

Committee Reports to the 2025 Kansas Legislature

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

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

**Kansas Legislative Research Department
February 2025**

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**Special Committees;
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Task Forces**

Special Committee on Available and Affordable Housing

Special Committee on Centralized Pooled Collateral
and PMIB Modernization

Special Committee on Foreign Trade and Regulatory Sandboxes

Special Committee on Medical Marijuana

Special Committee on Sedation Dentistry

Special Committee on Targeted Case Management

Joint Committee on Child Welfare System Oversight

Joint Committee on Fiduciary Financial Institutions Oversight

Joint Committee on Information Technology

Joint Committee on Kansas Security

Joint Committee on Pensions, Investments and Benefits

Joint Committee on State Building Construction

Joint Committee on State-Tribal Relations

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

Health Care Stabilization Fund Oversight Committee



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Foreword

In the 2024 Interim, the Legislative Coordinating Council appointed nine special committees and authorized meetings of a special committee created pursuant to provisions in the appropriations bill (HB 2551). Legislation recommended by the committees will be available in the Documents Room early in the 2025 Session. Such legislation will also be available on the Kansas Legislature's website, <http://kslegislature.gov/li/>.

Joint committees created by statute met in the 2024 Interim as provided in the statutes specific to each joint committee. Several of the joint committees have reported on their activities, and those reports are contained in this publication. Legislation recommended by these committees will be available in the Documents Room early in the 2025 Session. Such legislation will also be available on the Kansas Legislature's website, <http://kslegislature.gov/li/>.

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

- Special Committee on Budget Process and Development

- Special Committee on Legislative Budget

- Special Committee on State Employee Compensation

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

- Legislative Budget Committee

- Capitol Preservation Committee

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

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Health Care Stabilization Fund Oversight Committee

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Summary of Conclusions and Recommendations

Special Committee on Available and Affordable Housing

The Committee made recommendations to the 2025 Legislature to review the following: changes to the housing portion of the Linked Deposit Program; the sealing of eviction filings; the concurrent use of housing incentives and tax credits; allowing county appraisers to account for capped resale covenants for certain homes; whether statutes restrict local government zoning authority or other local solutions to affordable housing; changes to local building code and permitting processes; and possible solutions for vacant homes with encumbered titles to be sold faster. The Committee also urged the Kansas Housing Resource Corporation to reconsider the Low Income Housing Tax Credit waiver denied to the Multi-Agency Center in Wichita. The Committee recommended enactment of a bill with language contained in 2024 HB 2832 regarding the Kansas Housing Investor Tax Credit.

Special Committee on Centralized Pooled Collateral and PMIB Modernization

The Committee recommended the Legislature consider creating a centralized collateral pool program to provide for the security of deposits of public funds by Kansas governmental entities. The Committee further recommended the Legislature consider various statutory changes related to deposits of public funds, interest rates for public funds, and oversight of public funds deposits.

The Committee also recommended the Legislature consider reworking all state linked deposit loan programs to modernize the programs and improve the usefulness and competitiveness of such programs.

Special Committee on Foreign Trade and Regulatory Sandboxes

The Committee recommended the 2025 Legislature pursue legislation to implement a regulatory sandbox program in Kansas that is not limited to businesses within any particular industry and in which the administering agency is authorized to consult with relevant industry experts in the consideration of applicants. The Committee further recommended the opinion of the Attorney General regarding the constitutionality of such a program be formally requested. The Committee also made various recommendations regarding foreign trade, including exploring opportunities to educate businesses and Kansas youth on participation in foreign trade and monitoring information on foreign land holdings in Kansas and any potential threats related to foreign influence.

Special Committee on Medical Marijuana

The Committee did not make formal recommendations.

Special Committee on Sedation Dentistry

The Committee recommended the scope of practice for certified registered nurse anesthetists (CRNAs) be defined and that CRNAs be able to procure their own medications under a U.S. Drug Enforcement Administration license. Additionally, the Committee recommended a review of rates, including for partially completed services and the dental code G0330. The Committee also recommended reviewing dental incentives to add dentists to the KanCare network, ensuring there is an accurate list of sedation dentistry providers, highlighting for the consumer the connection between dental care and long-term health, and expressing support for the My Dental Care Passport.

Special Committee on Targeted Case Management

The Committee was tasked with facilitating legislative oversight of potential changes to the Medicaid targeted case management (TCM) service for individuals with intellectual and developmental disabilities. The Committee recommended the Kansas Department for Aging and Disability Services distribute a survey regarding satisfaction with current services and service providers and develop a Kansas-specific response to federal requirements regarding TCM; the House and Senate health committees review TCM provider capacity; and the Committee write a letter to the federal government requesting written documentation of conflict of interest violations and guidance.

Joint Committee on Child Welfare System Oversight

The Committee made recommendations related to several topics.

The Committee made recommendations related to youth in foster care: efforts to make foster youth aware of financial and educational benefits available following graduation from high school; mechanisms to ensure guardians *ad litem* are meeting with the children they represent; ensuring timely enrollment in school when a foster youth has changed placements; shortening and enforcing timelines by which foster youth must receive mental health treatment; and capturing data pertaining to youth who miss mental health appointments and compiling reports for the Committee's review.

The Committee made recommendations related to the Legislature: topics the House Committee on Child Welfare and Foster Care should hold informational hearings on, consideration of legislation amending the definition of "neglect" in the Revised Kansas Code for the Care of Children, and addressing other legislative priorities of the Department for Children and Families as presented to the Committee at its November 2024 meeting.

The Committee made additional recommendations regarding data that case management providers should report at each Committee meeting; requiring literacy assessments for children adjudicated to be in need of care; written information that should be provided to parents after law enforcement has removed a child to protective police custody (PPC); additional resources that should be made available to law enforcement with respect to PPC removals; assistance to a particular family regarding the process for filing a claim against the State; the prioritization of

kinship care placements and consideration of attachment to kinship caregivers in adoption decisions; efforts being made at Kansas universities to encourage students to pursue careers in child welfare; and public awareness regarding safe firearm storage.

Joint Committee on Fiduciary Financial Institutions Oversight

The Committee submitted comments and recommendations regarding the reports submitted by the State Bank Commissioner and the regulated technology-enabled fiduciary financial institution (TEFFI), Beneficient Fiduciary Financial, LLC. The Committee encouraged consideration of a potential liquidation process for TEFFIs; changes to the application fee, reporting requirements, and lending limits; revising certain definitions; Safety and Soundness examination for a TEFFI; industry consultation; and continuation of the Committee itself.

Joint Committee on Information Technology

The Committee requested the introduction of a bill to include the Committee as a recipient of the State IT Consolidation Report and the project cost estimates from the Judicial Branch IT Services for county and district court employees. The Committee also recommended the Legislature review law established in 2024 House Sub. for SB 291 prior to its sunset on July 1, 2026. Further recommendations included the review of statutes and policies around data retention, sale of personal data, and artificial intelligence.

Joint Committee on Kansas Security

The Committee made multiple Kansas Highway Patrol budget-related recommendations. Additionally, the Committee recommended the House Committee on Appropriations and Senate Committee on Ways and Means review the issue of FY 2024 federal budget cuts to the Emergency Management Grant Program and consider adding state moneys for emergency preparedness to maintain funding to the Kansas Division of Emergency Management and local governments.

The Committee also recommended the utilities committees receive briefings on the integrated resources available for electricity, the appropriate legislative committees receive briefings on integrating floor plans of buildings of concern into the information available to first responders and the costs for doing so, and the appropriate legislative committees receive presentations from the Kansas Intelligence Fusion Center regarding threats from foreign adversaries.

The Committee expressed concern over several issues, including increases in violent crime, readily available dangerous drugs, and security for large solar energy installations, and requested the appropriate legislative committees receive presentations on those topics.

Joint Committee on Pensions, Investments and Benefits

The Committee recommended the House Committee on Appropriations and Senate Committee on Ways and Means consider transferring \$1.0 billion from the State General Fund to the Kansas Public Employees Retirement Fund to make additional contributions toward the reduction of the Kansas Public Employees Retirement System (KPERS) unfunded actuarial liability. The Committee also recommended the House Committee on Financial Institutions and Pensions and the Senate Committee on Financial Institutions and Insurance continue to review the Deferred Retirement Option Program, cost-of-living adjustments, and potential changes to KPERS Tier 3 benefits, including funding sources for any such changes.

Joint Committee on State Building Construction

The Committee recommended all five-year capital improvement plans. It requested updated information regarding the Hutchinson Correctional Facility replacement, including cost and location of the proposed new facility; additional information on requirements that restrict disposition of demolition materials more than twice in one location and what criteria must be met for any requested exemptions; and revised expenditures and ending balances of the three building funds: Kansas Educational Building Fund, State Institutions Building Fund, and Correctional Institutions Building Fund.

Joint Committee on State-Tribal Relations

The Committee recommended the 2024 Legislature approve the proposed amendment to the Iowa Tribe of Kansas and Nebraska-Kansas Gaming Compact and introduced corresponding resolutions to provide legislative approval of the amendment. [Note: The resolutions—SR 1750 and HR 6045—were adopted on April 2, 2024.] The Committee made no recommendations to the 2025 Legislature.

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

The Committee made recommendations to implement the graduate medical education program for the Kansas Behavioral Health Center of Excellence; for a budget proviso to amend the Children’s Health Insurance Program eligibility income guidelines in statute and to address federal regulatory changes regarding waitlists and lockout periods; for the social services budget committees to review providing grant funding for local communities to make digitally available a resource guide based upon the out-of-print “Explore Your Options” Resource Guide; for a budget proviso providing for additional substance use disorder (SUD) funding through a grant fund to supplement federal funding for SUD providers that have expended their allocated funds; to adopt conferee rules for the Committee; and to continue annual rebasing of the Program of All-inclusive Care for the Elderly Medicaid rates through a budget proviso.

With regard to legislation, the Committee recommends a Committee bill using the 2024 omnibus

budget proviso language regarding funding for the Mental Health Intervention Team program and keeping the program with the Kansas Department for Aging and Disability Services; legislation supporting the Kansas Behavioral Health Center of Excellence; legislation to change the home plus definition in statute to increase the number of beds from 12 to 16; legislation requiring the Department of Administration to adopt a written policy governing the negotiated procurement of managed care organizations to provide Medicaid pursuant to a contract with the Kansas Program of Medical Assistance that would include a prohibition on the destruction of records that complies with the Kansas Open Records Act, adopts a tie-break procedure, provides transparency with the Legislature to the full extent permitted by law, and is made available to the public and potential bidders; and legislation to allow a rural emergency hospital to be granted a waiver from the physical environment requirements of a new facility for skilled nursing beds.

Health Care Stabilization Fund Oversight Committee

The Committee continues in its belief that it serves a vital role as the link between the Health Care Stabilization Fund (HCSF) Board of Governors, health care providers, and the Legislature, and should be continued. The Committee is satisfied with the actuarial analysis presented and does not request a second independent review. Additionally, the Committee recognizes the important role and function of the HCSF in providing stability in the professional liability insurance marketplace, which allows for more affordable coverage to health care providers in Kansas.

The Committee expressed its appreciation for the service of the former HCSF Deputy Director and Chief Counsel, who has retired, and recommended consideration of expanding allowable HCSF investment options, the addition of advanced practice registered nurses as defined health care providers for coverage purposes, and the HCSF continue to be held in trust.

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Report of the Special Committee on Available and Affordable Housing to the 2025 Kansas Legislature

CHAIRPERSON: Representative Sean Tarwater

VICE-CHAIRPERSON: Senator Renee Erickson

OTHER MEMBERS: Senators Brenda Dietrich, Robert Olson, Usha Reddi, and Tim Shallenburger; and Representatives Pam Curtis, Robyn R. Essex, Leah Howell, Cyndi Howerton, and Lynn Melton

STUDY TOPIC

The Committee is directed to study and make recommendations concerning:

- Home ownership, with an emphasis on housing priced less than \$200,000, and the availability of such housing in urban and rural areas of the state;
- Rental housing issues, including availability of affordable rental housing, eviction issues for tenants and landlords, and potential amendments to the Kansas Residential Landlord and Tenant Act;
- Housing for populations that face specific housing-related challenges, such as fixed-income senior citizens, individuals undergoing substance abuse or mental health treatment, veterans, adults with intellectual and developmental disabilities, and individuals exiting the foster care system or the correctional system;
- The relationship between affordable housing and economic development specifically considering concerns of the workforce, homebuilders, and businesses creating jobs in Kansas;

- Possible incentives for small businesses that purchase and remodel homes, including policies that other state are utilizing;
- Current housing law and policies in Kansas and other states; and
- Other housing issues identified by the Special Committee.

