later entered the custody of the Deputy Secretary of Juvenile Services as juvenile offenders.

Staff noted certain data that had been requested were not available, including:

- Organizational/system charts (in development by DCF);
- Foster parent arrests (conviction data available and provided);
- Number of foster homes by family structure (data not kept); and
- Number of foster homes in which alcohol or tobacco are used.

Staff also provided the Committee with the latest report showing national fiscal year (FY) 2014 data from the U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau's Adoption and Foster Care Analysis and Reporting System (AFCARS).

Following the presentations by staff, Committee members asked staff to request the following additional data from DCF or other sources:

- Information regarding the number of days between a child's removal until adjudication;
- Any LPA audits examining the current foster care system in comparison to the past;
- Information on persons who are placed in foster care and who later are convicted of crimes as adults; and
- Information on the number of days of school missed for children in grades 1 through 12 who are in foster care.

A Committee member asked staff if Executive Reorganization Order No. 43 transferred all foster care responsibilities of KDHE to DCF. Staff replied that it did. Another member asked staff to compare the Kansas version of the Safe Families Act with versions enacted in other states, and staff

replied that this comparison could be completed and provided to the Committee at a later date.

### **Social Worker Perspective on Kansas Foster Care**

A Board member for Kansas Chapter of the National Association of Social Workers provided written testimony outlining the foster care system from the social workers' perspective and provided recommendations for the Committee. The Board member noted the rapid turnover of social workers in the child welfare systems, at both DCF and the foster care contractors, and the numerous LPA reports since 1991 on different aspects of foster care that did not include the reports related to the foster care settlement agreement reached in 1993 in the 1989 case, *Sheila A. v. Hayden*. The recommendations made by the Board member included the investigation of the scope of social worker turnover in both DCF and foster care contractors, including caseloads; a determination of the reasons social workers are leaving; the implementation of a multi-year focus on recruitment and retention of social workers; and the development of long-term incentives, supports, career path (advancement), professional development, on-going training, supervision, student loan forgiveness, and competitive compensation.

### **Department for Children and Families' Perspective and Kansas Foster Care Contracts**

A DCF staff member stated DCF received 65,152 reports of alleged abuse or neglect of children in FY 2014 and then outlined the foster care process for children who require out-of-home placements. The DCF staff member stated most children who require foster care have been abused or neglected, but some children who have not been abused or neglected may be placed in foster care for reasons such as out-of-control behavior, overwhelmed parents, failure to attend school, or running away from home. The staff member noted children in foster care are most frequently placed with relatives or in licensed family foster homes, though some children may need more structured settings, such as group homes or residential centers. DCF entered into contracts that commenced on July 1, 2013, with two private

agencies (Saint Francis Community Services and KVC Behavioral Healthcare [KVC]) to provide reintegration, foster care, adoption, and family preservation services in contract regions that align with the four DCF regions. The initial term of the contract was four years, but DCF renegotiated the costs of the contract in 2015, as is allowed every two years.

A DCF staff member stated there are six protective factors included in all aspects of the child welfare system that DCF expects to be a part of all contracts and, when present, these factors improve the well-being and health of children and families: nurturing and attachment, knowledge of parenting and child development, parental resilience, social connections, concrete support for parents, and social and emotional competence of children.

According to a DCF staff member, as part of the contracts entered into in 2013, DCF enhanced its role in monitoring children placed in the custody of the Secretary for Children and Families (Secretary). Placements, case plans, and case plan goals are subject to DCF approval, and contractors are required to notify DCF in advance of placement changes, unless an emergency exists. The DCF staff member stated important considerations for placements include whether placement is possible with grandparents, other relatives (including siblings), or those with a close relationship with the child; the ability for the child to remain in the same school and the same community; and the potential for permanency. DCF also expanded services to families following permanency in order to maintain safety and stability. The contractors provide continued services following permanency through reintegration and, if permanency is reached through adoption, the contractors continue to serve the child and the adoptive family for the life of the contract. The contractors also are responsible for reviewing and completing the revised Transition Plan that went into effect in July 2015 for youth in the Secretary's care beginning at age 16 in order to teach them skills that reinforce personal accountability.

The DCF staff member stated the contractors are required to maintain a complaint response system and collaborate with DCF in complaint responses. DCF maintains an Office of Customer

Services and a Foster Parent and Youth Ombudsman to assist in responding to concerns.

Additionally, contractors are required to employ an in-home preservation system to implement safety and risk assessments. Staff training is provided. DCF assesses this model through outcomes, case reads, and site visits. The DCF staff member stated there is a requirement to contact the family within 24 hours of a referral for family preservation services and to make the first in-person contact within 2 business days. DCF may require an earlier in-person contact if deemed appropriate.

A second DCF staff member outlined the licensing procedure for foster care homes, noting the licensing process was transferred from KDHE to DCF in July 2015 by Executive Reorganization Order No. 43. The staff member noted the change was intended to allow DCF to better monitor the entire foster care system and streamline services for any child determined to be a CINC, their families, and foster parents, and to make DCF responsible for all foster-care-related activity in the state.

The DCF staff member outlined the process to become a foster parent and the requirements that must be met by the applicants. Prospective foster parents first contact a child placing agency (CPA) to receive sponsorship. The CPA works with the prospective foster parent to complete the foster parent application and to prepare the home for inspection by the DCF Licensing Division surveyor. In examining the qualifications and expectations for foster parents, statutory and regulatory requirements center on addressing where the child will reside, identifying the individuals who also will be in the home, and the treatment of the child.

According to the DCF staff member, it is the responsibility of the Licensing Division to ensure the physical environment of the home does not present a threat to the health, safety, or welfare of any child in foster care. State regulations address numerous requirements that must be met to provide for adequate sleeping arrangements, including the minimum required size of the room, provisions for sharing a room with another child, and restricting the maximum number of foster

children allowed in any one home to four. Exceptions to the number of foster children can be made in certain circumstances, most commonly to allow for keeping larger groups of siblings together in the same home.

The DCF staff member stated the fundamental and basic requirements to be a foster parent include being at least 21 years of age, having sufficient income or resources to provide for the basic needs and financial obligations of the foster family and to maintain compliance with all regulations governing family foster homes, and having access to safe transportation. Foster parents must complete required training, commonly referred to by the acronym PS-MAPP, consisting of 30 hours of training conducted over a 10-week period. Foster parents and any other person who is 10 or older and resides, works, or regularly volunteers in a foster home must pass a background check. Kansas statute (KSA 2015 Supp. 65-516) identifies approximately 100 prohibited criminal offenses for which a conviction will disqualify one from working, residing, or regularly volunteering in any child care facility, including a family foster home. A person also may be prohibited from being a foster parent for committing an act of physical, mental, or emotional abuse or neglect or sexual abuse and being listed on the Child Abuse and Neglect Registry maintained by the Secretary. Individuals who have had a child removed from their home under a CINC finding or had their parental rights terminated also are prohibited from becoming foster parents. Foster parents also must undergo a health assessment to determine their physical and mental ability to provide safe and healthy care for children in foster care.

The required treatment of a foster child also was explained by the DCF staff member. A foster parent must act in the best interest of the health, safety, and welfare of the foster child, including providing supervision appropriate for each child, nutritious food, clean clothing and bedding, and birthday and holiday gifts, and being active participants in the child's case plan and implementing the provisions assigned to the foster parents. Kansas Administrative Regulations outline the appropriate methods of disciplinary guidance appropriate for the age of the child to which foster parents must agree and also set out the prohibited punishments. Kansas foster parents

must ensure the foster child's school attendance and serve in a mentoring role to assist the child in learning basic life skills that will prepare him or her for life after foster care.

The DCF staff member briefly explained the Secretary may deny a foster care application or revoke a foster care license, and the denial or revocation order must state the specific reasons justifying such action. The applicant or licensee has the right to a hearing under the Kansas Administrative Procedure Act to appeal the Secretary's decision, and a decision of the administrative law judge may overrule the Secretary's determination.

A foster care overview sheet and a Child Welfare Fact Sheet, both dated November 2015, were provided by the DCF staff member. The overview sheet outlined the number of children in foster care, noting the number of children in out-of-home placement is influenced by the number of those entering the system (removals) and the number of those exiting the system (exits). The DCF staff member noted, in order to see a decrease, or no increase, in the total number of children in foster care, the number of exits must be equal to or exceed the number of entries into the foster care system. The staff member provided data indicating the number of children entering foster care in a given month has held steady for the past two fiscal years, at 317 children. However, over the past four fiscal years, the average number of those exiting foster care in a given month has not kept pace with the number of those entering, resulting in an increase in the number of children in foster care.

The information provided by the DCF staff member noted children ages one to three comprise the largest age group of children in out-of-home placement, and the median age of a child in foster care is eight. The data indicates the average length of stay in foster care for those who are reintegrated is nine months and for those adopted is 33 months. During FY 2015, 765 adoptions were finalized, with 54 percent of children having a foster parent as an adoptive resource. The FY 2015 adoption finalization number reflects an adoption increase of 99 over the previous fiscal year. Additional statistics on adoption, family preservation, primary reasons for removal, placement settings, permanency goals, and general foster care were

provided in the Child Welfare Fact Sheet, along with information on the child protective services process, the history of privatization in Kansas, and child welfare goals; an explanation of substantiated and unsubstantiated findings; and a list of parents' rights.

The Secretary for Children and Families provided an overview of DCF activities related to foster care. The Secretary outlined agency reforms and initiatives to provide more oversight of contractors, as well as establishing an ombudsman liaison program and placing foster care liaisons with the contractors to assist with placement decisions. The Foster Parent and Youth Ombudsman appointed in June 2014 will address the concerns of foster parents and youth who have been or are in foster care. Noting DCF is actively recruiting foster parents, the Secretary expressed a need to develop a surplus of foster homes in order to make more relevant placements and give foster children placement choices. In response to Committee questions, the Secretary stated the agency is reviewing the entirety of the licensing procedures. The Secretary stated DCF is looking into social worker compensation to acknowledge long-time social work employees and to address concerns with pay.

The Secretary's testimony provided data on child fatalities and maltreatment while in foster care or receiving family preservation services. The data indicate 46 foster care fatalities and 37 family preservation fatalities between SFY 2001 and SFY 2016 (through September 30, 2015). However, the data note foster care fatalities can be due to the illness of a child, vehicle accident, or other non-maltreatment reasons.

The Committee's questions for the Secretary included a request for information regarding the use of psychotropic medications for children in foster care and whether special training was provided to foster parents with children on psychotropic medications. Concerns were expressed regarding the amount of time it takes for records data to move with foster children, especially those on medication. Questions also were posed regarding the number of CINC cases per social worker and what the ideal caseload should be. DCF officials indicated they would look into that concern and provide the data on open cases by social worker by region and county.

The Secretary indicated a recent policy allowing other professionals licensed under the Behavioral Sciences Regulatory Board to provide assistance to social workers should alleviate the caseload burdens.

Concerns were raised regarding a foster child placed in 20 foster homes in 7 months and being absent from school for 5 months. The Secretary indicated the case was an anomaly, but DCF would investigate the case. The Secretary noted compliance with the federal guidelines in this area are closely monitored.

In response to questions as to the contractual obligation of contractors with regard to child placement when the contractor does not have a local licensed foster care home it contracts with, but other foster care homes are available that are licensed by other groups, the Secretary noted DCF has identified some issues and concerns. DCF is reviewing the licensing system now that licensure is the responsibility of DCF. DCF is using KDHE regulations until the agency completes a plan for changes, which is not likely to take place until the spring of 2016 due to the thoroughness of the review.

Written testimony was provided by representatives of KVC and St. Francis Community Services, the state's foster care contractors, outlining the services provided to Kansas children.

## **Family Structure Considerations**

The Committee received testimony *via* speakerphone from presenters with differing views on family structure considerations with regard to foster care and placement (additional detail regarding these presenters is provided below). Additionally, written testimony was provided by a National Conference of State Legislatures (NCSL) staff member containing Child Trends Databank research on family structure and data from the Institute for Family Studies. Chapter 6 of George Barna and David Barton's book, *U-Turn*, also was provided as written testimony regarding family structure.

A research professor of sociology at the Catholic University of America presented research

data *via* speakerphone regarding foster care and adoption by same-sex couples. The professor noted that most studies focus on lesbian parents, but stated scholarly evidence documents a finding that children raised by same-sex couples have higher incidents of behavioral problems, developmental disability, sexual abuse, and instability than children raised by biological parents. The professor referenced the findings from the 2001-2007 National Health Information Surveys comparing children in intact married families with those in post-divorce single mother, single father, or blended families (among others) on a wide range of indicators of physical and emotional health as support for his position.

A representative of the American Psychological Association's (APA) Lesbian, Gay, Bisexual, and Transgender Concerns Office stated *via* speakerphone that empirical research indicates there is no measurable difference in outcomes for a child raised by heterosexual parents or same-sex couples. He noted there is no statistical difference when comparing various family structures and referenced information in the APA *amicus* brief to the U.S. Supreme Court in the *Obergefell* case in support of the APA's position. The Supreme Court's decision in the case holds same-sex couples may not be deprived of the fundamental right to marry.

DCF was asked for information as to whether foster children were in the care of same-sex couples because such couples were more willing to take children with troubles and on the potential impact on the number of children who could not be placed in foster homes if same-sex couples were denied foster care rights. Concern was expressed by a Committee member that same-sex parents would not be allowed to have foster care rights.

### **Law Enforcement Perspective**

The Committee heard testimony from law enforcement representatives who stated they have experienced an unproductive relationship with DCF and DCF foster care contractors, especially with regard to inadequate responses to emergency calls and accessibility outside of the Monday through Friday 8:00 a.m. to 5:00 p.m. hours. Concerns exist regarding the ineffectiveness of the

DCF Hotline in assisting law enforcement personnel when foster care issues arise. The representatives also cited the compromising of limited police resources when DCF or the contractors fail to address a foster care situation in a timely or effective manner. Recommendations made by the law enforcement representatives included conflict-resolution training for foster parents and the provision of DCF staff cell-phone numbers to law enforcement to facilitate access and assistance. DCF responded to the latter recommendation by stating the cell-phone numbers would be made available immediately and concerns regarding difficulties with responses from the DCF Hotline would be addressed.

### **Legislator Report of Foster Care**

Senator Julia Lynn, District 9, appeared before the Committee on behalf of Representative Mike Kiegerl, District 43, to provide a report containing legislative background and a review of DCF data. A copy of the Report to the Joint Committee on Children's Issues to the 2010 Legislature also was provided to the Committee. Senator Lynn emphasized the need for updated and expanded standards for foster care parents. She raised the question of whether DCF should continue to rely on private foster care contractors. In response to a question, Senator Lynn stressed the need for accountability for DCF, contractors, and the Legislature for healthy results and for the expected results to be defined and measured over time, so those who failed could be held accountable.

### **Other States' Non-Conventional and Innovative Programs and Successes**

The NCSL staff member presented information on foster care innovations in other states, referencing national information regarding foster care, recent legislation in various states, and standards and supports for foster parents. The staff member identified effective, evidence-based foster care practices and promising approaches and resources to improve foster care being applied in other states. In response to whether states undertake statewide implementation of new foster care practices and approaches, the staff member noted some states used pilot plans and other states borrowed from other states' experiences in enacting statewide measures.

One program referenced is Keeping Foster Parents Trained and Supported (KEEP), which teaches foster parents about the techniques and benefits of positive reinforcement. Kansas has a KEEP pilot program. In response to the availability of evaluation data on other states' programs, the staff member cited the California Evidence-Based Clearinghouse for Child Welfare as a source that identifies whether a foster care program actually is working and provides links to evaluation data.

The NCSL staff member responded to questions related to foster care licensing training in other states and training specifically geared to grandparents as foster parents by indicating some do not want to go through the training program because it is so intensive. The staff member noted federal law requires licensure to receive payment under Title IV-E, but most relative care providers do not want to go through the licensing process.

Written testimony was provided by a representative of the Midwest Foster Care and Adoption Association explaining the agency's Behavioral Interventionist Program, an initiative to keep special-needs children in their current homes.

### **Foster System Success Factors**

A representative of Casey Family Programs noted 76 percent of Kansas children enter foster care due to neglect, not abuse, and provided 6 critical components leading to successful protection for children and support for families. One of the components stressed is to have in place a robust and transparent process for continuous quality improvement (CQI) that allows an agency to self-monitor, based on data, to make adjustments and improvements in real time. The representative noted it appeared Kansas is well-positioned to have a robust CQI system. The creation of a trauma-informed system to best serve children who enter foster care was another factor the representative shared with the Committee.

The Casey Family Programs representative also made several recommendations and suggested tools to enhance licensing policies as DCF considers changes to existing licensing policies. The representative stressed the importance of focusing on quality foster homes and engaging

with foster parents as a means of improved outcomes. When foster families are seen as members of the professional child welfare team, they are more satisfied and likely to provide longer care for children and better support birth families. In response to a question asking if there is a right to be licensed as a foster parent, the representative stated the licensing process should be robust and the same across the board, but not onerous. With regard to prioritization to criteria to be considered, the representative noted every state needs to set its own criteria, but the first key is safety. The representative indicated some states have enough foster care homes to provide a choice in matching children with placement close to home and appropriate kin placement.

The Casey Family Programs representative responded to a question on balancing the safety issue with the trauma of removing a child from the home by stating the trauma as a result of removal from the home is significant, so a robust assessment process with the funds to implement it would allow more children to remain in their homes.

### **Alternative Methods and Community Programs**

The Committee heard testimony from representatives of various community programs focused on addressing foster care concerns. A representative of Communities in Schools Mid-America, Inc., presented information on a pilot program funded by the Casey Foundation to reduce the incidence of neglect in vulnerable families at two elementary schools in the state, one in Pittsburg and the other in Chanute. By collaborating with the school staff and staff of other child welfare agencies, the program identifies at-risk children and offers intensive support for the family focused on making the home a safe place for the child and helping to keep the child in the home. The program is working in 20 Kansas communities with a mix of both private and public moneys, and it supplements family preservation services. The cost per student is \$106 annually, but the amount reflects the program-wide cost. The overall outcomes are reported to the school with no identifiable details.

A representative of FaithBuilders, Inc., stated her agency uses volunteers to provide a range of services to families in crisis: food, clothing, furniture, appliances, mentoring, respite care, and other services, as needed. The representative stated funding for the program is entirely from private donations. The representative noted a lack of cooperation on the part of DCF in a case where FaithBuilders was assisting a parent with a guardianship, but DCF stepped in and filed a CINC case.

A representative of Safe Families for Children presented another alternative to foster care, a separate volunteer organization that provides host families for families in crisis. The representative noted the program has a 90 percent success rate in reuniting children with their families. Partnerships with churches and other non-profit organizations provide the financial and professional support for the program. Funding for the program is from Casey Family Programs and Lifeline Services, with no government funding provided.

In response to a question regarding who decides if reunification should occur in the Safe Families program, the representative noted the family coach helps review whether the goals set for the reunification are met. The hosting agreement contains a reunification goal date.

With regard to how a parent who is out of the country or state regains custody of a child after the other parent has placed a child with a host family in the Safe Families program, the representative noted the issues of the child's right to contact with and access to the other parent are discussed during the initial intake visit and allows for the parent to have custody of the child upon his or her return without the need to initiate a court process. The representative stated, if there is a conflict among the parent, family coach, and the temporary host family, the parties talk to resolve the matter; however, if it involves a safety concern, Safe Families is a mandated reporter and will report to the appropriate entities.

In response to questions about who makes the school and healthcare decisions in the Safe Families program, the representative stated the parent signs a medical power of attorney for immediate care; the parent makes the decisions

but, if the parent does not, the host family can decide. The parent still has custody, so he or she can make these decisions.

Testimony was provided by the CarePortal State Director for Kansas in Missouri, a program that is part of The Global Orphan Project. The program works to meet the needs of at-risk children through partnership with local churches. The organization acts as a bridge to provide three tiers of services: physical needs, such as help with utilities; relational services, such as mentoring or taking a family member to a doctor appointment; and providing a temporary host family for vulnerable children. The funding for the program is entirely private.

A representative of Project 17 Circles explained the mission of the project is to improve the economic opportunities and quality of life for individuals who live in 17 counties in southeast Kansas. One focus of the project is to lower the number of children removed from their homes. Referrals are received from DCF and KVC, and Project 17 uses volunteers to build relationships with at-risk children and their families, helping to create more stable families. The representative stated Circles receives a small amount of government funding, but most funding comes from grants and donations.

A two-week deadline to submit additional testimony was set by the Committee. In addition to follow-up information provided by individuals testifying at the meeting, a private citizen whose grandchild died in foster care provided written testimony requesting changes to the foster care system.

## **Legal Considerations**

The legal issues related to foster care were reviewed by a staff member with the Office of Revisor of Statutes. In response to questions regarding how the state addresses family structure, the staff member stated Kansas statutes do not address non-traditional family settings for foster care placement. In response to whether a same-sex couple has a right to a foster care license, the revisor stated there is no right to a foster care license, rather it is a privilege with limits. The revisor stated it is not clear in *Obergefell* if same-

sex foster care must be allowed. The revisor noted the *Obergefell* decision of the U.S. Supreme Court regarding same-sex marriage eventually may lead to further court decisions offering a more detailed legal platform regarding the issue. The revisor reviewed other states' court decisions regarding foster care by same-sex individuals or couples.

With regard to the state's liability for foster care children, the revisor noted the state is immune to lawsuits; however, federal law has held that a foster child has a constitutional right to protection, which under certain circumstances may overshadow the state's immunity.

### **Kansas Courts Perspective**

The Honorable Mary B. Thrower, Saline County District Court Judge, provided the Kansas courts' perspective on foster care. She noted an increase in the number of children in foster care has limited DCF's ability to place a child close to his or her current home or community and recommended family preservation services and other community-based programs be used to reduce out-of-home placements. The Court Appointed Special Advocates program, which receives 90 percent private funding, was noted by a representative of the Office of the Judicial Administration as an example of the most successful agency for addressing needs of at-risk children. Bench cards used to illustrate the CINC code, to guide court officers in determining proper adjudication, and to help other child welfare agencies better understand judicial findings were provided to the Committee.

In response to a Committee member request, Judge Thrower provided a list of the types of programs included in prevention services. With regard to working with non-profit community groups that receive no government funds or oversight, Judge Thrower stated volunteers in those community-based programs need trauma-based training.

### **CONCLUSIONS AND RECOMMENDATIONS**

Members requested additional information from the Secretary. The information available was provided by DCF after the meeting.

Additionally, ancillary information was requested from a representative of KVC Health Systems regarding negotiations with the federal government to receive a naval base in West Virginia that would be converted into Sugar Grove College and used by KVC to create a transition and training facility for those aging out of foster care. The college would provide room, board, and mentoring at no cost to students. Mental health services would be addressed and educational opportunities, with job placement following completion of the curriculum, would be provided.

The Committee discussed the need for an additional meeting day to consider recommendations. A motion passed to request another interim day from the LCC and to request a special or joint committee be established to finish the work assigned to the Special Committee. A request for another interim day was made, but the request was not approved by the LCC.

The Committee met briefly on January 11, 2016, to discuss and make recommendations for inclusion in this report. The following recommendations were made by the Committee:

- In considering the best interest of a child, evidence-based peer-reviewed research on family structure be considered a high priority in making foster care placement decisions; and
- Legislation be introduced to create a foster care oversight committee similar to the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight; and should legislation creating a foster care oversight committee not be approved, a Senate committee and a House committee each be charged with reviewing the topic of foster care.

### **Proposed Legislation**

The Committee was supportive of legislation being introduced during the 2016 Legislative Session to create a foster care oversight committee, but did not request a bill be drafted on behalf of the Committee.

# Report of the Special Committee on Insurance to the 2016 Kansas Legislature

**CHAIRPERSON:** Representative Scott Schwab

**VICE-CHAIRPERSON:** Senator Jeff Longbine

**OTHER MEMBERS:** Senators Elaine Bowers, Tom Hawk, and Rick Wilborn (substitute); and Representatives Daniel Hawkins, Roderick Houston, and Jim Kelly

## STUDY TOPIC

- ***Review Pharmacy Benefits Management Legislation.***
  - In February, the Senate Committee on Financial Institutions and Insurance reviewed 2015 SB 103, a bill that would enact new law establishing requirements for Pharmacy Benefits Managers (PBMs). The Committee is to review 2015 SB 103 and relevant issues associated with pharmacy benefits management, including maximum allowable cost (MAC) pricing of generic drugs, and the implications for Kansas pharmacies and health plans.
- ***Study the Need to Increase the Minimum Motor Vehicle Liability Insurance Policy Limits and, If Needed, What Limits Would be Indicated***
  - In February, the House Committee on Insurance held a hearing on HB 2067. The bill would have increased the mandatory minimum motor vehicle liability policy limits. The Committee indicated the need to further study the matter before action, if any, was taken. Under existing law, KSA 40-3107, the minimum policy coverage limits in any one accident is \$25,000 for bodily injury or death of one person and \$50,000 for two or more persons, and \$10,000 for harm to or destruction of the property of others.



# 2015 Special Committee on Insurance

## PHARMACY BENEFITS MANAGER LEGISLATION

### Conclusions and Recommendations

The Committee recommends the insurance committees of the Senate and House take up 2015 SB 103 or a compromise replacement bill early in the 2016 Session. [The bill remains in the Senate Committee on Financial Institutions and Insurance.] The Committee commends the parties to the bill for their efforts to reach a compromise on the bill.

*Proposed Legislation:* None.

### BACKGROUND

The charge to the Special Committee on Insurance was to review and make recommendations on two topics assigned by the Legislative Coordinating Council: pharmacy benefits management legislation and relevant issues, including Maximum Allowable Cost (MAC) pricing of generic drugs and the implications for Kansas pharmacies and health plans (2015 SB 103), and the need to increase minimum motor vehicle liability insurance policy limits and, if needed, what limits would be indicated (2015 HB 2067). The Committee was authorized to meet for one day.

On the subject of the pharmacy benefits management legislation, the Committee was directed to review 2015 SB 103 and the relevant issues associated with pharmacy benefits management, including MAC pricing of generic drugs, and the implications for Kansas pharmacies and health plans.

In February 2015, the Senate Committee on Financial Institutions and Insurance reviewed SB 103, a bill that would enact new law establishing requirements for Pharmacy Benefits Managers (PBMs), including publication of price lists and the drugs included on the lists, an appeals process for network pharmacies requesting reimbursement for drugs subject to MAC, and penalties for PBMs found to be in violation of the act, and would

amend the Pharmacy Benefits Manager Registration Act (Act) to update the definition of “pharmacy benefits manager.” This study topic was requested by the Senate Committee.

### COMMITTEE ACTIVITIES

The Committee met on December 7, 2015, and considered both assigned topics. As part of its review of the PBM legislation, the Committee received an overview of the bill and current registration requirements in law for PBMs, comparative information on similar legislation addressing PBMs and MAC pricing of generic drugs, and an update and comments from conferees to the original bill.

**Overview of current registration requirements for PBMs; legislation in other states.** Committee staff outlined the registration requirements for PBMs that provide “claims processing services, other prescription drug or device services, or both, to covered persons who are residents of this state.” The law requires PBMs to register or renew on an annual basis (registrations expire March 31), submit a renewal form to the Insurance Commissioner, and pay a renewal fee of \$140. The Commissioner may revoke or suspend a registrant until the renewal and penalty fee (also specified in the amount of \$140) is paid. The law grants the Commissioner authority to adopt rules and regulations, including

requirements relating to the application form, to carry out the Act. Any person who acts as a PBM without being registered is subject to a fine of \$500 for each violation. Moneys received by the Commissioner pursuant to the Act are to be remitted to the State Treasury at least monthly and credited to the Pharmacy Benefits Manager Registration Fund. Finally, the Act contains a severability clause. The Act has not been amended since its enactment in 2006.

*MAC legislation in the states.* Utilizing a legislative database, as well as review of articles and interest group website content, analysis was conducted by committee staff to determine whether other states have bills similar to 2015 SB 103 pending or have enacted such legislation. At the time of this survey, nine states enacted legislation in 2015 relating to the use of MAC pricing and prescription drug reimbursement. In addition to Kansas, eight states introduced similar legislation. Additional published states' information indicated, since 2013, 17 states have enacted legislation implementing transparency within MAC lists.

**2015 SB 103.** The bill, as introduced, would amend the Pharmacy Benefits Manager Registration Act. Under current law, PBMs must obtain a valid certificate of registration issued by the Insurance Commissioner prior to operating as a PBM in the state. Most insurance plans, Medicare, and Medicaid use PBMs to process payments for prescription medications. The PBMs then use MAC lists to reimburse pharmacies for generic drugs.

The bill would place restrictions on the drugs PBMs may place on MAC lists, require the PBMs to update each MAC list every seven business days, make the updated lists available to network pharmacies in a readily accessible and usable format, and require PBMs to implement an appeal process for network pharmacies regarding the reimbursements of drugs subject to MAC pricing.

According to the fiscal note on the bill, as introduced, prepared by the Division of the Budget, the Kansas Insurance Department states any additional workload that would result from the enactment of the bill could be absorbed by the agency's current staff and budget. The Kansas

Board of Pharmacy states the bill would have no fiscal effect on the agency. The Kansas Department of Health and Environment (KDHE) indicates the bill would reduce the flexibility of PBMs using MAC pricing for generic drugs, an effective mechanism to control prices for the state's healthcare plan. By restricting the use of MAC pricing, KDHE estimates the bill would have the potential to increase the cost of the state's healthcare plans by \$3,145,976 in FY 2016 and \$3,350,923 in FY 2017. Additionally, KDHE indicates the other state funded healthcare plans, KanCare and SCHIP, could experience similar cost increases, but KDHE could not provide an accurate fiscal impact because the managed care organizations have their own PBMs for those plans.

**Comments from interested parties.** In lieu of a formal hearing on the bill, conferees were asked to provide an update on efforts to reach consensus on the provisions contained in the original bill and issues identified at the time of the Senate Committee hearing.