Special Committee on Available and Affordable Housing

REPORT

Conclusions and Recommendations

The 2024 Special Committee on Available and Affordable Housing makes the following recommendations to the 2025 Legislature:

- Review the proposal from the City of Pittsburg regarding changes to the housing portion of the Linked Deposit Program;
- The House and Senate Committees on Judiciary review eviction proceedings, specifically with regards to the sealing of eviction filings;
- The Kansas Housing Resource Corporation reconsider the denial of the waiver for granting Low Income Housing Tax Credit incentives to the Multi-Agency Center Project in the City of Wichita;
- Review how housing incentives and tax credits can be used concurrently as well as the benefits and detriments of the practice;
- Allow county appraisers to account for capped resale covenants for homes held by community land trusts during the appraisal process;
- Examine whether any state statutes restrict local government zoning authority;
- Pass a bill with the language contained in 2024 HB 2832, as introduced, pertaining to the transferability of the Kansas Housing Investor Tax Credit;
- Review statutes to find provisions that would prohibit local solutions to affordable community housing;
- Further study fast-tracking of permits and the adoption of the recommendations contained within the Pacific Legal Foundation testimony;
- Explore solutions and ideas for vacant homes whose titles are currently encumbered for the purposes of returning the homes to the marketplace; and
- Study the requirement of return on investment component of city building codes in a manner similar to the requirement in Michigan statutes.

Proposed Legislation: One bill. The Committee recommends a bill with the language of 2024 HB 2832, as introduced, regarding the transferability of the Kansas Housing Investor Tax Credit.

BACKGROUND

The Special Committee on Available and Affordable Housing (Committee) was created by the Legislative Coordinating Council (LCC) for the purposes of studying housing issues, such as, but not limited to, homeownership, rental housing, the relationship between affordable housing and economic development, and current housing law and policies.

The LCC authorized the Committee to meet for two days; the Committee met at the Statehouse on November 19 and 20, 2024.

COMMITTEE ACTIVITIES

November 19 Meeting

The Committee met the afternoon of November 19, 2024, to hear testimony and presentations from legislative staff and conferees on the issues of the availability and affordability of housing in Kansas and possible legislative solutions.

Overview of Housing Data and Programs

A Senior Research Analyst with the Kansas Legislative Research Department (KLRD) provided the Committee with an overview of federal and state housing programs, census data on homeownership and renting in the state, and the fair market rate of rent by county in the state, as determined by the U.S. Department of Housing and Urban Development.

The conferee noted that the majority of housing programs, both federal and state, in Kansas are administered by the Kansas Housing Resource Corporation (KHRC), with the Moderate Income Housing Program being the only state program that receives state appropriations.

Overview of 2024 Housing Bills

An Assistant Revisor of Statutes from the Office of the Revisor of Statutes (Revisor's Office) reviewed housing bills that had been before the 2024 Legislature:

- 2024 SB 28;
- 2024 SB 530;

- 2024 SB 533; and
- 2023 SB 17.

Kansas Housing Resource Corporation

A KHRC representative provided an overview of the agency. The representative described the agency, how it is governed, and what programs the agency oversees. These programs include, but are not limited to, Emergency Solutions Grants, Tenant Base Rental Assistance, Low Income Housing Tax Credits, Kansas Housing Investor Tax Credit, Home Loan Guarantee for Rural Kansas, Weatherization Assistance, and the Moderate Income Housing Program.

The representative also discussed the 2021 Kansas State Housing Needs Assessment and how it is being utilized by the agency and its programs.

Housing Supply and Affordability in Kansas

The Founding Director of the Wichita State University Center for Real Estate (Director) presented information on the current state of the housing supply and housing affordability in Kansas and how those compare to historical levels. The Director noted that his focus was not on traditional "affordable housing" but rather the middle rate for market-rate housing and the affordability of homes for families making 120 percent of median family income.

The Director discussed the historic trends in home mortgage rates and home construction rates and that he believes the low interest rates from 2008 to the COVID-19 pandemic were an anomaly and that the current home mortgage interest rates are more of a return to historical norms. He further discussed the impact of the 2008 financial crisis, increased material cost, and lack of skilled labor on the housing supply.

Stakeholder Testimony

Friends of Historic Preservation

A representative of the Friends of Historic Preservation testified on the importance of preserving historic buildings throughout the state. The conferee emphasized the importance of both federal and state historic tax credits and other programs to help ensure historic buildings can be preserved.

Kansas Association of Realtors

A representative of the Kansas Association of Realtors provided testimony on the State’s housing crisis. He discussed the impact of the 2008 financial crisis on slowing, if not halting, new home construction in the state for a number of years and how that has impacted the natural housing cycle. He also spoke to the Committee about how state statutes allow only cities and counties to utilize Euclidean, or use-based, zoning and how he believes allowing communities to adopt other types of zoning, such as form-based zoning, could help address housing issues.

Hillcrest Transition Housing

A representative of the Hillcrest Transition Housing provided an overview of his organization and the types of programs it offers to assist unhoused individuals with finding new homes, while providing wraparound services to help ensure long-term success.

United Community Services of Johnson County

A representative of the United Services of Johnson County provided testimony primarily on the challenges faced by renters in attaining affordable housing. Her presentation provided data on both Johnson County and Kansas as a whole and noted the percentages of renters who are “cost burdened” by paying more than 30 percent of their monthly income in rent and utility costs. Additionally, she compared the data to homeownership and the lower rates at which homeowners are cost burdened. The conferee also offered a number of possible solutions to help protect renters and assist them with the high cost of rent.

November 20 Meeting

The Committee met on November 20, 2024, to continue to hear testimony from stakeholders regarding Kansas housing issues and possible solutions.

Stakeholder Testimony

Kansas Housing Association

A representative of the Kansas Housing Association provided details of the housing development process from the developer’s perspective. He explained an affordable housing

project could take up to 56 months to complete. He noted the importance for developers of having consistent housing policy.

Kansas Manufactured Homes Association

A representative of the Kansas Manufactured Homes Association described manufactured homes and reviewed the differing regulations and requirements they face compared to those for traditionally built homes.

Kansas Building Industry Association

A representative of the Kansas Building Industry Association testified on the need for continued investment in skilled trade training in the state. He specifically noted 2024 SB 5, which would have allowed citizens of Douglas County to vote to establish a special use district for purposes of funding a local technical training center.

National Association of Home Builders

A representative of the National Association of Home Builders presented information on housing supply and affordability both nationally and in Kansas. He also addressed the lack of “middle housing,” which he defined as home types between large multi-family complexes and single-family homes, such as duplexes, townhomes, courtyard apartments, and multiplexes.

Additionally, the representative noted the challenges that many builders face through local zoning laws, permitting policies, fees, and infrastructure requirements and costs. He also provided the Committee with some examples of successful projects throughout the country.

Home Builders Association of Greater Kansas City

A representative of the Home Builders Association of Greater Kansas City provided testimony on the local experience of home builders in the Kansas City area. He noted the scarcity of available lots upon which to build a new home and the impact land acquisition has on home supply. He also addressed difficulties that can arise from the different requirements and permitting processes across the various cities that comprise the metropolitan area.

Kansas Bankers Association

A representative of the Kansas Bankers Association testified on the need to have patience with newly implemented funding programs so they have time to become established and see results. He also suggested to the Committee that the Legislature look at altering elements of the linked Kansas Housing Loan Deposit Program and pass some technical cleanup for the Housing Investor Tax Credit.

Opportunity Solutions

A representative of Opportunity Solutions testified on the fast-track permitting process. The conferee explained how, under this policy, local governments have deadlines by which they must process building permits or the permit is automatically approved, the local government must refund the permit fees, or a third party is then allowed to approve the permit. He stated that this can help lower the cost of home building, as studies have shown that permit delays increase building costs.

Health Forward Foundation

A representative of the Health Forward Foundation presented information on the housing programs the organization implements in Allen, Johnson, and Wyandotte Counties. The conferee stated that increased access to affordable housing would also increase health and wealth opportunities for Kansas families. The representative asked the Legislature to appropriate more money to the State Housing Trust Fund.

Finney County Economic Development Corporation

A representative of the Finney County Economic Development Corporation discussed the various housing projects it has assisted with in Finney County and challenges faced in obtaining financing for multi-family developments. In response, the representative discussed new initiatives in which the organization was partnering with local financial institutions and large community employers to get local investments for the purpose of financing multi-family projects.

Habitat for Humanity Kansas City

A representative of Habitat for Humanity Kansas City presented information on the work that Habitat for Humanity does in the state. She noted there are 14 affiliates in 16 counties of the state and that 266 affordable housing projects were completed in fiscal year 2024, 38 of those being new-build homes. She also highlighted the Olathe Pathway Project where Habitat for Humanity Kansas City is building a neighborhood in Johnson County that will provide permanent affordable housing through a combination of a land trust and covenants on the homes that cap the market appreciation retained by a homeowner who sells one of these houses.

Habitat for Humanity Flint Hills

A representative of Habitat for Humanity Flint Hills testified on his organization's support of the suggestions made by the representative of Habitat for Humanity Kansas City regarding county appraisers being able to consider resale caps and other factors when making appraisal decisions on homes built on land held by land banks.

Cerebral Palsy Research Foundation

A representative of the Cerebral Palsy Research Foundation presented on The Timbers community in Wichita and the renovations that have been occurring to all of its units to make the unit more accessible and liveable for its residents.

Members of the Wichita City Council

A member of the Wichita City Council testified before the Committee on affordable housing issues facing the City of Wichita. He discussed issues with manufactured homes being classified as real property and the subsequent loss of value of the home; long-term vacant homes due to either issues of inheritance, absentee owners, or other reasons causing the homes to deteriorate; and the issues of unsafe rental housing due to lack of inspection authority for local governments.

He also provided the Committee with an update on the Multi-Agency Center (MAC) that the city is establishing in a recently closed school building. The purpose of the MAC will be to offer a 24-hour, low-barrier shelter that will also hold staff and office space for the city's various wrap-

around services, such as housing assistance and mental health services.

A second member of the Wichita City Council and City of Wichita staff appeared via Webex to address the Committee on issues of rental inspection and concerns of how to address substandard and unsafe living conditions in rental housing stock. They also addressed various questions from the Committee members.

Mercatus Center at George Mason University

A representative of the Mercatus Center at George Mason University testified on the need for land use regulation reform to help increase affordable housing. She specifically discussed and provided examples of how limiting minimum lot size requirements, legalizing more apartment construction, and legalizing accessory dwelling units can lead to increased affordable housing.

Pacific Legal Foundation

A representative of the Pacific Legal Foundation presented information to the Committee on its recommendations to increase affordable housing. The conferee specifically noted:

- Prohibiting discretionary reviews of building permits that meet the area's zoning requirements;
- Ensuring timely permit decisions;
- Limiting frivolous lawsuits against housing developments;
- Making impact fees proportional and transparent; and
- Streamlining the removal process for squatters and treating squatting as a criminal offense.

Institute of Justice

A representative of the Institute of Justice provided testimony on his organization's suggestions to increase affordable housing. These suggestions primarily revolved around land use

regulation reform and included reducing minimum lot size requirements, facilitating more areas of mixed commercial and residential use, reforming protest petitions regarding zoning changes, and easing restrictions on homeowners building accessory dwelling units on their property.

Following the meeting, the conferee provided the Committee with his organization's model legislation on the aforementioned topics.

COMMITTEE RECOMMENDATIONS

The Committee made the following recommendations to the 2025 Legislature:

- Review the proposal from the City of Pittsburg regarding changes to the housing portion of the Linked Deposit Program;
- The House and Senate Committees on Judiciary review eviction proceedings, specifically with regards to the sealing of eviction filings;
- The Kansas Housing Resource Corporation reconsider the denial of the waiver for granting Low Income Housing Tax Credit incentives to the MAC Project in the City of Wichita;
- Review how housing incentives and tax credits can be used concurrently, as well as the benefits and detriments of the practice;
- Allow county appraisers to account for capped resale covenants for homes held by community land trusts during the appraisal process;
- Examine if any state statutes restrict local government zoning authority;
- Enact a bill with the language contained in 2024 HB 2832, as introduced, pertaining to the transferability of the Kansas Housing Investor Tax Credit;

- Review statutes to find provisions that would prohibit local solutions to affordable community housing;
- Further study permit fast-tracking and the adoption of the recommendations contained within the Pacific Legal Foundation testimony;
- Explore solutions and ideas for vacant homes whose titles are currently encumbered for the purposes of returning the homes to the marketplace; and
- Study the requirement of return on investment component of city building codes in a manner similar to Michigan statutes.