The Government Affairs Committee Chairperson, Kansas Pharmacists Association (KPhA), provided an update on discussions between the interested parties, indicating representatives of KPhA and the PBMs have met in an effort to find a common ground regarding the provisions of SB103 [the KPhA was the primary proponent of the bill, as introduced]. After several sessions of negotiations, the parties have reached a consensus and the language provided to the Committee reflects the extensive discussions. She also noted the amendment addresses the concerns stated by KDHE in the original fiscal note. The KPhA conferee indicated the consensus language: 1) requires PBMs to update the MAC list every seven business days and apply the updates within one business day; 2) adds language that the drug must be available from a wholesaler in Kansas and that source identified, whether it is for placing a drug on the MAC list, or later in the appeal section, providing the pharmacy with wholesalers where the drug can be purchased; 3) provides that the PBM establish a process for each network pharmacy provider to readily access the MAC list; 4) establishes an appeals process that provides, a) if the pharmacy prevails, it has the ability to reverse and rebill and the resulting changes become effective going forward for all similarly

situated pharmacies; and b) if the appeal is denied, the PBM provides the appealing pharmacy the National Drug Code number from a national or regional wholesaler operating in Kansas where the drug is generally available for purchase at a price equal to or less than the MAC that may be substituted lawfully; and 5) [this compromise does] not contain an enforcement provision for the Act.

The Senior Director, State Government Affairs, Express Scripts [a PBM] commented on SB 103 and the compromise language presented to the Committee. He stated Express Scripts and the KPhA and its members have been negotiating during the interim and both parties have reached a compromise that would be acceptable to Express Scripts. The conferee's remarks also addressed how PBMs generally use MAC pricing and reimbursement methods, stating these methods ensure a fair reimbursement to pharmacies for generic drugs. MAC pricing was originally developed by state Medicaid programs after an audit proved there was overpayment for generic medications. Today, the conferee noted, 46 Medicaid programs, multiple federal programs, and most private payers use their own MAC processes.

Committee members and the conferees discussed the compromise language and reviewed topics associated with the reimbursement for generic drugs. The KPhA conferee stated the purpose of the bill is to improve the viability of pharmacies in the state of Kansas by providing the

pharmacies with the information they need to adequately price their drugs. Also discussed was the variance in pricing, not only on the cost of an individual drug, but also from pharmacy to pharmacy based on contracts with PBMs and, in some cases, wholesalers. The Committee reviewed the current appeals process with the pharmacist conferee. The PBM representative responded to a question regarding the financial impacts of drug pricing methodologies on pharmacies located in rural areas, including price fluctuation and inventory controls. The conferee indicated that, in part, MAC pricing was created to address the pricing of generic drugs (replacements for brand name drugs, at less cost) for State Medicaid programs. Under the consensus language, pharmacies, the conferee stated, should be better informed regarding their cost and pricing.

## CONCLUSIONS AND RECOMMENDATIONS

Following discussion, the Committee made the following recommendation:

- The insurance committees of the Senate and House take up 2015 SB 103 or a compromise replacement bill early in the 2016 Session. [The bill remains in the Senate Committee on Financial Institutions and Insurance.] The Committee commends the parties to the bill for their efforts to reach a compromise on the bill.

# 2015 Special Committee on Insurance

## MINIMUM MOTOR VEHICLE LIABILITY INSURANCE LIMITS

### Conclusions and Recommendations

The Committee recommends a bill to increase the minimum limit specified in KSA 40-3107 for property damage from the current \$10,000 to \$25,000. (The Committee made no recommendation on either bodily injury limit.)

With regard to the issues of uninsured and underinsured motorists, including the determination of penalties and consequences for drivers, discussed before the Committee and outlined in this report, the Special Committee requests its report be directed to the committee leadership of the House and Senate Judiciary Committees.

**Proposed Legislation:** One bill [to be introduced in the House].

### BACKGROUND

The charge to the Special Committee on Insurance was to review and make recommendations on two topics assigned by the Legislative Coordinating Council: pharmacy benefits management legislation and relevant issues, including Maximum Allowable Cost (MAC) pricing of generic drugs and the implications for Kansas pharmacies and health plans (2015 SB 103), and the need to increase minimum motor vehicle liability insurance policy limits and, if needed, determine what limits would be indicated (2015 HB 2067). The Committee was authorized to meet for one day.

In February 2015, the House Committee on Insurance held a hearing on HB 2067. The bill would have increased the mandatory minimum motor vehicle liability policy limits. After hearing proponent and opponent testimony, no action was taken. The Committee indicated the need to study the matter before action, if any, was taken. Under KSA 40-3107, the minimum policy coverage limits in any one accident are \$25,000 for bodily injury or death of one person and \$50,000 for two or more persons, and \$10,000 for harm to or destruction of the property of others. The last changes to these limits were made in 1981.

The topic was requested by the insurance committee conferees of the House and Senate.

### COMMITTEE ACTIVITIES

The Committee met on December 7, 2015, and considered both assigned topics. As part of its review of the motor vehicle liability insurance policy limits, the Committee received an overview of the bill and comparative information on the minimum limits in the states; received formal testimony from proponents, those who were neutral, and opponents; and held a roundtable discussion with representatives of State agencies, consumers, insurance agents, insurance companies, law enforcement associations, and a vehicle leasing company; a plaintiff's attorney; and a legislator (proponent of the bill).

**Overview of the topic: history of Kansas law and legislation, compulsory minimum limits.** Committee staff outlined the law enacted and legislation considered relating to the topic. Minimum motor vehicle liability insurance policy limits were first enacted in 1957 with coverage minimum limits in any one accident of \$5,000 for bodily injury to or death of one person and \$10,000 for two or more persons, and \$1,000 for

harm to or destruction of the property of others. Coverage limits, when referenced, often are listed to reflect the limits in sequential order and separated by a slash mark; the 1957 limits would be indicated as “\$5,000/\$10,000/\$1,000.” In 1973, enacted Sub. for HB 1129 included an increase in the limits, to \$15,000/\$30,000/\$5,000. In 1974, enacted SB 918 codified the requirements, which were not changed, at KSA 40-3107. In 1981, the passage of SB 371 amended those limits upward to \$25,000/\$50,000/\$10,000, the statutory limits that continue in effect to date. HB 2231, also introduced in 1981, proposed the same limits as SB 371. In 1984, technical changes were made to KSA 40-3107; the changes did not affect the policy coverage limits.

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

The last attempt to increase the minimum policy limits, prior to the introduction of 2015 HB 2067, occurred in 2012 with the introduction of HB 2679 by the House Committee on Insurance. The bill would have increased the minimum policy coverage limits to \$50,000/\$100,000/\$25,000. The bill was referred to the House Committee on Insurance, but no hearing was held on the bill. The bill died in Committee at the end of the 2012 Session.

A chart outlining states’ present minimums for bodily injury (BI), aggregate BI, and property damage (PD) is appended to this report. The chart

also illustrates the variation of each limit among the states.

**HB 2067.** The bill, as introduced, would amend KSA 40-3107 to increase the minimum policy coverage limits in any one accident from \$25,000 to \$50,000 for bodily injury to or death of one person and from \$50,000 to \$75,000 for bodily injury to or death of two or more persons, and from \$10,000 to \$35,000 for harm to or destruction of the property of others. Two technical changes related to drafting style also would be made. The bill would take effect on publication in the statute book.

According to the fiscal note prepared by the Division of the Budget, the Kansas Insurance Department states enactment of the bill would cause an increase of premiums that consumers would pay for auto insurance; however, the Department indicates the potential increase would be minimal. Additionally, the Department states the bill has the potential to increase taxes collected from insurance companies from higher premiums for auto insurance from the higher minimum levels of coverage. However, the Department states, there also is a potential for a reduction of premiums taxes collected if more individuals would choose not to pay higher premiums and become uninsured. Either way, the fiscal effect on insurance premiums taxes collected by the state cannot be estimated. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor’s Budget Report*.

**Comments on HB 2067 – proponents and neutral parties.** The following association representatives and individuals appeared before the Committee and provided testimony in support of the bill: representatives of the Kansas Association of Insurance Agents and the Kansas DUI Impact Center; one insurance agent; two plaintiff’s attorneys; four private citizens; and Representative Gonzalez (who requested the bill for introduction in the House Insurance Committee).

Proponents generally described the current minimum limits as outdated and noted the inflationary increases in costs, both for health care for injured persons and for vehicle repair and replacement, that have occurred since the limits

were last adjusted, and they pointed to a cost shift from some drivers onto other drivers, to health insurers and hospitals, to employers, and to government payors. Proponents also highlighted the purpose of the limits, including the protection of individuals from carrying too little coverage (underinsured) in an accident and the protection of others from having to bear the cost of an insurance claim through their own policies if they are injured or their property is damaged by someone who is underinsured. The private citizens shared personal experiences of automobile accidents resulting in loss of life, medical expenses, and property loss and testified as to the lack of adequate compensation under the current coverage limits to cover the losses incurred by the injured parties. Additionally, some proponents encouraged the Committee to establish new minimum limits that mirror 2015 law (House Sub. for SB 117; modified by SB 101) which imposed limits on personal automobiles used to provide transportation network company services — \$50,000/\$100,000/\$25,000.

Written proponent testimony was submitted by the following association representatives and individuals: representatives of the Kansas Association for Justice, the Kansas Association of Professional Insurance Agents, and the National Association of Insurance and Financial Advisors—Kansas; four insurance agents; and two private citizens.

*Neutral Testimony.* The Committee received neutral testimony from a representative of the State Farm Insurance Companies. The conferee stated that an efficiently administered financial responsibility or safety responsibility law could be as effective as a compulsory or mandatory insurance law; high minimum limits, the conferee suggested, could be counterproductive as they could aggravate problems of insurance affordability for some drivers and could lead to more uninsured drivers. One possible solution to help stabilize an increase in limits suggested by the conferee would be to increase the medical threshold from \$2,000 to \$2,500 (under the Kansas no-fault law, tort recovery is limited to individuals meeting a threshold that includes first-party medical benefits exceeding \$2,000).

**Comments on HB 2067 – opponents.** The Committee received testimony from

representatives of the American Insurance Association (AIA) and Enterprise Leasing Company of Kansas, LLC. Opponents generally stated enactment of this bill would result in increased premiums, which could result in individuals who could least afford the premium increases dropping their insurance coverage. In addition, a conferee cited the impact on leasing companies, as the bill could increase a company's operating costs at a time when it is already dealing with rising vehicle costs, and the business would have no choice but to pass some of these costs to its customers. A conferee asked the Committee to consider another potential consequence – persons dropping full coverage (in effect today) and carrying only the minimum limit due to increased premiums. The conferees also noted existing minimum automobile insurance liability limits in Kansas are in line with those of most states.

Written opponent testimony was submitted by representatives of American Family, Key Insurance Company, and the Property Casualty Insurers of America (PCI).

**Roundtable Discussion.** The Committee was joined by the following participants in a roundtable discussion on topics associated with the increase of the minimum auto insurance liability limits and the current requirements in law: Lisa Kaspar, Director of Vehicles, Kansas Department of Revenue; Clark Shultz, Government Affairs, Kansas Insurance Department; Lt. A.M. Winters, Kansas Highway Patrol; Representative Ramon Gonzalez; Larrie Ann Brown, PCI; Lonny Claycamp, Insurance Planning; Thomas Gordon, senior advocate; Richard James and DeVaughn James, injury lawyers; Andrie Krahl, Kansas DUI Impact Center; Ed Klumpp, representing various law enforcement associations; David Monaghan, American Family; Christine Peterson, Enterprise Leasing; Brad Smoot, AIA; Bill Sneed, State Farm; and Tim Tyner, Tyner Insurance Group.

These were among the topics discussed and issues identified during the roundtable:

- **Options to address the affordability of coverage for persons who cannot afford or obtain coverage in the private market;**

- On this topic, discussion included the current participation rate in the assigned risk pool and the likelihood more drivers would require coverage in the pool as the uninsured motorist rate (UMR) increases.
- The legislator (bill proponent) spoke from the perspective of law enforcement. A law enforcement stop results in a series of consequences; if a driver is convicted for not having insurance, it is a misdemeanor with a fine varying from \$250 to \$1,000. If the driver has been stopped and convicted previously, there could be suspension or the car could be towed. At this point, the driver may be in a “cycle”: uninsured and unable to purchase insurance. A law enforcement representative talked about the “fine line,” as communities and judges must weigh the issues of the cost of insurance and the public safety concerns.
- The issue of “cost shifts” from the responsible driver to other parties, including other drivers, hospitals and medical care providers, and government payors, received considerable attention from the roundtable. Participants discussed some of the differences seen in health insurance and auto insurance, as health insurance can be “subsidized” for lower income persons (*e.g.*, through Medicaid, Medicare, and the Health Insurance Marketplace). A similar subsidy does not exist for the person buying auto insurance.
- **In addition to cost and affordability, other contributing factors associated with persons opting to purchase coverage at the minimum limits;**
  - On this topic, discussion included the “virtual” or on-line availability of insurance coverage. A participant commented that often coverage purchased on-line is for the minimum limits—the cheapest option presented to the buyer. Agents, the participant noted, are generally advising their insureds to purchase higher levels of coverage. An insurance company representative estimated 95 percent of his company’s book of business was written for limits higher than the minimums.
  - The same insurance company representative also addressed the impact of on-line shopping for insurance policies, in terms of numbers in the past two years. He estimated, for his client, 25 percent to 30 percent of its policies are “sold” on-line. He also indicated this is where most of the minimum-only coverage is being purchased and indicated, although the policy is sold without a direct agent interaction, the policyholder is assigned to a local agent for follow-up.
- **Determining what rate of uninsurance is “reasonable” given an estimated current UMR of ten percent; and**
  - On this topic, discussion included where Kansas ranks among states’ minimum limits and associated average premiums and where Kansas would fit with the increased minimum limits. It was suggested Kansas would “move up the ladder” but not have premium costs as high as some of the coastal states given regional differences. The participants discussed the variance in costs, using the perspective of purchasing parts at an auto body shop (prices vary by rural and urban and by region and availability, and labor costs can vary).
  - The Director of Vehicles noted the work of a task force on issues relating to real-time reporting of insurance information (from the book of business submitted by insurance companies to the verification of proof of insurance at the time of vehicle

- registration or at the time of an accident or law enforcement stop). [Real-time data could better identify an uninsured motorist at any point in time.]
- Participants also discussed reasons why drivers are uninsured. An insurance company representative mentioned the “silver bullets”—the young, invincibles who take on this risk. A law enforcement representative stated, from his experience, there are three classes of uninsured persons – those with a cost issue and typically at “average risk,” those who are high risk due to prior tickets and accidents, and the “arrogant,” those who choose to ignore the risk and requirements.
  - A participant suggested it is often the penalties that determine how far a person is willing to go. For example, he suggested, a person may choose to buy a policy immediately following an accident before the coverage becomes more expensive. Strengthening the penalty means more people buying insurance. A law enforcement representative commented it is about a “risk” factor – not having insurance. This is a two-fold issue, getting caught coupled with the cost factors.
  - **Consideration of the potential consequences of changing one or more of the minimum limits in law and the resulting effect on driver behavior.**
    - On this topic, discussion included data cited by an insurance industry representative (2012 industry claims data) that indicated an estimated 12 percent of households would be impacted by higher rates. Conversely, it was noted, those drivers currently maintaining higher limits of coverage “pay” in a no-fault accident or when the other underinsured driver is at fault.
    - Additionally, a Committee member noted determination of the appropriate minimum limits in law should also take into account the current requirements for personal injury protection and tort law (e.g., recovery of damages, medical benefits).
    - A participant suggested higher limits were needed to help address a problem among young Kansans today. The underage drinking levels seen among Kansas high school students, she noted, place Kansas in the top five.
    - Additionally, in terms of driver behavior, participants pointed to driving as a privilege, not a right, and the impact driving underinsured or uninsured has on other drivers. Those drivers or property owners may not be able to afford vehicle repair or replacement costs or costs from injuries and lost wages not covered by insurance.
    - The roundtable members discussed the adequacy of the property damage limit and discussion continued to what levels would be “adequate” to place responsibility back on the at-fault driver. The policy decisions associated with establishing limits on transportation network companies (e.g., Uber and Lyft) and the comparative risks between those regulated entities and Kansas drivers also were discussed.
    - An insurance industry representative noted increasing the limits is not needed to cover the costs of injuries in today’s health care market since the average cost of auto injury claims, in general, is lower than the current BI limits. Based on 2012 claims data, it is estimated that the average BI payment for nine out of ten injury claims in Kansas was only about \$13,400. Additionally, the average PD liability claim cost in Kansas is less than

\$3,200 per insured vehicle; the current limit of \$10,000 per accident is more than sufficient to cover this amount. An insurance agent commented the cost to increase the PD minimum from \$10,000 to \$25,000 or even to \$50,000 is inexpensive – an estimated \$1/ car/ 6 months. The whole conversation is with BI limits.

minimum limit specified in KSA 40-3107 for property damage from the current \$10,000 to \$25,000. (The Committee made no recommendation on either bodily injury limit.); and

- With regard to the issues of uninsured and underinsured motorists, including the determination of penalties and consequences for drivers, discussed before the Committee and outlined in this report, the Special Committee requests its report be directed to the committee leadership of the House and Senate Judiciary Committees.