Report of the Special Committee on Centralized Pooled Collateral and PMIB Modernization to the 2025 Kansas Legislature

CHAIRPERSON: Senator Jeff Longbine

VICE-CHAIRPERSON: Representative Nick Hoheisel

OTHER MEMBERS: Senators Michael Fagg, David Haley, Rick Kloos, and Robert Olson; and Representatives Mike Amyx, Nikki McDonald, Rebecca Schmoe, Adam Turk, and Laura Williams

STUDY TOPIC

The Committee is directed to:

- Study the centralized pooled collateral for public funds and Pooled Money Investment Board (PMIB) linked deposit loan modernization, as well as the potential impacts of this increased investment in Kansas communities. Such study will permit adequate study of proposed legislation, an opportunity to hear from interested parties, and time for the presentation of a pending economic study that will be available in early October.

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Special Committee on Centralized Pooled Collateral and PMIB Modernization

REPORT

Conclusions and Recommendations

The Committee recommended the Legislature consider legislation:

- Creating a centralized collateral pool program;
- Reducing the statutory certificate of deposit program interest rate for the Pooled Money Investment Board;
- Adjusting the statutory rate that banks are required to offer to guarantee the receipt of public fund deposits, specifically considering options of eliminating the rate, fixing the rate at 2.0 percent below the rate offered by the municipal investment pool, or utilizing the municipal investment portfolio rate as the guaranteed rate;
- Clarifying legislative intent that banks and public entities may negotiate interest rates that differ from the statutorily guaranteed rate;
- Creating a process to ensure public entities are abiding by laws related to the deposit of public funds;
- Clarifying the proceeds from the sale of municipal bonds must be treated the same as all other public deposits;
- Prohibiting third-party investment advisors from being eligible to actively invest public funds for which they are advising; and
- Reworking all state linked deposit loan programs to remove outdated restrictions and improve the competitiveness of Kansas programs, including considering programs adopted by neighboring states.

Proposed Legislation: Two bills. The Committee recommended two bills be prepared and introduced by the House Committee on Financial Institutions and Pensions. One bill would incorporate revisions to the state's linked deposit loan programs, and the other bill would incorporate all other recommendations by the Committee.

BACKGROUND

The Special Committee on Centralized Pooled Collateral and PMIB Modernization (Committee) was created by the Legislative Coordinating Council to study centralized pooled collateral of

public funds in Kansas and modernization of the linked deposit loan programs of the Kansas Pooled Money Investment Board (PMIB).

The need for further study of these topics arose during informational briefings of the House

Committee on Financial Institutions and Pensions during the 2024 Session of the Kansas Legislature and coincided with the pending release of an economic impact study of the impacts of increased investment in Kansas banks.

The Committee was composed of 11 members and authorized to meet for 2 days.

COMMITTEE ACTIVITIES

The Committee met at the Statehouse on November 18 and 19, 2024.

Public Funds Investment Economic Impact Study

A professor at Fort Hays State University presented a report of an economic impact study of the public funds investment policies of the State. The report concluded that allowing local governments to invest funds outside of the state generally leads to fewer local economic development opportunities and reduced tax revenues for state and local governments.

The report followed up and its results aligned with those of similar studies completed in 1966, 1985, 2004, and 2006.

The report noted that, even if out-of-state investments of local public funds yield higher interest rates, the reduced amount of capital stock available at local financial institutions results in reduced availability of credit for local economic activity, leading to lower overall local economic activity, especially when factoring in compounding impacts of locally financed economic growth.

The report did note that, while local investment of funds is generally more beneficial than out-of-state investment, when interest rates of out-of-state investments significantly exceed local interest rates, the interest rate differential may exceed the overall economic benefits of local deposit of public funds. The study found out-of-state investments would need to offer interest rates more than 3.15 percentage points above the rate available in Kansas for the out-of-state investment to provide more revenues to the State and to local governments than an in-state investment.

Review of 2024 HB 2840

A Senior Assistant Revisor from the Office of Revisor of Statutes reviewed HB 2840 from the 2024 Legislative Session. The bill, which died in committee, would have authorized governmental units to utilize a single pooled collateral system to secure deposits of public funds in certain Kansas financial institutions in excess of the amount insured by the Federal Deposit Insurance Corporation, whereas current law generally requires each deposit of public funds to be secured by a separate and distinct pledge of collateral as security.

The bill would have required the State Treasurer to establish procedures for utilizing the centralized pooled collateral system and to designate a qualified firm to serve as the administrator of the program.

Financial Institutions Analysis and Recommendations

Representatives of the Kansas Bankers Association provided testimony, noting the current policies for public funds investment in Kansas result in less than 1 percent of the State's pooled money investment portfolio being directly invested with Kansas banks and frequently result in substantial outflows of capital from the state. The representatives recommended various policy changes to increase the amount of Kansas public funds deposited in Kansas financial institutions.

Additionally, representatives of two Kansas-based banks spoke before the Committee, indicating that most banks in Kansas currently have a high demand for credit and they expected a robust market for loans to local business and individuals if additional deposits of public funds were made in the state. The representatives noted that banks in the state are highly regulated and are generally in a strong position with relatively few institutions facing challenges.

Nebraska Centralized Pooled Collateral Program

A representative of the Nebraska Bankers Association presented information on the operation of the centralized pooled collateral program in Nebraska. The Nebraska program is operated by the insurance subsidiary of the

Nebraska Bankers Association and requires the posting of collateral equal to or exceeding 102 percent of the amount of public deposits held by each financial institution.

The Nebraska program has been operational since 2020 and reports no operational or credit risk problems. The representative mentioned that the transition to a new program can require education of both local governments and financial institutions, but noted that several states have now adopted centralized programs and could share resources regarding a transition period.

Linked Deposit Programs Overview and Guiding Principles for Kansas Public Deposits

The State Treasurer and the Executive Director of the PMIB appeared jointly to present information on the guiding principles for the investment of public funds in Kansas and information on the current Kansas linked deposit loan programs.

For the investment of public funds, the State Treasurer indicated that the security of the funds is always the paramount concern in managing public funds. Secondary concerns include the liquidity of the funds and the return on investment of the funds. The state's inflows and outflows in a day are close to each other on an average day, but on some days outflows may exceed inflows or inflows exceed outflows by several hundred million dollars. Accordingly, the State maintains a certain amount of its public funds in "overnight" funds that are available the following day and are secured by statutorily defined collateral.

The Executive Director of the PMIB indicated that a major concern of the state's investment policies is ensuring the State meets its cash flow needs. The state's linked deposit loan programs frequently have time horizons much longer than most of the State's investments.

The State Treasurer indicated the state's linked deposit loan programs are not widely used and the programs likely would need to be revised if the Legislature would like the programs to be more widely utilized.

The Executive Director of the PMIB indicated the Board was not advocating in favor of or in opposition to any specific policies, but generally supported the guiding principles for public funds investment: security, liquidity, and returns, in that order.

The State Treasurer indicated general support for centralized pooled collateral and provided input on policy considerations of other possible recommendations. He indicated all of the policy issues being considered were appropriate questions for the Legislature, and the State Treasurer's Office would work with the Legislature to implement whatever policy changes were desired.

CONCLUSIONS AND RECOMMENDATIONS

The Committee discussed a need to keep local government funds within local communities while maintaining as much free enterprise as possible and not mandating maximum or minimum interest rates to be paid for any deposits.

The Committee discussed a likelihood that Kansas could benefit from modeling its linked deposit loan programs after those offered by neighboring and surrounding states.

The Committee recommended the Legislature consider legislation:

- Creating a centralized collateral pool program;
- Reducing the statutory certificate of deposit program interest rate for the PMIB;
- Adjusting the statutory rate that banks are required to offer to guarantee the receipt of public fund deposits, specifically considering options of eliminating the rate, fixing the rate at 2.0 percent below the rate offered by the municipal investment pool, or utilizing the municipal investment portfolio rate as the guaranteed rate;

- Clarifying legislative intent that banks and public entities may negotiate interest rates that differ from the statutorily guaranteed rate;
- Creating a process to ensure public entities are abiding by laws related to the deposit of public funds;
- Clarifying the proceeds from the sale of municipal bonds must be treated the same as all other public deposits;
- Prohibiting third-party investment advisors from being eligible to actively invest public funds for which they are advising; and
- Reworking all state linked deposit loan programs to remove outdated restrictions and improve the competitiveness of Kansas programs, including considering programs adopted by neighboring states.

The Committee recommended the bills be prepared in conjunction with representatives of the Kansas Bankers Association and be introduced by the House Committee on Financial Institutions and Pensions during the 2025 Session of the Kansas Legislature.

Report of the Special Committee on Foreign Trade and Regulatory Sandboxes to the 2025 Kansas Legislature

CHAIRPERSON: Senator Renee Erickson

VICE-CHAIRPERSON: Representative Sean Tarwater

OTHER MEMBERS: Senators Oletha Faust-Goudeau, Virgil Peck, Ron Ryckman, and Tim Shallenburger; and Representatives John Carmichael, Patrick Penn, Barb Wasinger, Gary White, and Rui Xu

STUDY TOPIC

The Committee is directed to:

- Regarding foreign trade, study and make recommendations concerning:
 - Kansas trade with foreign countries, including a review of current trade agreements;
 - A comparison of Kansas foreign trade with that of other states; and
 - The identification of Kansas industries and products that may be available for foreign trade and the possible nations to solicit for such trade.
- Regarding regulatory sandboxes, study and make recommendations concerning:
 - The nature and operation of regulatory sandboxes;
 - The advantages and possible challenges of regulatory sandboxes; and
 - The successes of regulatory sandboxes in other states and how they may apply in Kansas.

December 2024

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Special Committee on Foreign Trade and Regulatory Sandboxes

REPORT

Conclusions and Recommendations

The Committee made recommendations regarding foreign trade and regulatory sandboxes.

Foreign Trade

Regarding foreign trade, the Committee recommended the Legislature:

- Explore opportunities to educate businesses on what the State can do to help them with foreign trade and other aspects of business with currently available tools;
- Encourage Kansas business development entities and relevant state agencies to innovate new ways to increase outreach and education regarding economic opportunities for Kansas businesses and the next generation of Kansans; and
- Identify and monitor ways to capture information regarding foreign land holdings in Kansas.

The Committee further recommended that a briefing, as requested by the relevant Chairpersons, be provided to legislative leadership and the commerce and agriculture committees of both chambers on any identified threats to Kansas from foreign adversaries pertaining to international trade and foreign influence.

Regulatory Sandboxes

Regarding regulatory sandboxes, the Committee recommended:

- A formal opinion on the constitutionality of regulatory sandboxes in the state of Kansas be requested of the Attorney General;
- That any regulatory sandbox program adopted in Kansas be generally applicable and not limited only to businesses within a particular industry; and
- That any legislation enacting a regulatory sandbox program provide for the administering agency to consult with relevant experts while considering applicants to the program.

Proposed Legislation: The Committee recommends the 2025 Legislature pursue legislation to implement a regulatory sandbox program in Kansas, incorporating the relevant recommendations above.

BACKGROUND

The Special Committee on Foreign Trade and Regulatory Sandboxes (Committee) was created by the Legislative Coordinating Council to study issues related to foreign trade and regulatory sandboxes. The Committee was authorized to meet for two days.

COMMITTEE ACTIVITIES

The Committee met at the Statehouse on November 18 and November 19, 2024. At the November 18 meeting, the Committee reviewed information relating to foreign trade during the morning session and reviewed information regarding regulatory sandboxes and the Kansas regulatory environment in the afternoon. At the November 19 meeting, the Committee reviewed further information relating to regulatory sandboxes.

November 18, 2024, Meeting

Foreign Trade

A representative of the Kansas Small Business Development Center (KSBDC) provided an overview of foreign trade resources available to small and mid-sized businesses through the KSBDC. The conferee discussed some of the barriers to international trade facing Kansas businesses, strategies and resources businesses can utilize to expand their operations, and the opportunities for growth that expanding into global markets present for Kansas companies.