## **CONCLUSIONS AND RECOMMENDATIONS**

Following discussion, the Special Committee made the following recommendations:

- The Committee recommends a bill, (to be introduced in the House) to increase the



# Report of the Legislative Budget Committee to the 2016 Kansas Legislature

**CHAIRPERSON:** Representative Ron Ryckman

**VICE-CHAIRPERSON:** Senator Ty Masterson

**OTHER MEMBERS:** Senators Jim Denning and Laura Kelly; Representatives Jerry Henry, Marvin Kleeb, and Sharon Schwartz

## STUDY TOPIC

The Legislative Budget Committee is statutorily directed to:

- Compile fiscal information, study and make recommendations on the state budget, revenues and expenditures, the organization and functions of the State, its departments, subdivisions and agencies with a view of reducing the cost of state government and increasing efficiency and economy.

Additionally, the Committee is assigned to:

- Oversee the Statewide Efficiency Study contract authorized by 2015 House Sub. for SB 112.



# Legislative Budget Committee

## REPORT

### Conclusions and Recommendations

The Committee recommends the consultant firm of Alvarez and Marsal Public Sector Services be retained to complete the Kansas Statewide Efficiency Study.

*Proposed Legislation:* None.

### BACKGROUND

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

The Committee's intention was to gather information to gauge where the State stands financially concerning consensus estimates and to formulate ideas for the remaining six months of Fiscal Year (FY) 2015 and going forward into FY 2016.

The Committee was also charged in House Sub. for SB 112 (L. 2015, Ch. 104) with developing a scope statement, drafting a request for proposal, soliciting bids, and negotiating a contract for a Kansas Statewide Efficiency Study. The legislation exempted the legislative and judicial branches of government. The Legislative Coordinating Council was charged with approving the final contract.

### COMMITTEE ACTIVITIES

The Committee met August 3, September 17, September 18, and November 9, 2015, to review fiscal information regarding revenues and

expenditures and to specifically discuss the revenue estimates and what components comprise the state tax revenue, human services caseloads, and review proposals for the efficiency study.

### State Budget, Revenues, and Expenditures

#### Legislative Adjustments to Consensus Estimates for FY 2015

Kansas Legislative Research Department (KLRD) staff presented an overview of the legislative adjustments to the Consensus Estimates for FY 2015 through FY 2017 memorandum. The adjustments reflect the fiscal impact of legislation enacted during the 2015 Legislative Session subsequent to the April 20, 2015, Consensus Revenue Estimates. The estimated receipts increased by \$1.3 billion for the combined years of FY 2015, FY 2016, and FY 2017. Net transfers increased by \$18.7 million attributable to the reduced transfer from the State General Fund (SGF) for bioscience initiatives and transfers from the SGF to the School District Extraordinary Need Fund. The adjusted baseline for FY 2015 was \$5.9 billion. The FY 2016 adjustments included revenue from the combined tax package. The SGF increase in total receipts for FY 2016 was \$384.4 million. The combined tax package for FY 2017 was estimated to increase the SGF receipts by approximately \$404.8 million.

Also noted were the low-income inclusions tax beginning in FY 2016, which generally eliminates all taxable income for wage earners of

\$5,000 or less per year filing a single tax return and \$12,500 or less per year filing a joint tax return. A review of tax amnesty also was included.

### **SGF Receipts FY 2015**

KLRD staff provided an overview of the SGF receipts for FY 2015. Total receipts for FY 2015 were \$15.6 million below the adjusted estimate, which included legislation enacted after the April 20 Consensus Revenue Estimate. The attributable factors were lower-than-estimated retail sales and corporate income taxes. Estimates increased for insurance premium and liquor enforcement taxes. Revenue estimators will continue to closely monitor the sales tax rate increase and base sales and use tax receipts.

Staff stated the actual June 2015 receipts totaled \$5.9 billion. Concern was expressed for the public's perception regarding shortfalls within the state budget projections. It was noted revenue estimates are based on current law. April estimates were based on current law and the sales tax increase was not factored into the revenue estimates, though included in the legislative adjustments memorandum. Concern was expressed regarding behavioral changes of the consumer and the impact on state revenue including consumer internet and out-of-state purchases. Staff noted a 3.75 percent long-term sales tax growth rate has been used in projections for a number of years.

### **MCO Privilege Fee**

Staff provided a brief overview of 2015 Senate Sub. for HB 2281 (L. 2015, Ch. 98), which created the Medical Assistance Fee Fund and increased the annual privilege fees paid by every health maintenance organization (HMO) for the reporting period beginning January 1, 2015, and ending December 31, 2017, from 1.0 percent per year to 3.31 percent per year of the total of all premiums, subscription charges, or any other term that may be used to describe the charges made by such organization to enrollees. The privilege fees collected or received by the Insurance Commissioner from July 1, 2015, through June 30, 2018, from HMOs, including the three KanCare Managed Care Organizations (MCOs), and Medicare provider organizations for fees specified

in law are to be deposited in the Fund to be expended for Medicaid medical assistance payments only. On and after January 1, 2018, the privilege fee will be 2.0 percent. This adjustment results in a savings of \$48 million after adjustments to fund Medicaid and newborn screening programs and the special revenue fund.

### **Other SGF Impacts**

KLRD staff provided an overview of the FY 2015 to FY 2016 SGF reappropriations by agency. The total reappropriation for FY 2016 was \$16.3 million, which reflects SGF dollars not spent in FY 2015 and that would be carried over to FY 2016.

Staff stated this amount would reflect additional expenditures in FY 2016. The approved budget was \$6.3 billion, which would increase expenditures by \$16.3 million. It was noted the reappropriation amount was less than the amount in past years, which in part is due to the timing of receipts for payment. The reappropriation of funds does not reflect reduced funding to agencies, as the payments are authorized.

Staff also provided an overview of the FY 2016 SGF Expenditure Reduction and Fund Transfer Plan. This information reflects the Governor's adjustments to the approved budget with SGF expenditure reductions of \$38.4 million and revenue transfers to the SGF in the amount of \$24.1 million for a total of \$62.6 million. Of this amount, \$17.7 million will be revised in the FY 2016 budget to reflect the federal match for the State Children's Health Insurance Program. The revenue transfer of \$1.9 million for the Performance Incentive Grants was line-item vetoed and will not be reduced through allotment authority. This line item was included in the Governor's \$50 million reduction plan. The revenue transfers to the SGF total \$24.1 million. The total SGF reductions and transfer amount is \$62.6 million. It was noted legislation passed authorizing additional flexibility for the Governor, but there was no requirement for a reduction of \$50 million to the approved budget.

## **SGF Receipts Current Fiscal Year**

KLRD staff provided an overview of the SGF receipts. The total SGF receipts from taxes for July and August were approximately \$35 million below estimates, with the largest reduction being in corporate taxes due to High Performance Incentive Program refunds. The individual income tax was down approximately \$1.4 million; however, the first-quarter receipts should reflect a better projection. Another area of concern was the severance tax, which was \$2.5 million lower than projected, due to lower prices for gas and oil, which may be ongoing. Insurance premium taxes were lower than projected, with an unanticipated refund of approximately \$2.5 million. The positive net transfers were due to actions taken by the Governor increasing transfers into the SGF.

KLRD staff provided an overview of the SGF Profile for FY 2014–FY 2017. This reflects the Governor’s revenue adjustments, reappropriation, expenditure adjustments, and cost savings. The ending balance for FY 2015 is \$71.5 million, and the estimated ending balances are \$77.9 million for FY 2016 and \$189.5 million for FY 2017.

KLRD staff also provided an update on the current SGF receipts after the new November revenue estimates. The total SGF receipts through November were above the estimates by \$14.6 million, or 0.6 percent. The component of SGF receipts from taxes only was \$8.1 million, or 0.4 percent, above the estimate. Staff noted a large portion of the estimated \$384.4 million in additional FY 2016 receipts attributable to tax law changes is not expected to materialize until the later part of FY 2016. In addition, staff noted the November estimates lowered the expected tax receipts for FY 2016 by \$181.2 million.

After the November estimates were released, KLRD staff provided an update of the SGF Profile for FY 2014–FY 2017. This reflects the Governor’s revenue adjustments, reappropriation, expenditure adjustments, and cost savings as well as the Governor’s November reductions of \$105.4 million. The ending balance for FY 2015 is \$71.5 million, the FY 2016 ending balance is estimated at \$5.6 million, and there is an estimated zero balance for FY 2017.

## **SGF Revenue Estimate**

KLRD staff reported on the SGF Revenue Estimate for FY 2016 and FY 2017. It was noted the revenue shortfall was due mainly to the decrease in sales tax revenues and not income tax reductions. The overall estimate for FY 2016 and FY 2017 was decreased by a combined \$353.6 million.

For FY 2016, the estimate was decreased by \$159.1 million, or 2.5 percent, below the previous estimate made in April and subsequently adjusted for the legislation enacted in the 2015 Session. The revised estimate for \$6.166 billion is 4.0 percent above the final FY 2015 receipts.

The revised estimate for FY 2017 is \$6.286 billion, which is \$194.5 million, or 3.0 percent, below the previous estimate. The amount of total taxes is estimated to increase by 2.8 percent in FY 2017, following a 5.7 percent increase in FY 2016.

## **Governor’s November Allotment Plan**

A representative from the Kansas Division of the Budget explained the allotment plan released on November 6, which included budget cuts and fund transfers to close the \$118 million shortfall in the projected budget. The plan included \$56.9 million in additional Kansas Department of Transportation transfers and a Children’s Initiative Fund Encumbrance Change under the special authority afforded under 2015 Senate Sub. for HB 2135 (L. 2015, Ch. 103).

Under the Governor’s regular allotment authority, the plan included a reduction of \$25.1 million for revised Medicaid estimates, a reduction of \$15.7 million for revised KPERS K-12 estimates, and a reduction of \$11.8 million in other various transfers and adjustments.

The plan also calls for an additional \$14.3 million in transfers to the SGF in FY 2016, which will be included in a rescission bill for the 2016 Session.

## Human Services Caseloads

KLRD staff explained the human services caseload impacts detailed in the Fall 2015 Human Services Consensus Caseload Estimates for FY 2016 and FY 2017.

The FY 2016 estimate for human services caseload expenditures is \$3.0 billion, including \$1.1 billion from the SGF. The estimate is an all-funds increase of \$48.9 million and a SGF increase of \$16.6 million above the FY 2016 approved amount.

The estimate for Temporary Assistance for Families caseloads is the same as the FY 2016 approved amount. The number of individuals estimated to receive cash assistance benefits from the Temporary Assistance for Needy Families program is expected to continue to decline due to a combination of lower applications for assistance and an increase in the rate of denials of the applications.

The estimate for foster care in FY 2016 is an increase of \$6.8 million from all funding sources and a decrease of \$3.5 million from the SGF. The increase from all funding sources is attributable to an increase in the anticipated number of children in the foster care system above the spring estimate and an increase in the contracted rates. The spring estimate also included \$12.0 million from the SGF for cash flow issues associated with not receiving federal Title IV-E funding. The Department for Children and Families indicated a settlement with the federal Administration for Children and Families on this issue was anticipated to resolve the cash flow issue, resulting in SGF savings.

For the Department of Corrections, expenditures for out-of-home placements for FY 2016 are estimated to be \$18.9 million from all funding sources, which is the same as the approved amount.

The FY 2016 estimate for Kansas Department for Aging and Disability Services (KDADS) Non-KanCare is an increase of \$2.0 million, including \$700,000 from the SGF, above the amount approved by the 2015 Legislature. The revised estimate reflects the transfer of expenditures for State Hospital Assessments from the KanCare to

Non-KanCare portion of caseloads beginning January 1, 2016. The estimate also reflects increased costs for nursing facility fee-for-service expenditures.

The FY 2016 estimate for KanCare Medical is \$2.8 billion from all funding sources and \$988.6 million from the SGF. The new estimate is higher than the approved FY 2016 amount by \$40.1 million from all funding sources and \$19.4 million from the SGF. For the Kansas Department of Health and Environment (KDHE), the KanCare Medical estimate is \$2.1 billion from all funding sources, including \$702.5 million from the SGF. The KDADS' KanCare caseload estimate is \$708.4 million from all funds, including \$284.8 million from the SGF. The KanCare Medical estimate for the Department of Corrections is \$2.9 million from all funds, including \$1.3 million from the SGF.

The increase for KanCare Medical is attributable to an estimated slight growth in population and capitation rates, continued increases in costs associated with the Affordable Care Act Insurers Fee included in the capitation rates (except for long-term care services and supports which are excluded from the federal requirements), scheduled increases in Medicare buy-in payments (the estimate was made prior to the change at the federal level to modify the increased amount), and costs associated with new drugs for treatment of high cholesterol and cystic fibrosis. The reduction in the KDADS KanCare estimate and increase in the KDHE KanCare estimate continues to reflect refinements made in the allocation to each agency based on additional experience and actual data on the type of medical services needed by consumers in those populations.

The FY 2017 estimate for human services caseload expenditures is \$3.0 billion, including \$1.1 billion from the SGF. The estimate is an all-funds increase of \$82.2 million and a SGF increase of \$30.8 million above the FY 2017 approved amount. The base Medicaid matching rate determined by the federal Centers for Medicare and Medicaid Services decreased the required state share by 0.02 percent between FY 2016 and FY 2017. The estimated impact of this adjustment in FY 2017 is \$554,415 less from the SGF required for KanCare caseload expenditures.

The FY 2017 estimate for the Temporary Assistance for Needy Families program is an all-funds decrease of \$523,068 and a SGF increase of \$303,093 for FY 2017. The number of families anticipated to receive services is expected to decrease at a faster rate than projected in the spring. The addition of SGF expenditures is needed to account for an anticipated federal penalty regarding two-parent work participation rates in those receiving services through the program.

The estimate for foster care is an increase of \$6.7 million, including \$6.2 million from the SGF, for FY 2017. The increase is attributable to an increase in the anticipated number of children in the foster care system above the spring estimate and an increase in the contracted rates.

For the Department of Corrections, expenditures for out-of-home placements for FY 2017 are estimated to be \$18.9 million from all funds, which is the same as the approved amount.

The FY 2017 estimate for KDADS Non-KanCare is an increase of \$2.1 million, including \$800,000 from the SGF, above the amount approved by the 2015 Legislature. The revised estimate reflects a full year of expenditures for State Hospital Assessments in the KDADS Non-KanCare portion of caseloads, which had previously been reflected in KDADS KanCare. The revised estimate also reflects increased costs for nursing facility fees for services.

The FY 2017 estimate for KanCare Medical is \$2.8 billion from all funding sources and \$1.0 billion from the SGF. The new estimate is higher than the FY 2017 approved amount by \$73.9 million from all funding sources and \$23.4 million from the SGF. For KDHE, the KanCare Medical estimate is \$2.1 billion from all funds, including \$735.0 million from the SGF. The KDADS' KanCare caseload estimate is \$633.8 million from all funds, including \$275.0 million from the SGF. The KanCare Medical estimate for the Department of Corrections is \$2.7 million from all funds, including \$1.2 million from the SGF.

The increase for KanCare Medical is attributable to an estimated slight growth in population and capitation rates, continued

increases in costs associated with the Affordable Care Act Insurers Fee included in the capitation rates (except for long-term care services and supports which are excluded from the federal requirements), scheduled increases in Medicare buy-in payments (the estimate was made prior to the change at the federal level to modify the increase amount), and costs associated with new drugs for treatment of high cholesterol and cystic fibrosis. The reduction in the KDADS KanCare estimate and increase in KDHE KanCare continues to reflect refinements made in the allocation to each agency based on additional experience and actual data on the type of medical services needed by consumers in those populations.

The funding mix for the medical programs is also affected by the implementation of the MCO privilege fee, which increased from 1.0 percent to 3.3 percent. The funds are deposited in the new Medical Assistance Fee Fund to be used for Medicaid funding, which then lessens the SGF needed for caseloads.

### **University of Kansas Capital Improvements Central District Development**

A representative from the University of Kansas reported on the capital improvements for the Central District Development Project at the University of Kansas. The estimated cost of the total project would be in the range of \$325 million to \$350 million. The staff noted Malott and Haworth Halls were designed and built in another era, and they cannot house modern science educational and research activities. There is an increased demand for science and lab classes with the increase in the number of pharmacy and engineering students. The Central District Development Project includes:

- Integrated science building;
- Residence hall;
- Apartment-style student housing building;
- New student union facility;

- New parking garage; and
- New central utility plant.

The representative responded to concerns that tuition would be increased to pay for the project. Out-of-state and international student enrollment and efficiency savings would pay for the project, and tuition fees would rise only at the normal rate. Staff noted total efficiency savings were estimated at \$7.5 million dollars. Staff reported the old student union would be demolished, Malott Hall would be re-purposed for another use, and the science building would be converted into classrooms.

### **KPERS Valuation Update**

Staff from the Kansas Public Employees Retirement System (KPERS) presented an overview of the 2014 actuarial valuation, which is a snapshot of the financial condition of the Retirement System as of December 31, 2014. The actuarial valuation was estimated to be \$15.662 billion. Actuarial assets are calculated by “smoothing” investment gains and losses over a five-year period. An estimated \$660 million in deferred gains could be realized in the outlying years. Due in large part to investment gains over the past three years, the funding status has improved for all membership groups (KPERS state, school, and local groups; Kansas Police and Firemen’s Retirement System; and Judges’ Retirement System). The unfunded actuarial liability for the entire system decreased in 2014 by \$298 million, leaving \$9.468 billion remaining to be funded. The funded ratio increased from 59.5 percent in 2013 to 62.3 percent in 2014. Legislative reforms enacted in 2012, including increased employer and employee contributions, will continue to improve funding. Assuming all actuarial assumptions are met in the future, KPERS will be fully funded at the end of the amortization period in calendar year 2031. The valuation does not include the proceeds of the recently issued pension obligation bonds, which will be included in the 2015 actuarial valuation report.

### **Efficiency Study**

The 2015 Legislature appropriated \$3.0 million, in House Sub. for SB 112 (L. 2015, Ch. 104), to enter into a contract with a professional consulting service to assist in the review of state government. The Legislature stated such review and evaluation shall include examining state agency core functions, procedures, and efficiencies which may result in the consolidation of state agencies and functions, resulting in an overall reduction in expenditures and reporting to the Senate Ways and Means Committee and House Appropriations Committee on or before January 1, 2016, on its findings.

On August 3, 2015, the Committee discussed the timeframe for the efficiency study and determined there would be 10 days for communication of interest, 5 days for questions, 5 days for responses, 15 days for proposal presentations, and a final approval date of October 1, 2015. KLRD staff provided an overview of the request for proposal (RFP) process and provided the draft RFP for the efficiency study to the Committee. The Committee determined the RFP would be posted on the KLRD website and the closing date for the RFP would be September 11, 2015.

The Committee reviewed the RFP and amended the RFP to have the legislative liaison report to the Legislative Coordinating Council; set the deadline for completion of the study as January 1, 2016; exclude city and county governments from the scope statement; include school districts within the scope of the study; and make other technical corrections.

On September 17, 2015, the Committee heard public overviews from three consultants who bid on the RFP to perform the efficiency study: Boston Consulting Group, McGladrey, and Deloitte Consulting.

The Committee entered into executive session for the purpose of discussing confidential and trade secret data regarding the proposals from the three consultants. The Committee held separate executive sessions for each consultant at which only the Committee members and the members of the consulting firms were present.

On September 18, 2015, the Committee heard the public overview from Alvarez and Marsal Public Sector Services. The Committee then entered into executive session for the purpose of discussing confidential and trade secret data of Alvarez and Marsal.

After the executive session, staff from KLRD and the Office of Revisor of Statutes briefed the Committee on further details of the RFP. The First Assistant Revisor stated the cost proposal components of the consultant proposals are confidential and sealed until the the proposals are reviewed. The cost proposals will be open to the public after a consultant is selected. The Chairperson indicated he would release the confidential price proposals to the Committee after the merits of the various proposals were discussed.

The Assistant Director for Fiscal Affairs briefed the Committee on the selection process, stating it is a two-phase process. The first phase is review of the technical proposals from the consultants. The second phase is review of the cost proposals. The bidders would be evaluated based on their experience, statement of finances and integrity, organizational staffing, and methodology of their analysis.

The Committee discussed the proposals, complimenting all four consultants on the quality of their submissions. The Chairperson requested

Committee members rank the bids based on the technical proposal.

The Committee selected Alvarez and Marsal Public Sector Services to begin negotiations with over its proposal. The Committee stated this selection was made based on effective communications skills of the consultant, willingness to confer with groups who may be impacted by the study, and demonstrated knowledge base on specific state programs.

On November 9, 2015, Alvarez and Marsal provided a status update to the Committee. The consultant indicated the company would submit a preliminary report to the Legislature on December 16, 2015. The areas of focus are the Department of Transportation, Medicaid and social services, the Department of Education, the procurement process, the Office of Information and Technology Services, the Department of Corrections, the Department of Commerce, state employee group health insurance, and the State's revenue and tax collections processes. The consultant indicated the data collection process was almost complete.

## **CONCLUSIONS AND RECOMMENDATIONS**

Following its review, the Committee recommends Alvarez and Marsal be retained for purposes of the efficiency study.



# Report of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight to the 2016 Kansas Legislature

**CHAIRPERSON:** Senator Mary Pilcher-Cook

**VICE-CHAIRPERSON:** Representative Daniel Hawkins

**OTHER MEMBERS:** Senators Jim Denning, Marci Francisco (January – June), Laura Kelly, Jacob LaTurner (August – December), and Michael O'Donnell; and Representatives Barbara Ballard, Will Carpenter (April – December), Willie Dove, John Edmonds, Sharon Schwartz (January – April), and Jim Ward

**CHARGE**

*The Committee is to oversee long-term care services, including home and community based services (HCBS). In its oversight role, the Committee is to:*

- Oversee the savings resulting from the transfer of individuals from state or private institutions to HCBS and to ensure that any proceeds resulting from the successful transfer be applied to the system for the provision of services for long-term care and HCBS;
- Review and study other components of the state's long-term care system; and
- Oversee the Children's Health Insurance Program (CHIP), the Program for All-Inclusive Care for the Elderly (PACE), and the state Medicaid programs (KanCare), and monitor and study the implementation and operations of these programs including, but not limited to, access to and quality of services provided and any financial information and budgetary issues.



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

## REPORT

### Conclusions and Recommendations

The Committee makes the following conclusions and recommendations:

#### Prescription Drugs

The Committee made the following recommendations regarding prescription drugs:

- The Kansas Department of Health and Environment (KDHE) produce a report, collaborating with the Managed Care Organizations (MCOs), to report the geographic location and type of provider over-prescribing anti-depressant and anti-psychotic drugs. The geographic locations would mirror the Program for All-Inclusive Care for the Elderly (PACE) regions;
- The KDHE adopt a policy allowing the MCOs and providers to use step therapy (a.k.a., fail first) on the non-waiver population; and
- The KDHE review the preferred drug list (PDL) rules for the non-waiver population and adopt a policy allowing the MCOs to determine the PDL for the non-waiver population, instead of the State setting the PDL for this population. The review should include a variety of options, including new pricing methodologies, relaxing PDL rules, or allowing network contracting strategies. Decisions would be contingent upon providing a positive dollar impact (savings) to State expenditures of any such change.

#### Health Homes

The Committee made the following recommendations regarding Health Homes:

- The KDHE continue to evaluate the financial and health outcomes of the existing Health Homes program for individuals with Serious Mental Illness (SMI), including exploring opportunities for simplification of the program;
- The KDHE adopt a policy excluding the Developmental Disability (DD) population from the Health Homes program for individuals with SMI to remove duplication of case management services;
- The KDHE adopt a policy that the automatic opt-in to the Health Homes program for individuals with SMI would not apply until the patient has utilized medical services with

an annual minimum value of \$10,000; and, if a patient does not utilize Health Home services during the first 60 days, the patient would be automatically opted out of the Health Homes program;

- The KDHE adopt a policy requiring medical and surgical services in the Health Homes program for individuals with SMI be provided by the lowest number of primary care providers required to provide the needed services; and
- The KDHE adopt a policy holding any targeted case manager financially harmless for the value of the services provided to an individual in a Health Homes program for individuals with SMI when notification of patient inclusion in the program has not been documented or provided in a timely manner to the targeted case manager. The policy should be budget neutral to the Medicaid program.

### **Colorado Parent as Caretaker Program**

- The Committee requests the Kansas Department for Aging and Disability Services review the Colorado Parent as Caretaker Program and determine the feasibility of introducing a program such as this in the state of Kansas.

### **Services to Pregnant Women**

- The Committee requests KDHE review the actual experience of the presumptive eligibility program for pregnant women to determine whether prenatal services are being delayed due to the presumptive eligibility policy not being appropriately implemented.

***Proposed Legislation:*** None.

## **BACKGROUND**

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services (HCBS) and KanCare Oversight operates pursuant to KSA 2015 Supp. 39-7,159, *et seq.* The previous Joint Committee on HCBS Oversight was created by the 2008 Legislature in House Sub. for SB 365. In HB 2025, the 2013 Legislature renamed and expanded the scope of the Joint Committee on HCBS Oversight to add the oversight of KanCare (the state's Medicaid managed care program). The Committee oversees long-term care services, including HCBS, which are to be provided through a comprehensive and coordinated system throughout the state. The system, in part, is designed to emphasize a delivery concept of self-direction, individual choice, services in home and community settings, and privacy. The Committee also oversees the Children's Health Insurance Program (CHIP), the

Program for All-Inclusive Care for the Elderly (PACE), and the state Medicaid programs.

The Committee is composed of 11 members, 6 from the House of Representatives and 5 from the Senate. Members are appointed for terms that coincide with their elected or appointed legislative terms. The Committee is statutorily required to meet at least once in January and once in April when the Legislature is in regular session and at least once for two consecutive days during both the third and fourth calendar quarters, at the call of the chairperson. However, the Committee is not to exceed six total meetings in a calendar year, except additional meetings may be held at the call of the chairperson when urgent circumstances exist to require such meetings. In its oversight role, the Committee is to oversee the savings resulting from the transfer of individuals from state or private institutions to HCBS and to ensure proceeds resulting from the successful

transfer be applied to the system for the provision of services for long-term care and HCBS, as well as to review and study other components of the state's long-term care system. Additionally, the Committee is to monitor and study the implementation and operations of the HCBS programs, CHIP, PACE, and the state Medicaid programs including, but not limited to, access to and quality of services provided and financial information and budgetary issues.

As required by statute, at the beginning of each regular session, the Committee is to submit a written report to the President of the Senate, the Speaker of the House of Representatives, the House Committee on Health and Human Services, and the Senate Committee on Public Health and Welfare. The report is to include the number of individuals transferred from state or private institutions to HCBS, as certified by the Secretary for Aging and Disability Services, and the current balance in the HCBS Savings Fund. (See Addendum A for the 2015 Report.) The report also is to include information on the KanCare Program as follows:

- Quality of care and health outcomes of individuals receiving state Medicaid services under KanCare, as compared to outcomes from the provision of state Medicaid services prior to January 1, 2013;
- Integration and coordination of health care procedures for individuals receiving state Medicaid Services under KanCare;
- Availability of information to the public about the provision of state Medicaid services under KanCare including access to health services, expenditures for health services, extent of consumer satisfaction with health services provided, and grievance procedures, including quantitative case data and summaries of case resolution by the KanCare Ombudsman;
- Provisions for community outreach and efforts to promote public understanding of KanCare;

- Comparison of caseload information for individuals receiving state Medicaid services prior to January 1, 2013, to the caseload information for individuals receiving state Medicaid services under KanCare after January 1, 2013;
- Comparison of the actual Medicaid costs expended in providing state Medicaid services under KanCare after January 1, 2013, to the actual costs expended under the provision of state Medicaid services prior to January 1, 2013, including the manner in which such cost expenditures are calculated;
- Comparison of the estimated costs expended in a managed care system of providing state Medicaid services under KanCare before January 1, 2013, to the actual costs expended under KanCare after January 1, 2013; and
- All written testimony provided to the Committee regarding the impact of the provision of state Medicaid services under KanCare upon residents of adult care homes.