The Executive Director of IBG Global and former Director of Virginia's International Trade Development Program discussed state-led export promotion initiatives. The presentation addressed state-funded international trade development programs, including the current landscape of foreign trade state programs, why states conduct international trade, and the benefits Kansas could experience from investing more in international trade.

A representative from the Greater Wichita Partnership presented information on Wichita's foreign trade ecosystem and the Partnership's activities to support international development among the region's businesses. The conferee

highlighted the quality of the region's foreign direct investments and the positive results the Partnership is seeing based on outreach programs through air shows and other international programming.

A representative of the Kansas Department of Agriculture provided an overview of foreign exports of Kansas agricultural products and discussed the effects of various trade agreements and issues related to the impacts of federal policy on the state.

Regulatory Sandboxes

Kansas Legislative Research Department staff provided an overview of other states' regulatory sandbox programs, the process for and legislative oversight of rules and regulations in Kansas, and data trends related to Kansas rules and regulations.

Office of Revisor of Statutes staff provided an overview of Kansas administrative procedure, especially as it pertains to potential implications for regulatory sandboxes. The conferees also presented a review of HB 2821, introduced during the 2024 Session, which would have created a regulatory sandbox program in Kansas within the Office of the Attorney General.

November 19, 2024, Meeting

A representative of the Libertas Institute provided an overview of how a sandbox program could work and how other states are using them. He also addressed Committee member questions related to other states' programs and differences between industry-specific and general sandbox programs.

A representative of Americans for Prosperity presented on the history of regulatory sandboxes and how to attract businesses to Kansas. He also addressed Committee member questions on where the program is implemented, identifying regulations to waive, and restrictions or limitations of a program.

The Director of the Utah Office of Regulatory Relief conducted a question-and-answer session with the Committee about Utah's implementation of its regulatory sandbox program. Topics of questions addressed included the pros and cons of

various regulatory sandbox program parameters, considerations related to the implementation and administration of a regulatory sandbox program, the importance of inter-agency cooperation in carrying out program objectives, the scope and constitutionality of regulatory sandboxes, managing concerns related to consumer safety, and examples of how the program has been utilized in Utah.

The Deputy Attorney General for the Civil Division, Office of the Attorney General (Office), provided an overview of the Office's feedback on legislation introduced in the 2024 Session. HB 2821 would have created a regulatory sandbox program and placed it under the purview of the Attorney General. The Deputy Attorney General discussed concerns with incorporating such a program into the Office and how those concerns could be addressed. He indicated the Office does not have serious concerns with the implementation of such a program or its constitutionality as a whole.

CONCLUSIONS AND RECOMMENDATIONS

The Committee discussed recommendations regarding foreign trade during its November 18 meeting and regarding regulatory sandboxes during the November 19 meeting.

Regarding foreign trade, the Committee recommended the Legislature:

- Explore opportunities to educate businesses on what the State can do to help them with foreign trade and other aspects of business with currently available tools;

- Encourage Kansas business development entities and relevant state agencies to innovate new ways to increase outreach and education regarding economic opportunities for Kansas businesses and the next generation of Kansans; and
- Identify and monitor ways to capture information regarding foreign land holdings in Kansas.

The Committee further recommended that a briefing, as requested by the relevant Chairpersons, be provided to legislative leadership and the commerce and agriculture committees of both chambers on any identified threats to Kansas from foreign adversaries pertaining to international trade and foreign influence.

Regarding regulatory sandboxes, the Committee recommended:

- A formal opinion on the constitutionality of regulatory sandboxes in the state of Kansas be requested of the Attorney General;
- The 2025 Legislature pursue legislation implementing a regulatory sandbox program in Kansas;
- That any regulatory sandbox program adopted in Kansas be generally applicable and not limited only to businesses within a particular industry; and
- That any legislation enacting a regulatory sandbox program provide for the administering agency to consult with relevant experts when considering applicants to the program.

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Report of the Special Committee on Medical Marijuana to the 2025 Kansas Legislature

CHAIRPERSON: Senator Michael Fagg

VICE-CHAIRPERSON: Representative Will Carpenter

OTHER MEMBERS: Senators Larry Alley (substitute), Cindy Holscher, Mike Petersen, and Mike Thompson; and Representatives Dennis "Boog" Highberger, Nick Hoheisel, Steven K. Howe, Tom Kessler, and Heather Meyer

STUDY TOPIC

The Committee is directed to:

- Evaluate various policy options and make recommendations for comprehensive medical marijuana legislation. Such review will include review of recent legislation and study of the following topics:
 - Impact of the proposed federal rescheduling of marijuana in the Controlled Substances Act from Schedule I to Schedule III and what that would mean for Kansas;
 - Outcomes in states that have allowed medical marijuana access for veterans and end-of-life patients; and
 - Structure and enforcement of the current cannabidiol (CBD) statute in Kansas.

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Special Committee on Medical Marijuana

REPORT

Conclusions and Recommendations

The Committee made no formal recommendations to the 2025 Legislature.

Proposed Legislation: None.

BACKGROUND

Medical marijuana has been discussed by the Legislature in recent sessions. During the 2022 Interim, the Special Committee on Medical Marijuana met for four days to study recent medical marijuana legislation, receive testimony from stakeholders, and make recommendations to the 2023 Legislature. During the 2023-2024 Biennium, the Legislature continued to hold informational briefings on the topic, and the Senate Committee on Federal and State Affairs considered SB 135 and SB 555. The Legislative Coordinating Council (LCC) authorized the 2024 Special Committee on Medical Marijuana (Committee) to further study the topic and learn more about the proposed federal rescheduling of marijuana under the Controlled Substances Act.

COMMITTEE ACTIVITIES

The LCC approved two meeting days for the Committee during the 2024 Interim. Members met at the Statehouse on October 16 and 28, 2024.

October 16, 2024, Meeting

Overview of Marijuana History

A Kansas Legislative Research Department (KLRD) Senior Research Analyst presented a memorandum covering a broad overview of the history of marijuana through ancient and modern times. The analyst also discussed scientific milestones related to marijuana and the history of marijuana policy in the United States, including the Marihuana Tax Act of 1937, the Controlled Substances Act of 1970, the work of the Shafer

Commission, and the Ogden and Cole memorandums, produced by the U.S. Department of Justice. Additionally, the analyst provided information about the 2014 and 2018 Farm Bills, which modified federal policies on the production of hemp, and a chart reflecting the year each state authorized medical marijuana programs, recreational or adult-use marijuana programs, and cannabidiol (CBD)/low tetrahydrocannabinol (THC) programs, as well as the year each state decriminalized marijuana, as applicable.

Legal Status of Marijuana and Cannabidiol in the United States and Federal Rescheduling of Cannabis

A KLRD Senior Research Analyst presented a memorandum on the legal status of CBD and Delta-8 THC in all U.S. states, including Kansas. The analyst stated that 38 states and the District of Columbia have comprehensive medical marijuana programs, and 24 states and the District of Columbia allow for recreational, adult-use marijuana. The analyst also discussed decriminalization of marijuana in U.S. states.

The analyst discussed the possible federal rescheduling of marijuana under the Controlled Substances Act from Schedule I, the most restrictive classification, to Schedule III. This change would recognize the medical usage of marijuana and allow for drugs derived from cannabis that have been U.S. Food and Drug Administration (FDA)-approved to be lawfully prescribed and dispensed; the change would not impact the legal status of marijuana for recreational use. Additionally, the analyst stated

rescheduling marijuana to Schedule III would ease barriers to medical research on cannabis.

The analyst also discussed the legal status of CBD. At the federal level, the 2018 Farm Bill removed hemp and all cannabis byproducts with less than 0.3 percent THC from the definition of marijuana in the Controlled Substances Act. While CBD products containing 0.3 percent THC or less are considered legal federally, the analyst provided information on states that have enacted laws regulating or restricting its use.

Financial Considerations and the SAFER Banking Act

A KLRD Research Analyst presented a memorandum on the legal restrictions and potential liability banking institutions face in working with marijuana-related businesses due to federal law. This has caused most marijuana-related businesses to be cash-based.

The analyst discussed federal legislation that has been introduced in recent years, including the Secure and Fair Enforcement (SAFE) Banking Act and the Secure and Fair Enforcement and Regulation (SAFER) Banking Act. Among the changes proposed in the bills, federal regulators would not be able to penalize a depository institution for providing banking services to a state-sanctioned marijuana business or consider transactions conducted by a state-sanctioned marijuana business proceeds from unlawful activity. The analyst noted that neither bill has become law.

Kansas Law, Recently Considered Legislation, and Implications of Rescheduling

A Senior Assistant Revisor from the Office of Revisor of Statutes provided information about current Kansas law regarding possession of products containing THC, legislation from the 2023-2024 Biennium concerning the legalization and regulation of medical marijuana, and the potential federal action on rescheduling marijuana.

In Kansas, there are four major acts regulating possession and use of products with THC:

- The Commercial Industrial Hemp Act, which regulates hemp production and limits the THC concentration in industrial

hemp to 0.3 percent, in accordance with federal law;

- Crimes Involving Controlled Substances, which defines THC as a controlled substance and also defines various unlawful activities related to its manufacture, distribution, cultivation, or possession;
- The Uniform Controlled Substances Act, which includes THC as a Schedule I drug, in accordance with federal law; and
- Claire and Lola’s Law, which provides an affirmative defense for parents in possession of CBD products used for treatment of children with debilitating conditions.

The revisor discussed bills related to the production and sale of medical marijuana during the 2023-2024 Biennium, including SB 135, HB 2417, SB 171, SB 310, SB 555, and SB 558.

The revisor also outlined the regulatory process for the federal rescheduling of marijuana. The U.S. Department of Health and Human Services (HHS) recommended to the U.S. Drug Enforcement Administration (DEA) that marijuana be rescheduled from Schedule I to Schedule III based on the FDA’s review of marijuana and HHS findings. He informed the Committee that a public hearing on the issue would begin on December 2, 2024. The revisor also clarified that even with the rescheduling, recreational use of marijuana would still be prohibited at the federal level unless Congress takes action.

Testimony from State Agencies and Organizations

Department of Revenue

The Director of the Alcoholic Beverage Control Division (ABC), Department of Revenue, provided testimony to the Committee to make regulatory recommendations should the Legislature decide to legalize medical or recreational marijuana. The Director stated that ABC has been proactively learning from other states for best practices in regulating marijuana.

She provided a list of items ABC would request to be considered when constructing a medical marijuana program, including:

- Creating an efficient regulation model;
- Setting attainable implementation dates;
- Listing qualifying medical conditions in statute;
- Defining terms clearly in statute;
- Establishing various ownership requirements, such as the minimum age to own a medical marijuana license, and fingerprinting;
- Establishing in statute which entities need a license, what the license fees are, whether licenses are transferable, and whether the number of licenses will be capped;
- Defining specific parameters for labels and packaging;
- Requiring licensed laboratories to test products;
- Determining who will issue medical cards and how medical cards will be verified by law enforcement;
- Determining whether there will be reciprocity with other states;
- Setting penalties in statute, including a violation for failing to comply with a lawful order from the Director;
- Specifying who will be taxed and how taxes will be distributed; and
- Determining sustainable funding.

State Board of Pharmacy

The Executive Secretary for the State Board of Pharmacy provided testimony to the Committee regarding federal rescheduling, the involvement pharmacists and pharmacies could have in a medical marijuana program, the role of K-TRACS in a medical marijuana program, and suggestions for labeling, packaging, and storage.

State Board of Healing Arts

The Executive Director of the State Board of Healing Arts provided testimony to the Committee regarding the impact upon the agency should Kansas create a medical marijuana program. She stated the State Board would request the following factors to be considered when developing a medical marijuana program:

- Who is authorized to prescribe medical cannabis;
- Whether a physician-patient relationship must be established;
- Which agency will issue medical marijuana certificates;
- Whether there will be mechanisms for a health care professional to revoke a medical marijuana card;
- Whether a prescription can be obtained through telemedicine; and
- Protections preventing public disclosures of protected health information.

Kansas Department of Health and Environment

The Deputy Secretary of the Division of Public Health, Kansas Department of Health and Environment (KDHE), testified to the Committee regarding the impact of legalization of medical marijuana on the agency. She referenced previous proposed legislation that would have given KDHE a regulatory role in the state medical marijuana program.

Kansas Silver Haired Legislature

The Floor Leader for the Kansas Silver Haired Legislature spoke before the Committee in favor of medical marijuana. He stated the Silver Haired Legislature fully supports medical marijuana legislation that includes proper dosing, quality control, and balanced oversight, including senior citizen representation.