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

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

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

## COMMITTEE ACTIVITIES

The Committee met twice during the 2015 Legislative Session (January 23 and April 28) and held two days of meetings during the 2015 Interim (August 21 and December 29). In accordance with its statutory charges, the Committee's work focused on the specific topics described in the following sections.

**KanCare overview and update.** At the January meeting, the Acting Secretary for Health and Environment provided a KanCare cost comparison comparing both pre- and post-KanCare costs. She stated the goals of KanCare were better coordination and integration of care, reducing gaps in care, reducing delays in care, and reducing redundant exams and testing. She reported preventative services such as dental, vision, visits to primary physicians, visits to Federally Qualified Health Centers and Rural Health Centers, and non-emergency transportation utilization had increased, while inpatient stays and emergency room visits had decreased.

A Committee member asked a question about the length of time MCOs are allowed to process prior authorization requests. The Secretary for Aging and Disability Services stated processing of prior authorizations was a contractual requirement for which the state has an enforcement mechanism and the length of time varies depending on the situation.

*KanCare enrollment.* Updates on Medicaid and CHIP member eligibility and expenditure information; KanCare financial summaries; provider networks; claim processing and denials; utilization summary; value-added services and in-lieu-of services; and member grievances, appeals and hearings were provided at all four meetings. The Division of Health Care Finance (DHCF) Director, KDHE, stated at the April meeting that membership by MCOs remained relatively unchanged at approximately one third of the membership in each MCO with total membership of 406,333 as reported January through March 2015.

In August, the DHCF Director reported the average annual membership from January through June 2015 was 410,180. Responding to an inquiry

from a Committee member, the DHCF Director explained the contractual obligation of the MCOs to safeguard the confidentiality of member and program data.

In December, the DHCF Director reported the average annual membership from January 2015 through November 2015 was 411,805.

*Eligibility determinations.* During the January meeting, the Acting Secretary for Health and Environment stated Executive Reorganization Order No. 43 would transfer eligibility positions from the Kansas Department for Children and Families (DCF) to the KDHE clearinghouse beginning January 1, 2016. She indicated savings would be created by consolidating the eligibility positions, with a reduction in the administrative burden.

*KanCare Inspector General position.* An update on the vacant position was provided at all four meetings. Representatives from KDHE stated recruiting for the position has been difficult, and KDHE was reviewing the original 2007 statute to determine whether the program integrity goals were being met with other existing measures. During the 2014 Legislative Session, SB 182 was introduced. The bill would have moved the position from classified to unclassified. The bill became Senate Sub. for SB 182 and would have eliminated the position. The bill was not enacted. At the August meeting, the Secretary for Health and Environment (formerly the Acting Secretary; for the remainder of this report she will be referred to as the Secretary) stated the salary had been increased and the position reposted; at the December meeting, she stated the position is continuously posted.

**Kansas Eligibility Enforcement System (KEES) Update.** At the January meeting, the KDHE Chief Information Technology Officer (CITO) reported KEES implemented the account transfer component allowing individuals who apply for health insurance coverage on Healthcare.gov and assessed eligible for Medicaid to have their applications automatically transferred for processing by the KanCare Clearinghouse eligibility workforce. The KDHE CITO also reported the enrollment process was in pilot mode

and would be moved to production within two weeks.

During the April meeting, the KDHE CITO reported the Medicaid component of KEES was about 83 percent complete and a production cut-over was targeted to begin in late June 2015. The Deputy Secretary for Health and Environment, responding to a question from a Committee member, stated by the time KEES goes live in July 2015, the amount spent on the KEES project will be close to the original pre-implementation estimate of \$139 million. The Secretary for Health and Environment reported that KEES conversion and implementation for Medicaid eligibility functions began on June 19, 2015, and entered full production on July 13, 2015.

**Health Homes implementation.** During the January meeting, the Secretary for Health and Environment stated Serious Mental Illness (SMI) Health Homes was launched in July 2014 and as of January 1, 2015, 27,766 individuals were enrolled. She reported there were 80 contracted Health Home Partners (HHPs), with each MCO having at least 56 contracted HHPs. The KDHE DHCF Director reported KDHE would compare the acute care costs of individuals in Health Homes for individuals with SMI to costs for individuals with the same diagnosis codes; however, since the Health Homes was implemented in July 1, 2014, data needed to determine cost savings were not available yet.

During the April meeting, the DHCF Director stated, as of April 2015, more than 33,000 members were eligible for SMI Health Homes and about 28,000 of those members enrolled, which was about a 17 percent opt-out rate. The DHCF Director reminded the Committee the federal financial rate was 90 percent for the first two years of Health Homes, and KDHE would provide information gathered from the HHPs listening tour and survey during the third quarter meeting. In a response to a question by a Committee member, the DHCF Director stated the 17 percent opt-out rate was lower than KDHE had projected in the budget projections for Health Homes. The DHCF Director also stated Medicaid eligibility was not impacted by a person's decision to participate in or opt out of Health Homes.

At the August meeting, the DHCF Director shared the results of the listening survey and tour. The DHCF Director stated many success stories were shared that demonstrated KanCare members are being diverted from using the emergency room as a primary source of medical care, preventing unnecessary inpatient stays, correcting duplicate prescribing problems, teaching each member to help manage his or her chronic conditions, and helping him or her understand more about healthy living. The DHCF Director stated nine themes raised by the HHPs, and that KDHE has taken immediate steps in response to the HHPs input as well as developed a long-term action plan.

**Transition of Long-Term Services and Supports for Individuals on HCBS Intellectual / Developmental Disability (I/DD) waivers.** The Secretary for Aging and Disability Services provided an update on the transition of I/DD Long-Term Services and Supports into KanCare at all four meetings.

**MCOs financial update.** A update was not available at the January meeting because the filing deadline for the National Association of Insurance Commissioners Financial Statement was not until February 15, 2015.

At the April meeting, the DHCF Director provided information indicating the MCOs reported about 46 percent reduction in loss in Calendar Year (CY) 2013 as compared to CY 2014. Responding to a question from a Committee member, the DHCF Director stated the net loss reported by MCOs through December 31, 2013, was \$116,208,699 and through December 31, 2014, the net loss was \$52,959,879.

The DHCF Director reported the MCOs had a total adjusted net income January 2015 through September 30, 2015, of \$41,676,498.

**KanCare Ombudsman.** The KanCare Ombudsman provided an update indicating there were two opportunities for members and providers to meet the Ombudsman, one at a vendor booth at an InterHab Conference and the second at the Brain Injury Conference. The Ombudsman stated the Ombudsman's office mailed information about its services to the 105 targeted case managers. The Ombudsman provided a summary to the

Committee of the 2014 fourth quarter report. She stated the top four issue categories for the fourth quarter were medical services, HCBS general issues, appeals and grievances, and billing. She indicated billing and appeals and grievances were the top two issues that have been consistent across all four quarters.

At the April meeting, the Ombudsman indicated the office received 510 contacts during the first quarter of 2015, with 221 of the contacts related to an MCO issue.

At the August meeting, the Ombudsman indicated the Volunteer Program would begin September 1, 2015; the numbers of contacts to the office were down slightly in the second quarter; a new Ombudsman brochure was developed; and nursing facility issues and pharmacy were new top issues reported by members.

At the December meeting, the Ombudsman reported the Volunteer Program had been implemented in Wichita, and programs were planned for Kansas City and Johnson County in early 2016. The Ombudsman also reported the office received a total of 1,551 contacts during the first, second, and third quarters. Of those contacts, 616 were related to MCO issues.

During CY 2015, the Ombudsman provided Medicaid program outreach at several events including the KanCare (I/DD) Friends and Family Advisory Council, the Conference on Poverty, and the Disability Caucus.

**Hospital claims.** At the January meeting, a representative from Newman Regional Health expressed concern that some of the claims processing problems expressed to the Committee in 2014 had not been resolved with the MCOs and did not have long-term solutions. At the April meeting, the Chairperson stated the testimony provided by Newman Regional Health at the January meeting was not wholly accurate and the MCOs followed up with Newman Regional Health and the problems were resolved.

At the December meeting, representatives from Lawrence Memorial Hospital (LMH) expressed concerns about the coordination of patient care and utilization review, processing of

claims submitted to KanCare MCOs for payment, and payment denial of claims for services and the appeals process. A representative from LMH stated many claims are denied without a reason being provided. The MCOs provided information indicating denied claims always include a reason for the denial.

The Chairperson invited LMH and the MCOs to provide an update at the January 2016 meeting.

**Presentations on KanCare from individuals, providers, and organizations.** The Committee heard from multiple KanCare beneficiaries regarding both favorable experiences and difficulties faced in navigating the system.

Positive experiences were described by multiple individuals receiving KanCare services. Among the favorable testimony heard were comments related to the ease of navigating the process, valuable assistance provided by the support teams and case managers, support teams and case managers being responsive and cooperative, MCOs' efforts at keeping members informed, services provided by the MCOs to facilitate the members' ability to remain in their homes, support provided in addressing both physical and mental health problems, and MCOs taking time to assess and then address individual needs.

Various complaints heard by the Committee from individuals included situations where the system's structure caused confusion in which neither the MCO nor the provider would take responsibility, difficulty in navigating the Interactive Voice Response System, frustration with the change in age requirements for personal care service workers, the inability to obtain information regarding the basis for reductions in plans-of-care hours, lack of knowledge and communication regarding the status of individuals on the waiting lists, difficulty navigating the system and administrative burdens, lack of service providers, caseworkers being difficult to work with, and difficulty in understanding and navigating the appeals process.

Representatives of the following organizations and providers testified or provided written testimony before the Committee: Kansas Home Care Association; LeadingAge Kansas; Newman Regional Health; Kansas Hospital Association;

Kansas Action for Children; Kansas Health Consumer Coalition; InterHab; Kansas Advocates for Better Care; Topeka Independent Living Resource Center; Jenian, Inc.; Kansas Neurological Institute Parent Guardian Group; Association of Community Mental Health Centers of Kansas; Community Health Center of Southeast Kansas; COMCARE of Sedgwick County; Advocate Care Services; Life Patterns; Providence Professional Services; Case Management Services, Inc.; HealthCore Clinic; Asbury Park; Kansas Center for Assisted Living; Lawrence Memorial Hospital; Self-Direction Care Providers of Kansas; Health Homes Mirror, Inc.; Wyandot, Inc.; Bert Nash Community Mental Health Center; Cottonwood, Inc.; and Advocacy Services of Western Kansas, Inc.

Some organizations and providers praised KDHE and KDADS for the agencies' willingness to work with them on issues that arose and KDHE for providing leadership on the Health Home initiative. The KDHE also was praised for inviting Kansas providers to provide input regarding the Integrated Waiver project and partnering with Financial Management Services (FMS) providers attempting to comply with the U.S. Department of Labor (DOL) rule. The MCOs also received praise for their cooperative efforts from organizations and providers, though some expressed difficulty with particular MCOs.

Various areas of concern or need expressed by organizations and providers [*responses from agencies provided in brackets*] included the potential loss of needed services to a number of individuals on the physical disability (PD) waiting list because KDADS had been unable to contact them [*A representative from KDADS explained the efforts made by the agency to contact individuals on the PD waiting list and noted the waiting list number actually includes some individuals who have been extended an offer to receive services. The representative also indicated the acceptance rate of services is about 50 percent.*]; the funding mechanism for the Frail Elderly (FE) waiver in assisted living; retaining support staff due in part to low wages; prior authorization particularly in general and as it relates to crisis funding [*A representative from KDHE explained MCOs have about ten days to respond from the time the request is received, and there is no prior authorization required for emergencies.*]; long

I/DD waiting list and low rates for I/DD providers [*A representative from KDADS stated KDADS has had issues with not being able to contact people who have been on the I/DD list for a lengthy time, possibly due to their relocating or having started other services. The representative also indicated KDADS is working closely with the Community Developmental Disability Organizations to identify names that should and should not be on the list.*]; an unfunded mandate for background checks on all personal care service workers [*A KDADS representative stated KDADS is trying to mitigate those costs by working within KDADS and with the Survey Certification Commission.*]; challenges facing FMS providers, such as requests for FMS rate increases and moving from a self-directed model to a vendor fiscal employer model [*A representative from KDADS explained the changes were put in place to ensure consumers could successfully perform the role as employer, and KDADS accepted provider input when developing the FMS manual. The representative also indicated KDADS is not performing a rate study related to FMS providers.*]; the need for management and control of the PD waiting list to be with the Centers for Independent Living; the need for support for older adults; concerns as to the use of anti-psychotic drugs as chemical restraints in the treatment of dementia in the elder population; the change in age requirements for support workers [*A representative from KDADS stated the age requirement for personal care service workers was changed in response to a request for information from CMS and is not a federal requirement.*]; the need for increased reimbursement rates for HCBS professional staff providing services and supports to those with disabilities; concern with the new DOL rules [*A representative from KDADS stated KDADS is preparing to implement the rule according to the Court of Appeals time line which begins enforcement January 1, 2016.*]; members' rights to due process not being protected; individuals with I/DD being opted-in to mental health Health Homes but not being notified [*A representative from KDHE stated effective November 1, 2015, MCOs are required to provide written notice to the TCM of the individual being placed in the Health Home.*]; long-term supports not being understood by MCOs; and long-term supports not belonging in KanCare.

**Hepatitis C drug use and Centers for Medicare and Medicaid Services (CMS) ruling.**

At the January meeting, the Secretary for Health and Environment discussed the federal requirement to cover new drugs for hepatitis C once approved by the federal Food and Drug Administration. She stated a 12-week course of treatment for hepatitis C is available in a cost range from \$80,000 to \$120,000 for a full course of treatment. A Committee member requested the projection of the cost of the hepatitis C drug be included in the state budget. The DHCF Director indicated KDHE would work with the KDHE actuary and pharmacy team to achieve an accurate projection.

At the April meeting, the Deputy Secretary for Health and Environment reported hepatitis C drug utilization is part of KDHE's monthly financial reports, and KDHE is anticipating spending between \$30 million and \$32 million per year for the drug.

At the August meeting, the DHCF Director reported \$24,789,662 was expended by MCOs from March 2015 through July 2015 on hepatitis C drugs. In response to a concern from a Committee member, the DHCF Director stated the use of hepatitis C drugs is a concern in all states and the issue is being monitored.

At the December meeting, the DHCF Director stated as it related to comments CMS published on November 5, 2015, concerning the state Medicaid coverage of hepatitis C medications, he did not believe there was any impact or additional cost to be borne by Kansas as Kansas was already compliant with CMS' suggestions. It also was reported that \$28,716,966 had been spent by MCOs on hepatitis C medications from January 2014 to December 2015.

**Update on the state and expectation of change regarding psychotropic drug use and prescription drug process.** At the April meeting, the Deputy Secretary for Health and Environment provided an update on 2015 Senate Sub. for HB 2149 that was pending and was subsequently enacted. The law allows prior authorization or other restrictions on medications used to treat mental illness to be imposed on Medicaid recipients for medications subject to guidelines

developed by the Drug Utilization Review Board (Board) in accordance with provisions of the bill; establishes instances not to be construed as restrictions; provides for the development of guidelines; establishes requirements for Board review of medications used to treat mental illness available for use before and after July 1, 2015; and creates a Mental Health Medication Advisory Committee (MHMAC) outlining Committee membership and appointments, meeting frequency, and member compensation.