Law Enforcement and Public Safety

Kansas Association of Chiefs of Police

The Legislative Chair for the Kansas Association of Chiefs of Police testified before the Committee regarding the Association's opposition to the legalization of medical marijuana in Kansas. He stated the Association supports the use of medical marijuana in cases where it has undergone approved pharmaceutical processes, and use of marijuana for end-of-life care should be part of specialized medical treatment. The conferee also stated the legalization of marijuana would have unintended consequences for law enforcement, who already report experiencing the challenges of citizens obtaining marijuana products from other states.

Kansas Peace Officers Association

The Vice President of the Kansas Peace Officers Association provided testimony to the Committee, outlining some of the challenges that agencies and states could face as a result of the rescheduling of marijuana. He stated there would be undue strain placed on the health care system, citing statistics from the Midwest High Intensity Drug Trafficking Area in North Dakota, where emergency room-related visits increased more than 300 percent in the seven years since the state legalized medical marijuana. He stated that court systems could be overwhelmed with requests for expungements of marijuana-related crimes. Additionally, he stated that legalization of a drug does not necessarily lower the crime rate, as rates of illegal grow operations and distribution increase, as well as money laundering and human trafficking.

Kansas Sheriffs Association

The President of the Kansas Sheriffs Association provided testimony to the Committee, stating the organization opposes legalization of

marijuana unless it is in the form of an FDA-approved medication prescribed by a physician. He stated that the idea that opioid use or deaths would decrease with the legalization of medical marijuana is false, and pointed to studies from the American Journal of Psychiatry and the National Academy of Sciences to support the claim. The conferee also noted that THC levels in modern marijuana products are much more highly concentrated, making misuse more likely.

Other concerns stated by the conferee included whether or not jails and correctional facilities would need to provide medical marijuana to incarcerated individuals with medical marijuana patient cards and the need for law enforcement to have the capability to test and enforce THC content limits in the field.

Kansas Sentencing Commission

The Research Director for the Kansas Sentencing Commission testified before the Committee, providing an overview of data collected on felony convictions pertaining to marijuana. According to the agency's prison bed impact assessment, the impact of medical marijuana on prison beds and admissions would be difficult to predict because there are many potential variables, such as the ease of obtaining a medical card and how the policies of law enforcement and the judiciary might shift with the legalization of medical marijuana. He stated that only a small percentage of individuals serve prison time for a felony marijuana conviction, with more than 85 percent of such individuals receiving probation in the last year.

The Chairperson invited the Executive Director for the Commission to address the Committee. The Executive Director emphasized that prosecution of marijuana offenses has changed over the years due to societal trends, and prosecutors and judges have more flexibility in handling cases than do law enforcement.

Cannabis Justice Coalition

The Executive Director for the Cannabis Justice Coalition spoke to the Committee about bringing Kansas into alignment with neighboring states that have medical marijuana programs. She stated Kansas laws need to evolve to reduce the burden on the criminal justice system and alleviate

the impact of cannabis laws that disproportionately affect the working class and people of color. The conferee also noted benefits of legalizing cannabis in Kansas, including creating jobs, stimulating local economies, generating tax revenue for public services, and helping address social injustices caused by prohibition.

In response to a question from a Committee member, the Research Analyst for the Kansas Sentencing Commission stated he did not have numbers specific to marijuana, but he confirmed that a disproportionate number of felony defendants who are incarcerated are Black individuals and about 85 percent of all felony convictions impact those who meet the definition of indigent.

Cannabis Freedom Alliance

The co-founder of the Cannabis Freedom Alliance and President of The Weldon Project addressed the Committee as an advocate of marijuana reform. He spoke about his experience being convicted and sentenced for a marijuana crime in 2004; because of mandatory minimum sentencing guidelines, the conferee was sentenced to 55 years in prison. He was released after serving 13 years and now works as an advocate for marijuana reform. The conferee stated that reforming marijuana law in Kansas could improve public safety, free up law enforcement resources for more pressing issues, and prioritize the well-being of Kansans. He discussed how a well-regulated medical marijuana program could provide law enforcement with a clear distinction between legal medical use and illegal activity, and revenue generated from the program could be used for law enforcement training and public safety initiatives.

Physicians, Medical Professionals, and Patient Advocacy

Kansas Medical Society

The Executive Director of the Kansas Medical Society (KMS) spoke to the Committee, stating KMS continues to be in opposition to the legalization of medical marijuana. She stated KMS believes more evidence of medical efficacy is needed.

The Executive Director of KMS introduced a physician representing the International Academy on the Science and Impact of Cannabis to testify on behalf of KMS. The physician provided an overview of his experience practicing medicine and discussed his concerns about THC concentration in marijuana products. He suggested that, in terms of medical applications of marijuana and THC, the FDA-approved, Schedule III drug Marinol may be prescribed.

Kansas Pharmacists Association

A practicing pharmacist and owner of multiple rural pharmacies representing the Kansas Pharmacists Association spoke to the Committee in support of medical marijuana with the caveat that it be dispensed by licensed pharmacists in Kansas. The conferee stated that pharmacists already safely dispense controlled substance prescriptions, and they are well-versed in federal and state agency reporting procedures and requirements. He noted cannabis could integrate with the established reporting system pharmacies already use, and pharmacists are uniquely positioned to provide patient education and screening and monitor for misuse. The pharmacist requested, if marijuana is rescheduled at the federal level, that state laws be amended to mirror the change so that pharmacies in Kansas do not have to navigate conflicting regulatory structures.

Kansas Cannabis Coalition

The President of the Kansas Cannabis Coalition, a registered nurse, provided testimony to the Committee in support of medical marijuana. As a nurse, she stated she educates professionals and patients on how to use cannabis safely and discussed some common misunderstandings regarding the therapeutic benefits of cannabis and the types of relief it may provide. As an example, the conferee describes how different products and consumption methods can provide relief for different periods of time. She stated support for a medical marijuana program that can provide Kansans with access to clean, tested cannabis products at an affordable price with patient, public, and health care provider education and safety as its cornerstone.

Business and Finance

Kansas Chamber of Commerce

The Senior Director of Government Affairs for the Kansas Chamber of Commerce expressed concern to the Committee about bill language that would prohibit businesses from enforcing their own drug testing policies. He stated his organization values the ability of employers to determine drug testing standards suitable for their business, and future legislation should protect this ability.

League of Kansas Municipalities

The Government Affairs Director for the League of Kansas Municipalities provided testimony to the Committee, stating that his organization does not have a stance on whether marijuana should be legalized in Kansas, but they would request that any future legislation regarding medical marijuana not alter local zoning authority, address local taxation, and allow cities to issue permits for dispensaries. The League's members believe that cities should have the ability to opt-in to allow medical marijuana sales locally and restrict sales locations through zoning regulations. The conferee also requested that revenue from fines and fees be apportioned back to cities for the purpose of training law enforcement and human resource professionals.

Kansas Cannabis Chamber of Commerce

The Board President of the Kansas Cannabis Chamber of Commerce spoke to the Committee about the business and financial opportunities associated with medical marijuana programs. She stated that marijuana prohibition is a barrier to economic growth and opportunity, and reform could lead to new business development and job creation, noting a study by the Kansas City Federal Reserve that found legalizing cannabis led to a 3.0 percent increase in state income per capita. The conferee also noted a *Kansas City Star* editorial that estimated cannabis could generate up to \$50.0 million in annual tax revenue, and the Kansas Speaks Survey, which reflects that a majority of Kansans support legalizing both medical and recreational marijuana.

Perspectives from Other States

Utah

The Senate Majority Leader for the Utah State Senate spoke to the Committee about his experience developing medical marijuana legislation and observing the state's implementation of the program. The Senator explained that Utah's medical marijuana program is based on a pharmacy model, requiring similar laws, and that a pharmacist must be on duty whenever the pharmacy is open for business; he stated this approach to medical marijuana treats the drug like medicine from both a regulatory and medicinal perspective. The Senator also discussed other features of Utah's medical marijuana legislation, including:

- Ensuring that a medical professional works with patients from start to finish;
- Requiring physicians and practitioners who prescribe cannabis to complete additional education and receive certification to become a "Qualified Medical Provider";
- Establishing a reasonable list of qualifying illnesses in order to receive a medical marijuana card;
- Setting limits on quantities that can be purchased within a 30-day period;
- Establishing an electronic verification system;
- Setting up dual regulation between two state agencies; and
- Creating criteria for licensing, operating procedures for entities, and qualifications for employees and owners.

The Senator stated that Utah has approximately 80,000 medical cannabis cardholders and 15 pharmacies that dispense medical marijuana across the state.

The Senator also expressed that the Utah Legislature continues to work on various aspects

of the program, with continuing challenges including addressing excessive patient fees; restrictions on advertising, vertical ownership, and delivery; and the push for recreational use.

Mississippi

The Executive Director of the Mississippi Medical Marijuana Association testified before the Committee regarding the process Mississippi pursued to craft medical marijuana legislation. He stated the state focused on four key tenets:

- The program should be patient-focused;
- The program should be a free market system;
- The program should provide physicians, physician assistants, and nurse practitioners with decision rights; and
- The program should be self-sustaining.

The conferee stated there are approximately 46,000 medical marijuana cardholders in Mississippi and almost 400 different businesses involved in the program, including dispensaries, cultivators, processors, transportation companies, testing labs, and a research facility at the University of Mississippi.

October 28, 2024, Meeting

Marijuana Public Policy Issues

A representative of Smart Approaches to Marijuana (SAM) spoke before the Committee about his own experience with marijuana addiction and his organization's policy positions on marijuana. SAM's position is that if marijuana is to be used as a medication, it should be part of a FDA process where products are examined for safety and efficacy. The representative stated his organization's concern that a medical marijuana program would lead to a much-less-restrictive adult-use program, which brings with it a number of risks, from increased daily use of marijuana in individuals to the involvement of organized crime.

Law Enforcement and Public Safety

Kansas Bureau of Investigation

Testimony was provided to the Committee by the Director of the Kansas Bureau of Investigation (KBI) regarding the agency's concerns about legalization of marijuana in any capacity, which he stated would increase criminal activity, negatively affect the youth population, and make citizens less safe and less healthy overall. The Director stated that organized crime increases in other states that have legalized marijuana use, along with increases in negative social impacts and illegal marijuana sales.

The Director also stated that the Legislature should look at Kansas hemp laws, as the current statute is creating frustrations for law enforcement in prosecuting marijuana cases.

A Laboratory Operations Manager with the KBI provided testimony to discuss statutes involving marijuana, THC, and hemp. He stated that definitions for and references to hemp, hemp products, and THC in statute create ambiguity for law enforcement and prosecutors, making it difficult for them to prosecute certain crimes. Additionally, the many different types of cannabis-infused products on the market, including drinks and edibles, make it difficult for the lab to get samples into a suitable format for testing.

Law Enforcement Action Partnership

A representative of Law Enforcement Action Partnership and former U.S. Attorney for the District of Kansas spoke before the Committee, stating his opinion that law enforcement resources are better utilized in the fight against fentanyl rather than pursuing marijuana offenses. He stated that criminalizing small amounts of cannabis has caused significant harm to individuals who are using the drug for medical purposes, and Kansans should have the option to make their own decisions about medical cannabis use for their health.

Show Me Organics

A retired police chief and Chief Operations Manager for Show Me Organics, a cannabis company based in Missouri, provided testimony to the Committee. The conferee spoke about the importance of regulation to ensure operators are in

compliance and able to provide clean, tested cannabis to patients in need.

Reno County District Attorney

The Reno County District Attorney (DA) spoke to the Committee regarding a legal issue involving sentencing laws that govern hemp products containing THC and laws that govern controlled substances, including THC. Current law leaves hemp producers whose products exceed the 0.3 percent THC limit with the potential of being prosecuted similarly to crimes involving much higher THC concentrations. The DA proposed changes to KSA 21-5706 and KSA 2-3908 to provide more clarity. He also suggested the Legislature consider establishing a regulatory scheme that would impose fines for violations of the hemp statutes in addition to already-enacted criminal provisions.

The DA also addressed two potential issues he believes are behind the lack of prosecution for marijuana cases. He stated that many local prosecutors have proactively notified businesses of their intent to prosecute items prohibited under KSA 2-3908, and that it is cost prohibitive to send items to labs to be tested for specific THC content that is the basis for prosecution.