At the August meeting, the Secretary for Health and Environment stated the MHMAC would meet in September to review mental health drugs by class. She also indicated the dose optimization and consolidation prescription drug process replaces multiple doses of a medication at a lower strength with a single dose of medication at a higher strength, applies to a state-approved list of 17 mental health drugs, and allows multiple doses of lower strength to be requested *via* the prior authorization process.

At the December meeting, the Secretary for Health and Environment stated the MHMAC had met three times and had reviewed the proposed criteria for approving mental health drugs and discussed processes for MCO prior authorization implementation and review.

**KanCare Waiver Integration project.** The Secretary for Health and Environment provided an overview of the KanCare Waiver Integration project, stating there are seven HCBS programs under the 1915(c) waiver that cover autism, FE, I/DD, PD, serious emotional disturbance, technology assisted, and traumatic brain injury (TBI), that operate alongside the 1115 waiver. The 1115 waiver includes all Medicaid services in the State plan, the authority to provide all services through managed care to all populations, and HCBS. The integration project would combine all services into two broad categories of adult and children's services. How the funds would be appropriated under the integration is still undecided. At the August meeting, the goal for new service to be available to beneficiaries was July 1, 2016, but at the December meeting the goal was updated to January 2017.

At the December meeting, the Secretary provided an overview on the outreach KDHE and KDADS conducted to stakeholders. KDHE will file a request with CMS for permission to move forward with the project in the spring of 2016.

Responding to questions, the Secretary for Health and Environment provided the following information about the Waiver Integration project: the payment model will not change; the waiting lists will not be affected; and the vast majority of services will continue to be available.

**PACE expansion.** The Secretary for Aging and Disability Services informed the Committee three locations were in the process of adding a PACE program. All three locations were in the process of completing the State Readiness Review.

**Osawatomie State Hospital (OSH).** At the April meeting, the Secretary for Aging and Disability Services stated the hospital needed to undergo renovations to continue to be certified, renovations were in progress, and the renovations needed to be completed by October 1, 2015, to meet CMS' deadline. The Secretary also stated OSH's capacity needed to be reduced by 60 to 146 during the renovations.

At the December meeting, the Secretary for Aging and Disability Services provided an update on the CMS termination of federal government reimbursement for Medicare-eligible inpatients admitted to OSH after December 21, 2015. The Secretary stated OSH is still operating, has 146 patients, and is still taking patients.

**Tele-monitoring.** At the December meeting, the Chief Executive Officer (CEO) of UnitedHealthcare updated the Committee about UnitedHealthcare's tele-monitoring pilot program that began January 1, 2015. The CEO stated the objective of the program is to evaluate quality and cost outcomes resulting from expansion of tele-monitoring services to additional KanCare populations. The expected benefits include cost reduction in emergency room and inpatient utilization, transportation costs, and nursing home admissions and quality improvement in preventative care for members with chronic disease. The CEO reported, since the inception of the program, inpatient admissions per member per

month decreased by 14 percent and total costs declined by 2 percent.

**Agency responses to presentations by individuals, organizations, and providers.** At the April meeting, a Committee member, referencing written testimony from Kansas Action for Children that stated the enrollment of poor one- to five-year old children in KanCare had been dropping since November 2012, asked if policy changes in DCF regarding Temporary Assistance for Needy Families (TANF) and the Supplemental Nutrition Assistance Program (SNAP) would impact enrollment. The KDHE CITO stated a change in the eligibility policy for SNAP or TANF would not affect the eligibility for the one- to five-year-old group. A Committee member expressed interest in reviewing policy changes made in DCF programs impacting the enrollment of young children in Medicaid.

A Committee member inquired about how applications from pregnant women applying for Medicaid were processed. The KDHE CITO explained those applications were moved to the front of the eligibility queue for processing and, with the implementation of KEES, there would be a presumptive eligibility pool for pregnant women that would grant 60 days of eligibility to allow time to process the applications.

The Secretary for Health and Environment responded to testimony provided by InterHab related to HCBS rate with the I/DD provider rate. The Secretary indicated KDADS staff continue to work with CMS to see if there is going to be a change in the CMS approach to the provider assessments and KDADS was working with a work group of DD providers to identify outcomes that could be tied to an increased rate of reimbursement. The Secretary indicated there could be a higher reimbursement rate tied to improved outcome in HCBS.

**MCO testimony and responses to presentations by individuals, organizations, and providers.** Representatives of the three MCOs testified at the four committee meetings. The CEO from Amerigroup Kansas Plan provided the Committee an update on Amerigroup 2014 achievement, 2014 provider payments and 2014 provider payment detail, provider servicing,

Health Homes statistics, I/DD program, and 2015 initiatives. In response to questions, the CEO stated Amerigroup continues to meet with its DD and PD waiting list individuals at least once a year assessing for gaps, developing plans of care, and continuing to work with them to help support whatever needs they have until they become eligible to go on the waiver.

The CEO and Plan President from Sunflower State Health Plan provided an overview on the progress made by Sunflower over the past 24 months, and he addressed the prior authorization issue indicating Sunflower is near the required 14-day turnaround time. The CEO also reported Sunflower had about 149,000 members, paid out more than \$1 billion to providers in 2014, and transitioned 170 members in 2014 from nursing facilities into HCBS.

The Health Plan CEO from UnitedHealthcare Community Plan provided information on utilization management, quality outcomes, provider satisfaction, member satisfaction, and prior authorization, including steps UnitedHealthcare had taken to address the prior authorization problem. The CEO also reported UnitedHealthcare's claim denial rate in 2015 has been about 7 percent, with 20 percent of denials due to a prior authorization issue.

**Human Services Consensus Caseload Spring Estimates.** At the April meeting, a KLRD staff member provided an overview of Human Services Consensus Caseload Estimates for FY 2015, FY 2016, and FY 2017. The staff member stated, as a starting point for the current estimate, the Human Services Consensus Caseload Estimating Group (Group) used the Governor's budget recommendation as adjusted by 2015 House Sub. for SB 4 and appropriation revisions and supplementals for FY 2015 and FY 2016 for various state agencies. The staff member indicated the estimate for all caseloads for FY 2015 was a decrease of \$36.4 million from the State General Fund (SGF) and \$119.3 million from all funding sources from the amount approved in House Sub. for SB 4. The new estimate for FY 2016 was a decrease of \$58.6 million from all funding sources and an increase of \$3.8 million from the SGF. The estimate for FY 2017 was a decrease of \$6.5 million from the SGF and \$71.0 million from all funding sources from the Governor's budget

recommendation. The combined estimate for FY 2015, FY 2016, and FY 2017 was an all-funds decrease of \$248.9 million, including \$39.1 million from the SGF. The staff member next provided details on FY 2015, FY 2016, and FY 2017 human services caseload estimates.

In response to questions, the staff member provided the following information: the Group made increases in the estimates for hepatitis C drugs from the 2014 fall estimates; the Group used not quite a two percent growth in Medicaid membership for each year; regarding the Federal Medical Assistance Percentage change in FY 2017, the Group used a blended rate to account for the fact the federal rate crosses over fiscal years, and the Group knew how the percentages were calculated, but members were not able to look at the actual calculations; and the Group reinserted \$12 million for the DCF settlement. The staff member explained the settlement arose from a past federal audit that determined certain expenditures were not allowable that DCF believed were allowable; therefore, adjustments had to be made.

**Human Services Consensus Caseload Fall Estimates.** At the December meeting, a staff member from KLRD reviewed the estimates on human services caseload expenditures for FY 2016 and FY 2017. Staff from the Division of the Budget, DCF, KDHE, KDADS, Kansas Department of Corrections (KDOC), and KLRD met on October 28, 2015, to revise the estimates on human services caseload expenditures for FY 2016 and FY 2017. The caseload estimates include expenditures for Temporary Assistance to Families, the reintegration/foster care contracts, out-of-home placements, KanCare regular medical assistance, non-KanCare, and nursing facilities.

The staff member reported the human services caseload expenditures estimate for FY 2016 is \$3.0 billion from all funding sources and \$1.1 billion from the SGF. This represents an increase of \$48.9 million from all funding sources, including \$16.6 million from the SGF as compared to the budget approved by the 2015 Legislature. The estimate for FY 2017 is \$3.0 billion from all funding sources including \$1.1 billion from the SGF and is an increase of \$82.2 million from all funding sources, including \$30.8 million from the SGF from the FY 2017 approved budget. The combined estimate for FY 2016 and FY 2017 is an all-funds

increase of \$131.0 million and a SGF increase of \$47.4 million. The staff member stated the administration of KanCare within the state is accomplished by KDHE maintaining financial management and contract oversight including regular medical services, while KDADS administers the Medicaid Waiver programs for disability services as well as long-term care services, mental health and substance abuse services, and the state hospitals. In addition, KDOC administers the part of KanCare related to youth in custody.

Concerning FY 2016, a Committee member asked the staff member to explain the information concerning the transfer of expenditures for state hospital assessments from the KanCare to non-KanCare portion of caseloads. The staff member explained, effective January 1, 2016, some of the services provided are not paid for under the contract with the MCOs, so these entitlement services are being reallocated to the line item non-KanCare.

Concerning FY 2017, a Committee member asked the staff member to explain the statement concerning the addition of SGF expenditures needed to account for an anticipated federal penalty regarding two-parent work participation rates in those receiving services through the program. The staff member stated a portion of the TANF program at the federal level has a requirement for participation at a certain rate in order to qualify for the block grant funding. It is anticipated Kansas will not meet the required percentage for two parents working for FY 2017; therefore, a penalty is expected, requiring an increase in the funds allocated to the SGF.

**Quarterly HCBS report.** At each Committee meeting, the Secretary for Aging and Disability Services provided information on average monthly caseloads and average census for state institutions and long-term care facilities. The Secretary also provided information on savings on transfers to HCBS waivers and the HCBS Savings Fund balance.

**Financial Management Services (FMS) program update.** At the January meeting, the Secretary for Aging and Disability Services stated the changes to the FMS program were put in place

to ensure consumers could successfully perform the role as employer. She also stated the changes would implement a consistent model across the state.

**Update on renewal of waivers.** At the December meeting, the Secretary for Aging and Disability Services stated the renewal applications for PD, I/DD, FE, and TBI waivers were approved by CMS; CMS approved an extension to March 28, 2016, of the Serious Emotional Disturbance waiver program; and CMS approved an extension of the Autism waiver program to March 30, 2016. The Secretary also stated KDADS submitted amendments to renewed HCBS waivers to modify sleep-cycle support service to comply with the Fair Labor Standards Act and the DOL rule.

**Waiting lists reduction.** The Secretary for Aging and Disability Services stated at the January meeting that, with the Governor's proposed budget increases, 175 additional individuals would be moved off of the I/DD waiting list and 125 individuals moved off of the PD waiting list.

At the April meeting, the Secretary for Aging and Disability Services stated, as of April 14, 2015, 5,482 individuals were receiving services on the HCBS PD program and 8,724 individuals were receiving services on the I/DD program. The Secretary reported from January 1, 2015, to March 31 2015, 9 individuals from the I/DD waiting list accepted services and 55 individuals from the PD waiting list accepted services. Responding to a question, the Secretary stated \$65 million all funds had been allocated to the waiting lists since 2013.

At the August meeting, the Secretary for Aging and Disability Services reported, as of August 15, 2015, there were 1,721, individuals on the PD waiting list and 3,449 individuals on the I/DD waiting list.

At the December meeting, the Secretary for Aging and Disability Services reported KDADS had extended offers of service to everyone who was placed on the PD waiting list as of June 30, 2015, and earlier, and there were 1,319 individuals on the PD waiting list as of December 2015. The Secretary also reported there were 3,554 individuals on the I/DD waiting list as of

December 2015, and 565 individuals started I/DD services in 2015.

**U.S. DOL HCBS settings rule.** At the January and April meetings, the Secretary for Aging and Disability Services updated the Committee on the DOL rule regarding whether direct service workers serving HCBS waiver clients would be subject to minimum wage and overtime benefits from which they previously were exempt and indicated there was on-going litigation. During the August meeting, the Secretary stated the U.S. Court of Appeals issued a unanimous opinion affirming the validity of the DOL Final Rule. The ruling requires Kansas to provide an hourly rate instead of a nightly rate for sleep cycle support. The Secretary indicated the plaintiff filed a petition for *writ of certiorari* requesting the U.S. Supreme Court hear an appeal of the case. Kansas coordinated an *amicus* brief filed December 23, 2015, with 12 other states' Attorneys General in support of the plaintiffs. KDADS submitted targeted waiver amendments to CMS to update policies related to personal care and overnight support.

**Federal Health Insurance Marketplace update.** Information was provided by representatives of the Kansas Insurance Department (KID) at the January, April, and August meetings.

A representative of KID reported at the January meeting that enrollment totaled 54,899 Kansans who completed the eligibility portion of the application process between November 15, 2014, and December 15, 2014, 39,023 of whom selected a Marketplace plan. The representative from KID noted the remainder had either not selected a plan (11,964) or had been determined eligible for Medicaid/CHIP (3,912). The representative also explained the data did not include consumers automatically re-enrolled into coverage.

During the April meeting, the KID representative reported, as of March 10, 2015, Marketplace enrollment was at 96,197, with 80 percent eligible for financial assistance. A Committee member asked the representative if the commercial payers had their financial strength decreased by the Marketplace business and if

those payers would pass costs to the private sector. The representative stated the companies are not in a financial position that causes significant concern.

During the August meeting, a representative from KID reported the following companies were Marketplace insurers and provided a financial review of the companies: Blue Cross and Blue Shield of Kansas, Coventry Health Care of Kansas, Coventry Health and Life Insurance Company, and Blue Cross and Blue Shield of Kansas City.

The KID representative also reported the 2016 Marketplace open enrollment is November 1, 2015 through January 31, 2016.

## CONCLUSIONS AND RECOMMENDATIONS

Based on testimony heard and Committee deliberations, the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight makes the following conclusions and recommendations.

The Committee made the following recommendations regarding prescription drugs:

- The KDHE produce a report, collaborating with the MCOs, to report the geographic region and type of provider over-prescribing anti-depressant and anti-psychotic drugs. The geographic locations would mirror the PACE regions;
- The KDHE adopt a policy allowing the MCOs and providers to use step therapy (a.k.a., fail first) on the non-waiver population; and
- The KDHE review the preferred drug list (PDL) rules for the non-waiver population and adopt a policy allowing the MCOs to determine the PDL for the non-waiver population, instead of the State setting the PDL for this population. The review should include a variety of options, including new pricing methodologies, relaxing PDL rules, or allowing network contracting strategies. Decisions would be contingent upon providing a positive dollar impact (savings) to State expenditures of any such change.