Physicians and Health Care Professionals

International Academy on the Science and Impact of Cannabis

A physician representing the International Academy on the Science and Impact of Cannabis provided testimony to the Committee about her professional experience working with individuals who have a substance abuse disorder in Colorado before and after the state legalized adult-use marijuana. She stated her program saw a success rate of 80.0 percent before marijuana legalization, and it dropped to 50.0 percent after cannabis products became legal for recreational use. The physician stated she saw patients with significant cognitive issues, which she attributed to the use of high-THC products. In her opinion, having worked with patients who have post-traumatic stress disorder (PTSD), medical marijuana is not an appropriate treatment option, as it only provides temporary relief and must be used multiple times per day. She stated marijuana can interfere with sleep stages and quality of sleep, as well as have a

negative impact on learning and memory functions.

Four County Mental Health Center

The Executive Director of Four County Mental Health Center spoke to the Committee about substance use and mental health, particularly how marijuana can impact the mental health of adolescents. He stated his concern that marijuana use can precipitate the onset of serious mental illness by as much as ten years for those who have a predisposition to a condition and cited studies that marijuana use can lower the effectiveness of psychotropic medications. The conferee stated his belief in effective regulation and urged the Legislature to be cautious in their approach.

Cannabis Pharmacy – Utah

A pharmacist who currently works for a medical marijuana pharmacy in Utah provided testimony to the Committee. In Utah, medical marijuana pharmacies solely dispense cannabis products. The conferee has been working as a pharmacist for 25 years.

The pharmacist stated that much like a regular pharmacist, her role involves explaining to patients how different products work, providing guidance on how to take their prescribed products, and educating them on different types of products to determine the best approach for each patient. She stated Utah has tight regulations as to who can pick up a patient's medication, how much a patient can purchase per month, and how products may be advertised and packaged. Additionally, the pharmacist stated that Utah has 11 qualifying medical conditions for those over the age of 21; individuals under 21 or seeking treatment for a different condition may petition the state's Compassionate Use Board, which is composed of seven medical professionals appointed by the Executive Director of the Utah Department of Health and Human Services and confirmed by the Utah State Senate.

Veterans

Veterans Alliance for Holistic Alternatives

The Founder and Executive Director of Veterans Alliance for Holistic Alternatives provided testimony to the Committee in support of the creation of a medical marijuana program in the

state. He spoke about his personal experience with a traumatic brain injury, chronic pain, insomnia, and PTSD after having served in the military in Iraq. The conferee stated he followed the prescribed regimen of medications for dealing with his issues, but his problems did not improve and his quality of life degraded. He stated access to medical marijuana provided relief and allowed him to discontinue his prescription medications. The conferee encouraged the Legislature consider medical marijuana legislation to give Kansans access to more holistic options for managing their health.

Retired Servicemembers

A retired sergeant who served in Afghanistan and now works as a real estate appraiser testified before the Committee. The conferee is also involved in a veteran-focused nonprofit and multiple boards that assist veterans. Through this work, he stated he has observed struggles with alcohol, drugs, and suicide impacting veterans and their family members. The conferee stated his research about medical cannabis led him to become an advocate for its use for veterans.

A retired combat medic and Vietnam veteran also shared his experience with the Committee. He stated he disagreed with the use of medical marijuana until his wife developed dementia and became aggressive and agitated. He stated his wife's personal physician and psychiatrist suggested medical cannabis could be beneficial. With his family's support, he provided small doses of medical cannabis daily, which he stated greatly improved her quality of life and allowed her to discontinue some prescription medications.

Agriculture, Hemp, and Cannabis Reintegration

A representative of Kansans for Hemp and Planted Association of Kansas and volunteer board member for the Kansas Department of Agriculture's Industrial Hemp Advisory Board spoke to the Committee about marijuana law reform to reflect current research and public opinion. He provided research gathered over the past eight years about Kansas' history with hemp and marijuana. He stated that hemp once grew wild across the state, and Kansas was the first state to implement hemp eradication under a misguided notion that it was the same as cannabis. He stated studies and cannabinoid analyses conducted at

Kansas State University in the 1970s found that the plants growing wild in Kansas were of the fibrous hemp variety rather than cannabis bred more specifically for THC content. He stated that past surveys of Kansas farmers found that they valued hemp for its ability to keep away more invasive weeds and provide food for farm game, such as birds and pollinators. The conferee also noted that it is his understanding the 0.3 percent THC limit was first cited in a Canadian taxonomic report.

Overall, the conferee stated that having adaptable solutions based on accurate information that meet people where they are is key, and a commercially unregulated market of any drug ultimately means that the market is in the hands of criminals. He suggested that achieving a medical marijuana program that protects public health and patients is possible but must be supported by quality evidence and data.

Banking

Kansas Bankers Association

The Vice President for Government Relations and Staff Attorney for the Kansas Bankers Association (KBA) provided testimony to the Committee regarding the marijuana industry and federal banking laws. She stated that under current law, any money that can be traced back to marijuana operations poses a risk to banks in their legal, operational, and regulatory functions, and those who are indirectly tied to the marijuana industry also pose a legal risk to banks. The conferee stated the KBA has no formal stance on the legalization of marijuana, but the organization does encourage federal and state regulatory agencies to provide greater legal clarity to banks operating in locations where legal cannabis businesses exist. She also stated the KBA is in support of the SAFER Banking Act.

Office of the State Bank Commissioner

The General Counsel for the Office of the State Bank Commissioner provided testimony to the Committee regarding the impact legalizing medical marijuana in Kansas would have on the banking system. He stated that implementing a medical marijuana program would not cause a substantial impact on how banks currently operate in Kansas, as it is a cash-intensive business and

would likely stay that way due to credit card companies refusing to do business with marijuana dispensaries and other marijuana-related businesses. The General Counsel suggested banks will be hesitant to do business with these types of customers until the issues around federal rescheduling of marijuana and the credit card companies allowing marijuana-related transactions are resolved.

Marijuana Policy Considerations

Marijuana Policy Project

The Southeast Legislative Manager for the Marijuana Policy Project (MPP) provided testimony to the Committee to advocate for reform of marijuana laws. He outlined MPP's six key points that it considers critical policy for a compassionate, patient-focused medical marijuana program:

- Implement explicit patient protections from arrest, detention, and prosecution;
- Ensure easy, ready access to medical cannabis;
- Allow adequate qualifying conditions to provide for patient access;
- Implement health and safety protections;
- Ensure adequate anti-discrimination protections for patients; and
- Implement confidentiality protections for patients.

Private Citizens

Testimony was provided to the Committee by a private citizen regarding the potential of the cannabis industry and industrial hemp. She stated that the benefits of hemp often get lost in the conversation about medical marijuana, and she advocated for hemp to be treated as a standard crop option for Kansas farmers so that the state may benefit from the economic development potential of industrial hemp.

A second private citizen spoke to the Committee in support of marijuana law reform in Kansas and included several resources in his testimony.

Medical Marijuana in Utah

The Director of the Center for Medical Cannabis in Utah provided testimony to the Committee regarding the success of the state's medical cannabis program and the strengths and challenges of its pharmacy model. The Director stated that since the program's start in 2020, there have been more than 89,000 medical cannabis patient cards issued, and 950 medical providers, 76 licensed pharmacists, and 15 medical cannabis pharmacies registered with the state. Medical providers must meet cannabis educational requirements and may serve no more than 15 patients. Medical cannabis pharmacies cannot sell anything but medical cannabis products; regular pharmacies that dispense FDA-approved drugs cannot provide medical cannabis.

The Director stated a strength of the program is that patients must first meet with a medical provider for an in-person assessment and educational appointment on safe and responsible use. First-time patients must also meet with a medical cannabis pharmacist to discuss types of medical cannabis products, dosages, and potential side effects. He stated a pharmacist must be present during all business hours to answer patient questions, and the medical providers and pharmacists share a statewide software system for patient treatment notes.

The Director noted that Utah's program has experienced higher costs of medical cannabis products due to the expense of having a pharmacist on duty. Operating costs are also increased by oversight, including requirement that a pharmacist review every sales transaction.

The Director also provided information about Utah's Medical Cannabis Advisory Board and its role in making recommendations and giving feedback to state policymakers about the program.

Cannabis Industry

Kansas Natural Remedies

A representative of Kansas Natural Remedies spoke to the Committee as a proponent of the creation of a medical marijuana program in Kansas. He spoke in favor of adopting a model similar to Utah's that, if tightly regulated, would diminish black market sales. The conferee stated that many of the social problems attributed to legal marijuana are affected by a wide variety of factors that are not strictly marijuana-related. He recommended a well-regulated application process and thorough vetting would be important considerations for any future medical marijuana legislation.

Show Me Organics

The Chief Executive Officer and President of Show Me Organics, a cannabis company operating in Missouri, provided testimony to the Committee. He spoke about his experience with a vertically integrated business that cultivates, manufactures, and sells medical and adult-use marijuana in Missouri. He stated one of the key elements to effective regulation is having a quality seed-to-sale partner for tracking plants and products and providing data that can be used to understand the impact of the program. The conferee stated that a challenge for regulators is that some of the language in the Missouri cannabis statutes was not entirely clear, which has led to lawsuits, particularly in regard to how licenses were awarded.

Cannabis Industry – Growers

Coastal Cannabis Consulting

A representative of Coastal Cannabis Consulting spoke to the Committee about his experience as a cannabis business owner operating in Washington, Louisiana, and Mississippi. He stated that it is important to do everything possible to have a well-regulated market, but the reality is that the underground market will always exist. The conferee suggested that a successful medical marijuana program needs policy that allows for the program to be sized and grow based on actual patient counts and demand; he stated commissioning a study before establishing a program could help the state understand how many patients they could expect to serve, how

many testing labs would be needed, how much grow capacity would be needed, and how many retail shops would be feasible.

Cannabis Industry – Tracking

Metrc

The Government Affairs Director for Metrc provided testimony to the Committee regarding the use of seed-to-sale tracking that provides a transparent, secure, and safe centralized inventory system for state regulatory programs. She stated that Metrc's system provides a database for the state to track every legal plant and product in the supply chain, testing results, transfer of products, and sales information in real time. The conferee explained that these metrics help ensure the medical marijuana marketplace is safe and secure by creating a closed-loop supply chain and informing effective policy decisions. The data can also be used to help predict cash flow, observe consumption levels, assist with public safety, and monitor licensing and patient registration.

Kanha Technologies

The Chief Executive Officer and President of Kanha Technologies spoke to the Committee about how his company develops enterprise resource planning systems for every type of operation within the cannabis supply chain and for government use. The conferee discussed the use of tags used for tracking, including radio-frequency identification tags, which are more expensive but more efficient, and universal product code tags, which are barcodes that are more labor-intensive to scan but are significantly less expensive. The conferee stated his company is able to generate encrypted tags that are unable to be counterfeit and that producers can print themselves at low cost.

Cannabis Industry–Testing and Quality Assurance

PGx Medical

The President of PGx Medical spoke to the Committee about the importance of quality assurance (QA) testing of medical marijuana products. He stated QA testing sets the standards for the state from a regulatory perspective and ensures there are no pesticides or heavy metals in the products being provided to the public. Like other industries that are regulated, the conferee stated it is good practice to test and provide

evidence that state standards are being met. The conferee also described how randomized testing is used and how labs operate as public-private partnerships with states.

Gateway Labs

The Quality Manager for Gateway Labs provided testimony to the Committee regarding testing laboratories. She stated that labs test for quality, to ensure patient safety and the integrity of the data, and to hold medical marijuana to the same standards as other pharmaceuticals.

Accreditation requirements for licensing labs provides standardization for equipment, methods, and reporting. The conferee stated that State oversight would be needed to monitor the frequency and range of lab failures to ensure the safety and efficacy of products in Kansas.

CONCLUSIONS AND RECOMMENDATIONS

Following discussion, the Committee made no formal recommendations.

Report of the Special Committee on Sedation Dentistry to the 2025 Kansas Legislature

CHAIRPERSON: Representative Will Carpenter

VICE-CHAIRPERSON: Senator Beverly Gossage

OTHER MEMBERS: Senators Larry Alley, Renee Erickson, Carolyn McGinn and Pat Pettey; and Representatives Emil Bergquist, Doug Blex, Ron Bryce, Kirk Haskins, and Cindy Neighbor

STUDY TOPIC

The Committee is directed to consider the current availability of sedation dentistry services for Medicaid beneficiaries in the state and the challenges in accessing and providing those services. Such review will include:

- Soliciting testimony from Medicaid beneficiaries, providers, and other stakeholders regarding the accessibility and availability of sedation dentistry services;
- Identifying challenges faced by stakeholders in providing or accessing sedation dentistry services; and
- Making recommendations to the 2025 Legislature on matters related to sedation dentistry.

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Special Committee on Sedation Dentistry

REPORT

Conclusions and Recommendations

The Special Committee on Sedation Dentistry recommends:

- Reviewing the scope of practice of certified registered nurse anesthetists to determine if the authority to procure their own medicines under a U.S. Drug Enforcement Administration license could be included;
- An overall rate increase for dental providers, including allowing for the reimbursement of partial services that do not result in a dental service being provided;
- That the Kansas Department of Health and Environment (KDHE) share with the Committee the Sedation Dentistry Report totals using the current Missouri rates as well as rates that are 80 percent of the usual and customary rate;
- That KDHE provide a fiscal note regarding the cost to raise the dental code G0330 to the current Medicare rate of \$3,087 and index the full rate in future years to the current Medicare reimbursement rate;
- Providing a complete and accurate list of dental providers and anesthesiologists providing sedation dentistry that parents and other providers can easily access and know who they can call for assistance;
- Consumer education regarding the importance of the connection between dental care and overall long-term health care;
- Exploring dental incentives with the intention of recruiting more dentists in the KanCare program; and
- Support for the My Dental Care Passport.

Proposed Legislation: None.

BACKGROUND

The Special Committee on Sedation Dentistry (Committee) was created by the Legislative Coordinating Council (LCC). The LCC directed the Committee to request testimony from Medicaid beneficiaries, providers, and other stakeholders on the accessibility and availability of sedation dentistry services and identify challenges experienced in either providing or accessing

sedation dentistry. The Committee was granted one meeting day during the 2024 Interim.

COMMITTEE ACTIVITIES

The Committee met on October 10, 2024, and heard testimony from multiple providers, individuals, and organizations on the topic of sedation dentistry in Kansas.

Presentation on the Kansas Medicaid Sedation Dentistry Report

The Director of Kansas Medicaid on behalf of the Kansas Department of Health and Environment (KDHE) presented key points of the 2024 Sedation Dentistry Report. She reviewed the current Medicaid dental codes for sedation dentistry and provided information on the location of dentists using sedation by county as well as the utilization rate for 2023. Additionally, she advised the Committee that the dental codes are currently under review by Oral Health Kansas to determine the sufficiency of available codes as well as the permitted billing amount for the code.

Presentations on Sedation Dentistry by Providers

Dentists

The Committee heard oral testimony from two Kansas dentists who provide sedation dentistry services for Medicaid patients and received written-only testimony from the Kansas Dental Association. The providers identified two patient populations most in need of sedation dentistry: special needs patients of all ages and pediatric patients.

The dentists reviewed the three types of conscious sedation used in dentistry: nitrous oxide, oral conscious sedation, and intravenous (IV) sedation. One provider identified the patient's level of anxiety, the length of the procedure, and the patient's health history as factors in determining the level of sedation needed. He stated that, in some cases, general anesthesia, a type of unconscious sedation, may be necessary in a hospital or ambulatory surgery center when treating young children, adults with special needs, or people with severe dental anxiety.

He further stated that young children from lower socio-economic levels and children who are members of minority groups are at risk for severe early childhood caries and advised the Committee that, according to the U.S. Centers for Disease Control and Prevention, children from low-income families are twice as likely to have cavities as compared with children from higher-income households and have the most difficulty finding dental care.

The providers stated there are 1,500 licensed dentists in Kansas but many are not part of the KanCare network. The reimbursement provided by KanCare is at 40.0 percent of the billed fee. This is a challenging economic model for dentists as the reimbursement may be below the actual cost of the care provided.

It was noted that the educational requirements for a pediatric dentist are different from those of a general dentist and that pediatric dentists are less likely to practice in rural areas. The conferees also stated many patients with special needs may receive care from a pediatric dentist but, once the patient becomes an adult, it is difficult to find a general dentist who provides care in either their location or under KanCare.

The providers also shared their experiences of working with patients with special needs, noting that this population has different behavioral, medical, and physical responses than the general population. These characteristics require dental practices that treat patients with special needs to manage practice resources differently to ensure sufficient time and equipment, appropriate patient care, and appropriate staffing levels, to ensure that the practice is ready to treat the patient as scheduled.

It was highlighted that the billing codes in Kansas Medicaid do not permit billing for behavioral management services or the use of sedation if the dental treatment is not fully completed. The conferee shared that, in some cases, a patient may be prepared for treatment but, for a reason beyond their control, the planned dental treatment cannot be completed for the patient that day. Private insurance generally does permit the billing of the provided services even if the planned dental treatment was not completed. It was further noted the federal government mandates that access to care for patients covered by Medicaid be on par with access to care for patients covered by private insurance and, in their opinion, this has never been the case in Kansas.

Certified Registered Nurse Anesthetists

The Committee heard testimony from two certified registered nurse anesthetists (CRNAs) who provide anesthesia services during sedation dentistry procedures both in office and in hospital

settings. The providers highlighted the concern that the current KanCare reimbursement process does not encourage or incentivize dentists or other providers to participate in the program. Their observation is that a dental practice is able to participate in KanCare only if their private insurance practice is abundant enough to balance out the administrative burden of KanCare billing and the longer reimbursement time period, as well as the lower reimbursement rates.

The conferees also expressed concern that Kansas does not have a sufficient professional network in KanCare to provide dental care to vulnerable populations, specifically the dual-eligible special needs adult population. Concern was expressed about availability of care for the young U.S. residents without legal immigration status brought to the United States as children who are more likely to have high dental needs, as well as that dentists do not have equal hospital privileges or operating room availability. It was also noted that hospitals do not have any incentives to recruit dentists to address dental-related issues that patients may have during an emergency room or other hospital stay. In addition, it was noted that, due to the reimbursement structure for sedation dentistry, providers may need to subsidize some professional services when it is offered at the provider's facility.

The providers suggested that solutions be formulated around the following:

- Retaining and attracting new dentists to participate in KanCare by raising the dental reimbursement rates to be similar to those in Missouri;
- Providing an increased reimbursement rate to providers of sedation dentistry after five years of participation in KanCare;
- Allowing existing dental clinics at Kansas Neurological Institute and Parsons State Hospital and Training Center to see special needs children and adults outside their facilities and to bill Medicaid for those services;
- Encouraging federally qualified health centers to see special needs adults for

dental care and to provide sedation services on a routine basis;

- Addressing the disparity between Medicaid reimbursement rates and Medicare reimbursement rates as the current Medicaid rate is insufficient to cover costs; and
- Allowing mobile anesthesia providers to bill KanCare by creating a billing code for mobile sedation services.

Surgical Center

The Director of Surgery and Specialty Clinic Manager (Director) of the South Central Kansas Medical Center (SCKMC) provided insight regarding facilities used in the sedation dentistry process.

She stated that most patients who require dental work to be performed outside of a typical dental facility have severe cognitive, behavioral, or physical disabilities or some combination of those. Before a patient is permitted to undergo surgery in a hospital, the patient must complete a medical history and physical examination within 30 days of the surgery date. This documentation is submitted to the anesthesia and surgery medical teams two weeks prior to the surgery so they can evaluate the patient and develop a care plan, as well as identify any additional testing that may be needed prior to surgery. The surgical teams will also formulate a backup plan for the patient if the procedure does not proceed according to the original surgery plan.

She walked the Committee through the day of surgery and highlighted that, often, due to the high needs of the patient, the facility needs additional staffing. A typical team for a high-needs patient includes two anesthesia providers, two registered nurses, a surgical technologist, and the necessary dental staff. Additional concerns for these types of procedures include the challenging moments of intubation and extubation and longer hospital stays for monitoring, due to the complexity of the health needs.

The Director noted that other health care needs are addressed as necessary but the care team does

not always receive reimbursements for these additional services.

The Director stated SCKMC serves patients from all over Kansas because it is one of the few facilities in Kansas that provides sedation dental care for the adult special needs population. She cited the low Medicaid reimbursement rate combined with the increased time, risk, and effort involved for providing this service as the main reason for the lack of providers in the state.

Presentations on Sedation Dentistry by Individuals and Organizations

The Committee heard testimony from three private citizens regarding sedation dentistry. Two private citizens and the organization InterHab provided written-only testimony to the Committee.

The conferees shared stories of their families' experience with sedation dentistry. They noted that the availability of sedation dentistry (especially through a KanCare provider) and regular dental care decreased when the family member became an adult although the need for the service was just as high.

The private citizens shared how the My Dental Care Passport (passport) tool provided both their families and the dental provider insight into their prior experiences and made changing dental providers an easier process. [Note: A description of the passport was provided by the Oral Health Kansas Medicaid Projects Manager, summarized below.]

The testimony highlighted the challenge of finding providers who accept KanCare and patients with special needs, noting that a lot of time was spent contacting providers who were listed as KanCare providers who were not willing to accept special needs patients.

Sedation Dentistry Status and Innovations to Consider

The Medicaid Projects Manager and the Executive Director of Oral Health Kansas, Inc., shared that sedation dental care access is a persistent and complex issue. The representatives identified a combination of the lack of KanCare dental providers and the lack of providers who see

individuals with disabilities as reasons that Kansans with disabilities have the greatest barriers to dental care, particularly adults with disabilities.

One identified barrier is the limited participation by dentists in the KanCare dental program. The American Dental Association estimates only 39 percent of dentists in Kansas participate in Medicaid, while the national average is 43 percent. The Medicaid Projects Manager noted that recent data from KDHE shows that less than 15 percent of Kansas dentists see 100 KanCare patients and only 13 percent of Kansas dentists provide any sort of Medicaid dental services. It was noted that some dentists may be enrolled as KanCare providers but the number of KanCare patients they see is very small, they may not be accepting new patients, or they no longer see any KanCare patients.

Other barriers to the provision of sedation dentistry identified by the Oral Health Kansas representative include the low KanCare reimbursement rates for services, a lack of training and education in treating patients with disabilities and when to use sedation, increased non-reimbursable time, and the persisting misunderstanding and stigma of disabilities.

The Medicaid Projects Manager noted that a lack of training around treating patients with disabilities may perpetuate a pattern of misinformation. She noted information and support regarding the care options can help people navigate the system and advocate for their own health, including working with health care professionals to explore all their treatment options. It was highlighted that Kansas does not have a complete and reliable list or directory of sedation dental providers in the state.

The Medicaid Projects Manager identified the CRNA reimbursement rate for dual Medicare and Medicaid patients and the hospital and facility fees as additional barriers in providing sedation dental services. She stated the KDHE report shows that the KanCare rate for CRNAs is approximately \$18 for 15 minutes of care and this is not an adequate rate to cover all the needed provisions to safely care for individuals under sedation, particularly those with complex needs. Compounding the reimbursement issues for CRNAs are the dual Medicare Advantage-Medicaid plans. Medicaid is

the payor of last resort and, due to the application of “lesser of logic” when billing for sedation services, CRNAs receive the federally set Medicare rate for their services. This rate does not allow providers to provide ongoing services for this population without losing money.

The Medicaid Projects Manager noted that some individuals require dental care in a hospital setting due to safety issues associated with complex medical needs. Medicaid began implementing a policy change last fall to pay the hospital and ambulatory care center a facility fee of \$1,722 for dental procedures. Unfortunately, utilization has been low and access to surgical space for dental procedures is still difficult.

The Medicaid Projects Manager stated the Sedation Dentistry Task Force has focused on understanding the existing sedation dental provider network to eliminate barriers. She noted that the KanCare managed care organizations will be required to maintain a list of sedation dental providers. It was recommended that this list include the type of sedation each provider offers, the insurance they accept, the populations they treat, and the geographic areas they serve. In addition, training or education opportunities should be offered to dental providers and dental teams to improve the network of dentists who feel confident in serving individuals with disabilities.

The Medicaid Projects Manager described the passport as a communication tool created by Oral Health Kansas and its partners to improve dental office visits by providing a tool to patients to voice their specific needs. The passport was designed to help people with disabilities share with the dental office how they like to communicate, what worked well for them in past dental visits, and what parts of the appointment might be hard for them. The aim is to reduce communication barriers, save time and money, and perhaps even remove the need for sedation in certain circumstances.

The Executive Director provided testimony regarding avenues for improvement and some policy changes the Legislature could consider. She shared that, in October 2024, Oral Health Kansas was awarded an American Rescue Plan Act grant from the KDHE Division of Health Care Finance to help improve access to dental care for people with disabilities.