The Committee made the following recommendations regarding Health Homes:

- The KDHE continue to evaluate the financial and health outcomes of the existing Health Homes program for individuals with SMI, including exploring opportunities for simplification of the program;
- The KDHE adopt a policy excluding the DD population from the Health Homes program for individuals with SMI to remove duplication of case management services;
- The KDHE adopt a policy that the automatic opt-in to the Health Homes program for individuals with SMI would not apply until the patient has utilized medical services with an annual minimum value of \$10,000; and, if a patient does not utilize Health Home services during the first 60 days, the patient would be automatically opted out of the Health Homes program;
- The KDHE adopt a policy requiring medical and surgical services in the Health Homes program for individuals with SMI be provided by the lowest number of primary care providers required to provide the needed services; and

- The KDHE adopt a policy holding any targeted case manager financially harmless for the value of the services provided to an individual in a Health Homes program for individuals with SMI when notification of patient inclusion in the program has not been documented or provided in a timely manner to the targeted case manager. The policy should be budget neutral to the Medicaid program.

The Committee made the following additional recommendations:

- Request KDADS review the Colorado Parent as Caretaker Program and determine the feasibility of introducing a program such as this in the state of Kansas; and
- Request KDHE review the actual experience of the presumptive eligibility program for pregnant women to determine whether prenatal services are being delayed due to the presumptive eligibility policy not being appropriately implemented.

### **Proposed Legislation**

The Committee did not propose legislation for consideration during the 2016 Legislative Session.

## ADDENDUM A

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

#### ANNUAL REPORT FOR THE 2015 LEGISLATIVE SESSION

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight is charged by statute to submit an annual written report on the statewide system for long-term care services to the President of the Senate and the Speaker of the House of Representatives at the start of each regular legislative session. The authorizing legislation (KSA 2015 Supp. 39-7,159) creating a comprehensive and coordinated statewide system for long-term care services became effective July 1, 2008.

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

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

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

#### **Number of individuals transferred from state or private institutions to home and community based services including the average daily census in state institutions and long-term care facilities:**

*Number of Individuals Transferred*—the following table provides a summary of the number of individuals transferred from developmental disability (DD) institutional settings into home and community based services during state fiscal year 2015, together with the number of individuals added to home and community based services due to crisis or other eligible program movement during state fiscal year 2015. The following abbreviations are used in the table:

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

<b>DD INSTITUTIONAL SETTINGS AND WAIVER SERVICES*</b>	
Private ICFs/MR:Avg. Mo. Caseload SFY 2015	140
State DD Hospitals – SMRH: Average Monthly Caseload SFY 2015	317
MFP: Number discharged into MFP program – DD	30
I/DD Waiver Community Services: Average Monthly Caseload SFY 2015	8,740
* Monthly averages are based upon program eligibility.	
Sources: SFY 2015 - Medicaid eligibility data as of November 30, 2015. The data include people coded as eligible for services or temporarily eligible.	

The following table provides a summary of the number of individuals transferred from nursing facility institutional settings into home and community based services during SFY 2015. These additional abbreviations are used in the chart:

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

<b>FE/PD/TBI INSTITUTIONAL SETTINGS AND WAIVER SERVICES*</b>	
Nursing Homes -Average Monthly Caseload SFY 2015	10,491
MFP FE: number discharged into MFP program receiving FE Services	54
MFP PD: number discharged into MFP program receiving PD Services	148
MFP TBI: number discharged into MFP program receiving TBI Services	7
Head Injury Rehabilitation Facility	31
FE WAIVER: Average Monthly Caseload SFY 2015	5,159
PD WAIVER: Average Monthly Caseload SFY 2015	5,415
TBI WAIVER: Average Monthly Caseload SFY 2015	516
* Monthly averages are based upon program eligibility.	
Sources: SFY 2015 - Medicaid eligibility data as of November 30, 2015. The data include people coded as eligible for services or temporarily eligible.	

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

**Kansas Neurological Institute: Average Daily Census**

FY 2010 - 157  
FY 2011 - 153  
FY 2012 - 152  
FY 2013 - 145  
FY 2014 - 143  
FY 2015 - 144

**Parsons State Hospital: Average Daily Census**

FY 2010 - 186  
FY 2011 - 186  
FY 2012 - 175  
FY 2013 - 176  
FY 2014 - 174  
FY 2015 - 173

**Private ICFs/MR: Monthly Average**

FY 2010 - 194  
FY 2011 - 188  
FY 2012 - 166  
FY 2013 - 155  
FY 2014 - 143  
FY 2015 - 140

**Nursing Facilities: Monthly Average**

FY 2010 - 10,844  
FY 2011 - 10,789  
FY 2012 - 10,761  
FY 2013 - 10,788  
FY 2014 - 10,783  
FY 2015 - 10,491

\*Monthly Averages are based upon Medicaid eligibility data.

## **Savings Resulting from the Transfer of Individuals to HCBS**

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

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

As certified by the Secretary for Aging and Disability Services, the savings resulting from the individuals to home and community based services, as of December 31, 2015, was zero dollars.

## **Current Balance in the KDADS Home and Community Based Services Savings Fund**

The balance in the Kansas Department for Aging and Disability Services (KDADS) Savings Fund as of December 31, 2015, was zero dollars.



# Report of the Clean Power Plan Implementation Study Committee to the 2016 Kansas Legislature

**CHAIRPERSON:** Representative Dennis Hedke

**VICE-CHAIRPERSON:** Senator Robert Olson

**OTHER MEMBERS:** Senators Marci Francisco, Forrest Knox, Mike Petersen, and Caryn Tyson; Representatives Tony Barton, Ken Corbet, Annie Kuether, Les Mason, and Randy Powell

## **CHARGE**

The Clean Power Plan Implementation Study Committee shall:

- Hold informational hearings; and
- Receive updates from the Kansas Department of Health and Environment, the Kansas Corporation Commission, and the Attorney General about the implications of the adoption of a state plan pursuant to docket EPA-HQ-OAR-2013-0602 (the federal Clean Power Plan) concerning the impact to:
  - Electric ratepayers;
  - Electric utilities;
  - The reliability of the electric grid in Kansas; and
  - The overall sovereignty of the State.



# Clean Power Plan Implementation Study Committee

## REPORT

### Conclusions and Recommendations

The Committee makes no conclusions or recommendations.

*Proposed Legislation:* None.

### BACKGROUND

The 2015 Legislature passed HB 2233, which established the procedure for developing and submitting a state plan (Plan) to the U.S. Environmental Protection Agency (EPA) to comply with the proposed federal Clean Power Plan (CPP) rule. The bill created the Clean Power Plan Implementation Study Committee (Committee), which was directed to hold informational hearings and receive updates from the Kansas Department of Health and Environment (KDHE), Kansas Corporation Commission (KCC), and the Attorney General about the implications of the adoption of a Plan for the CPP. Members appointed to the Committee will serve a term from July 1, 2015 to June 30, 2017.

The Committee was authorized to meet one day.

### COMMITTEE ACTIVITIES

The Committee met on October 1, 2015, in the Statehouse. The Committee first reviewed the specifics of HB 2233.

#### Office of the Attorney General

The Chief Deputy Attorney General provided an update on the legal status of the CPP rule. On

August 1, 2014, Kansas and 11 other states filed a Petition for Review in the U.S. Court of Appeals for the D.C. Circuit, the case for which was captioned *State of West Virginia, et al., v. United States Environmental Protection Agency*, Case No. 14-1146. The 12 petitioning states also intervened in a private preemptory challenge to the CPP rule, which was *In re Murray Energy Corporation*, in the U.S. Court of Appeals for the D.C. Circuit, Case Nos. 14-1112 and 14-1151. The two cases were consolidated for briefing and oral argument. On June 5, 2015, the D.C. Circuit ruled against the petitioners on the ground that the CPP rule in its preliminary form could not be challenged until it became final.

After the CPP rule was announced on August 3, 2015, 11 of the 12 original states, plus four others, filed an Emergency Petition for Extraordinary Writ in the D.C. Circuit, asking for the CPP rule to be stayed. A panel of the D.C. Circuit denied the Petition on September 9, 2015. At the time of the Committee hearing, the Chief Deputy Attorney General stated Kansas is precluded from any additional legal challenges until the CPP rule is published in the *Federal Register*. The Chief Deputy Attorney General then reviewed the legal problems with the CPP rule, as identified by the Office of the Attorney General: the CPP rule unlawfully exceeds the authority of the EPA and contains multiple legal defects, each of which provides an independent basis to invalidate the rule in its entirety.

## **Kansas Department of Health and Environment (KDHE)**

The Air Monitoring and Planning Chief and Environmental Program Administration Supervisor (Supervisor) for KDHE discussed the CPP rule in detail, discussing key dates, affected units in Kansas, changes from the proposed CPP rule to the final CPP rule, and the emissions reductions that Kansas will need to achieve by 2030. The Supervisor discussed the various state plan types that Kansas could choose from and the two compliance paths provided by the final CPP rule. The Supervisor also discussed what the path forward would be, including evaluating the impact of a more stringent goal; reviewing types of plans and their requirements; determining which approach is best for Kansas; reviewing options for dealing with stranded assets; developing a plan to meet the public process provisions; continuing coordination with the KCC, utilities, and stakeholders; and reviewing the Model Rule and Federal Plan and preparing comments to be submitted to the EPA.

The Supervisor provided an initial calendar of dates for the Committee, with a submission of an initial state plan with an extension request by September 2, 2016.

## **Kansas Corporation Commission (KCC)**

The Director of the Utilities Division (Director), KCC, stated the agency staff is continuing to review the final rule. The KCC and KDHE staff have weekly calls to discuss the CPP rule and have bi-weekly calls involving the KCC, KDHE, and all stakeholders. The Director stated a general investigation would be opened soon after the Committee's meeting, to identify least-cost compliance options that maintain reliable electric service, be an open proceeding that affected parties may petition to intervene and submit comments, allow KDHE to participate per the terms of the Memorandum of Understanding signed by the two agencies, and encourage all affected non-jurisdictional utilities to intervene and participate.

The Director stated a request for proposal has been issued to engage a consulting firm with the necessary experience and modeling program to run

re-dispatch and power flow models. The Director then outlined the scope of work that was anticipated in order to accomplish the KCC's directives under HB 2233.

## **Southwest Power Pool (SPP)**

The Senior Vice President for Governmental Affairs and Public Relations and the Vice President of Engineering for the Southwest Power Pool (SPP) provided the SPP's impact assessment of the proposed CPP rule. The SPP performed three assessments on the draft rule:

- **Reliability Impact Assessment:** assessed the impact of EPA's projected generator retirements on the transmission system and resource adequacy;
- **Regional Compliance Assessment:** evaluated changes to existing resources and resource plans needed to comply with the CPP rule under a regional compliance approach; and
- **State-by-State Compliance Assessment:** evaluated changes to existing resources and resource plans needed to comply with the CPP rule under a state-by-state compliance approach.

The SPP found after conducting these assessments that state-by-state compliance is more costly than regional compliance and is more disruptive than a regional approach to the reliability and economic benefit provided by SPP's markets. In addition, the SPP found that more new generation and transmission infrastructure likely is needed for state-by-state than for regional compliance.

The SPP representatives stated the SPP stands ready to assist in any way that it can to ensure a reliable, cost-effective approach to compliance with the proposed CPP rule. The SPP encourages states to begin coordination with the SPP early and often during the development of state plans.

## National Perspective

A national perspective on the proposed CPP rule was presented by the Department Chair for Environment (Washington, D.C., office) and partner of Baker Botts, LLP, an international law firm. The representative stated there are legal vulnerabilities regarding the proposed CPP rule, which include whether the EPA has the power to regulate under existing law, whether the proposed standards are more stringent than existing standards, whether the EPA can require renewable energy under the proposed CPP rule, whether there are limits to EPA's authority under the proposed rule, and other CPP-specific elements, including remaining useful life of power plants, state obligations, and potential issues of leakage.

Additional information on the national perspective was provided by the Vice President of State Policy and General Counsel, American Energy Alliance, who stated the proposed CPP rule picks winner and losers. The representative also provided information regarding the various ways states could comply with the proposed rule and the role of state legislatures in complying with the rule. The representative provided three scenarios to consider:

- Submit a fully-compliant initial state implementation plan by September 2016;
- Submit a partial or non-compliant initial state implementation plan by September 2016; or
- Refrain from submitting an initial state implementation plan by September 2016.

## Industry Perspective – Investor-owned Utilities

The Executive Director for Environmental Services, Westar Energy, provided testimony on behalf of Westar Energy, Kansas City Power and Light (KCP&L), and Empire District, all of which are investor-owned utilities (IOUs). The Executive Director stated the IOUs were planning to approach the CPP rule on parallel paths. First, the IOUs are planning to challenge the rule in the courts, but at the same time, the IOUs will be analyzing the rule and working with KDHE to support the option of a state plan with the least

impact to the IOUs' customers. The Executive Director expressed the IOUs' support for a state plan, the development process of which allows for gathering data, getting regulatory input, and factoring in the results of litigation. In addition, the Executive Director added that the trading of allowances could be a valuable tool for reducing CPP customer impact, especially when done under a state plan. The Executive Director stated the SPP is reviewing and addressing potential reliability impacts and their current analyses support the value of a trading option, which could require legislative action to allow it in Kansas.

## Industry Perspective — Cooperatives and Municipals

The Executive Manager, Environment, for the Sunflower Electric Power Corporation (Sunflower) provided the cooperative utilities' concerns about the proposed CPP rule. The Executive Manager stated cooperative customers access coal-based energy from Sunflower and Westar Energy assets. He said coal is the state's most economical fossil fuel and there is no emission control technology that can reduce carbon dioxide emissions on currently installed fossil fuel electricity generating units. The Executive Manager continued by stating renewable resources already saturate the western and central Kansas electricity grid and there is doubt that more can be added. Additionally, the Executive Manager stated the EPA directs that electricity generation be redispatched, such that existing natural gas combined cycle units will operate at a 75.0 percent capacity factor, and that this will reduce utilization of lower-cost Kansas coal-based units to less efficient capacity factors. The Executive Manager also stated the proposed CPP rule will strand investment and that Sunflower's transmission rate has doubled since 2008. Adding additional wind requires more transmission reliability upgrades, which adds more costs.

The Director of Environmental Services, Kansas City Board of Public Utilities (BPU), presented the concerns of the municipal electric utilities. In addition to BPU, some units at the Coffeyville and Winfield municipal power plants are affected. The Director stated the proposed CPP rule will be detrimental to BPU customers and lower income earners in the service area, causing

an estimated 31.0 percent electric rate increase without escalation cost. The Director stated the CPP will potentially cause stranded assets, including a \$250.0 million air pollution control project initiated prior to the proposed CPP rule to comply with Cross State Air Pollution Control Rule and Mercury and Air Toxics Rule. BPU expects a negative impact on reliability, and the Director added that BPU supports the comments filed on proposed CPP rule by KDHE and all other Kansas utilities. The Director focused on the potential impact to rate payers, stating that because BPU services some of the lowest income earners in the state, the rate payers in the area would be

some of the most affected by the increased rates. The Director stated BPU supports KDHE in developing a state plan in lieu of a federal plan and transferability of credits may need to be codified in statute. BPU believes, the Director stated, that submitting a state plan provides the most economic and viable path to meet the proposed CPP rule.

### **CONCLUSIONS AND RECOMMENDATIONS**

Following its review, the Committee makes no conclusions or recommendations.