The organization plans to work on improving communication regarding the passport and promote its use. There will be resources in 2025 to launch a Project ECHO (Extension for Community Healthcare Outcomes) training series for dental teams that is focused on providing services to persons with disabilities. The organization also plans to use resources for consumer education programs, such as the Feeling Good About Your Smile program, as well as develop new educational videos for individuals with disabilities.

Another goal of the organization is to review the Centers for Inclusive Dentistry Model. This is a home training model that helps dentists with hands-on experience, including mentorship, to help them gain more confidence in seeing people with disabilities.

The organization is also planning to develop a Medicaid Dental Facilitator Program to recruit and support Medicaid dental providers in serving people with disabilities and review ways to regularly update and maintain the sedation dental provider survey. She noted that the survey will accomplish three important goals. First, consumers who are looking for sedation dental care will have a realistic list of offices to call. Second, the managed care organizations will be able to realistically update their sedation provider lists annually, as required in the new KanCare contract. Third, the organization will learn where gaps in the sedation network remain.

The Executive Director highlighted that the capacity in the Kansas Medicaid dental provider network is limited. Federally qualified health centers and safety clinics bear an outsized burden in seeing Medicaid members in Kansas. The only real solution to increase the provider network is to encourage more private dental offices to see Medicaid patients. Oral Health Kansas is requesting that the Committee recommend the 2025 Legislature increase the Medicaid dental rates to the level of the Missouri Medicaid dental rates.

Additionally, Oral Health Kansas is requesting study of models of providing enhanced rates for dental care provided under IV and hospital sedation, as dental providers who offer sedation care generally do it at their own expense. Procedures that require sedation take longer

because of all the work to prepare for the visit, get the person ready for sedation, and to ensure they come out of the sedation safely. The dentist is able to bill only the regular procedure codes for the care provided, which do not adequately compensate them for the actual care provided.

Another rate change the Executive Director requested be reviewed is the hospital facility fee code (G0330). The rate was set at the federal Medicare rate of \$1,722.43. In January of 2024, the federal Medicare rate for that code increased to \$3,087. The Executive Director requested the Kansas rate be increased to \$3,087 and the rate indexed to the federal Medicare rate.

She noted that the most complex issue the Committee is looking at is treating those patients who have dual Medicare and Medicaid coverage. Oral Health Kansas is requesting to continue exploration of changes to policy, reimbursement, or both to mitigate the sedation reimbursement rate issue for people who have dual Medicare and Medicaid eligibility.

Sedation Dentistry Statutes and Regulations

An Assistant Revisor of Statutes from the Office of Revisor of Statutes provided a written overview of the relevant Kansas statutes on sedation dentistry. She noted that, generally, the Dental Practices Act requires a license to practice dentistry or dental hygiene in Kansas. She noted exceptions for three practices related to sedation dentistry: a licensed nurse performing a task as part of administering anesthesia under the supervision of a licensed dentist, a CRNA giving anesthesia during a dental operation as part of the health care team, and a nonlicensed person completing certain tasks in a dental office but not administering anesthesia. KSA 65-1423 provides a definition of general and local anesthesia of any nature in connection with a dental operation. This does not include nitrous oxide (also known as laughing gas), oxygen, or both.

The Assistant Revisor stated that regulation of sedation dentistry is addressed in the Dental Practices Act at KSA 65-1444. This statute requires a dentist to get a permit issued by the Kansas Dental Board (Board) to practice sedation dentistry and follow the Board's rules and

regulations. The Board is authorized to issue permits, establish requirements and qualifications based on the type of sedation, and require periodic renewals of that authorization. In an office where a dentist is authorized to administer sedation and anesthesia, the dentist is subject to inspection by the Board to ensure compliance with the rules and regulations. Subsection (b) authorizes a dentist to use a nonlicensed assistant in the administration and monitoring of nitrous oxygen and oxygen if the nonlicensed assistant is certified in CPR and has completed a course of instruction approved by the Board.

She stated KSA 65-1158 requires CRNAs to receive an order of a physician or a dentist requesting anesthesia or analgesia care. She noted only the Senate passed 2024 SB 112, which would have extended practice authority for advance practice registered nurses. The bill did not include statutes dealing with other providers, including the CRNAs.

She also summarized the regulations provided to the Committee, noting that Kansas laws and regulations permit dentistry members of medical staff, as well as physicians, to have admitting or clinical privileges, but those privileges are generally up to the hospital. A dentist would have to apply to that hospital to be a member of its staff or to receive those privileges. The standards are up to each individual hospital.

CONCLUSIONS AND RECOMMENDATIONS

The Committee discussed a variety of issues raised by the conferees and agreed to the following recommendations:

- Reviewing the scope of practice of certified registered nurse anesthetists to determine if the authority to procure their own medicines under a U.S. Drug Enforcement Administration license could be included;
- An overall rate increase for dental providers, including allowing for the reimbursement of partial services that do not result in a dental service being provided;

- That KDHE share with the Committee the Sedation Dentistry Report totals using the current Missouri rates as well as rates that are 80 percent of the usual and customary rate;
- That KDHE provide a fiscal note regarding the cost to raise the dental code G0330 to the current Medicare rate of \$3,087 and index the full rate in future years to the current Medicare reimbursement rate;
- Providing a complete and accurate list of dental providers and anesthesiologists providing sedation dentistry that parents and other providers can easily access and know who they can call for assistance;
- Consumer education regarding the importance of the connection between dental care and overall long-term health care;
- Exploring dental incentives with the intention of recruiting more dentists in the KanCare program; and
- Support for the My Dental Care Passport.

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Report of the Special Committee on Targeted Case Management to the 2025 Kansas Legislature

CHAIRPERSON: Representative Will Carpenter

VICE-CHAIRPERSON: Senator Beverly Gossage

OTHER MEMBERS: Senators Chase Blasi, Renee Erickson, Michael Fagg, and Mary Ware; and Representatives David Buehler, Ford Carr, Susan Humphries, Kyle McNorton, and Susan Ruiz

STUDY TOPIC

The Committee is directed to:

- Facilitate legislative oversight of potential changes to the targeted case management (TCM) Medicaid service within the network of services for individuals with intellectual and developmentally disability;
- This facilitation will include the completion of an examination of changes to the TCM system and consideration of recommendations to the full Legislature.

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Special Committee on Targeted Case Management

REPORT

Conclusions and Recommendations

The Special Committee on Targeted Case Management recommends:

- The Kansas Department for Aging and Disability Services (KDADS) distribute a survey to individuals on the waiver, to individuals on the waitlist, and to other stakeholders. Findings should be reported to members by December 15, 2024. The survey should ask the following questions:
 - Are you satisfied with the services received from your Community Developmental Disability Organization and Targeted Case Management (TCM) provider?
 - Are you aware that you can change TCM provider?
 - What feedback, if any, would you give to KDADS regarding your services?
- KDADS develop a Kansas-specific response to meet requirements by the Centers for Medicare and Medicaid Services (CMS) to prevent conflicts of interest in providing TCM, including:
 - Allowing agency-based and independent case managers indefinitely;
 - Allowing all available flexibilities, including a clear firewall for agency-based providers; and
 - Building a robust monitoring system, including allowing exemptions in rural areas.
- House and Senate health standing committees review TCM provider capacity and TCM reimbursement rates during the 2025 Session.

The Committee also approved writing a letter to CMS requesting written documentation of the conflict of interest violations and guidance from CMS regarding the need to separate case management providers and services providers, as well as whether CMS is aware of rules already in place in Kansas to prevent conflicts of interest.

Proposed Legislation: None.

BACKGROUND

The Special Committee on Targeted Case Management was tasked with facilitating

legislative oversight of potential changes to the Medicaid targeted case management (TCM) service for individuals with intellectual and developmental disabilities (I/DD), including an

examination of changes to the TCM system and consideration of recommendations to the full Legislature.

The Special Committee on Targeted Case Management was authorized to meet for one day and met on October 9, 2024, at the Statehouse.

COMMITTEE ACTIVITIES

The Committee received testimony concerning requirements by the Centers for Medicare and Medicaid Services (CMS) that states provide TCM to individuals with I/DD free of conflict of interest, responses by other states, the plan developed by the Kansas Department for Aging and Disability Services (KDADS), and testimony from stakeholders.

Presentation on Federal Requirements and State Responses

A representative of the National Association of State Directors of Developmental Disabilities Services reviewed the CMS regulations requiring conflict-free TCM to individuals with I/DD. The regulations require states to separate TCM functions from delivery of other services. The representative provided information on how other states addressed the regulation requirements, including providing full disclosure, evaluating safeguards, establishing firewalls, and providing opportunity for individuals to appeal or dispute decisions.

Presentation on State Plans to Address the CMS Requirement

A representative of KDADS outlined the current status of the State's plan to address the CMS requirement, which is to completely separate TCM functions from services. The plan includes a time-limited option allowing provider agencies to provide both TCM functions and services, but not to the same individual, until July 2029. The representative reported next steps are to work with an advisory group to develop a road map, offer grants to provider agencies to assist in separating services, and to maintain communications with CMS.

Public Testimony from Individuals and Families

Several private citizens, including individuals with I/DD, family members, and caregivers, shared their experiences with TCM providers in Kansas. Conferees generally expressed positive experiences with providers and a desire for the current system to remain in place. A total of 31 conferees provided oral or written testimony.

Public Testimony from Providers and Organizations

The Committee heard testimony from representatives of services providers and organizations. Oral testimony was provided by representatives of Arc of Douglas County, CLASS LTD, COF Training Services, Cottonwood Inc., Developmental Services of Northwest Kansas, InterHab, Kansas Council on Developmental Disabilities, Lakemary Center, Sedgwick County Developmental Disability Organization, and Starkey Inc. Conferees included providers of both TCM and waiver services, independent TCM providers, and organizations representing the interests of individuals with I/DD. An additional 22 provider representatives provided written-only testimony.

CONCLUSIONS AND RECOMMENDATIONS

The Special Committee on Targeted Case Management recommends:

- KDADS distribute a survey to individuals on the waiver, to individuals on the waitlist, and to other stakeholders. Findings should be reported to members by December 15, 2024. The survey should ask the following questions:
 - Are you satisfied with the services received from your Community Developmental Disability Organization and Targeted Case Management (TCM) provider?
 - Are you aware that you can change TCM provider?
 - What feedback, if any, would you give to KDADS regarding your services?

- KDADS develop a Kansas-specific response to meet requirements by CMS to prevent conflicts of interest in providing TCM, including:
 - Allowing agency-based and independent case managers indefinitely;
 - Allowing all available flexibilities, including a clear firewall for agency-based providers; and
 - Building a robust monitoring system, including allowing exemptions in rural areas.
 - House and Senate health standing committees review TCM provider capacity and TCM reimbursement rates during the 2025 Session.
- The Committee also approved writing a letter to CMS requesting written documentation of the violation and guidance from CMS regarding the need to separate case management providers and services providers, as well as whether CMS is aware of rules already in place in Kansas to prevent conflicts of interest. [**Note:** Policy 33 of the Legislative Coordinating Council requires approval of the President of the Senate and the Speaker of the House of a nonpolicy statement, inquiry, or invitation sent to any federal agency.]

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Report of the Joint Committee on Child Welfare System Oversight to the 2025 Kansas Legislature

CHAIRPERSON: Representative Susan Concannon

VICE-CHAIRPERSON: Senator Beverly Gossage

RANKING MINORITY MEMBER: Representative Jarrod Ousley

OTHER MEMBERS: Senators Molly Baumgardner, Renee Erickson, Oletha Faust-Goudeau, Cindy Holscher, and Kristen O’Shea; and Representatives Leah Howell, Cyndi Howerton, Susan Humphries, Timothy Johnson, and Susan Ruiz

CHARGE

Review the Child Welfare System

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

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

- Trends, performance outcomes, activities, and improvement plans related to the federal Child and Family Services review;
- Reports from child welfare-related groups;
- Implementation of the 2019 Child Welfare System Task Force report recommendations;
- Reports on concerns received from the DCF Ombudsman or customer service department or similar office;
- Data and trends on family foster home licenses issued pursuant to KSA 2024 Supp. 65-516(b);
- The exception to the State Child Death Review Board confidentiality for city or county entities with the express purpose of providing local review of child deaths (KSA 2024 Supp. 22a-243); and
- Any other topic the Committee deems appropriate.

Joint Committee on Child Welfare System Oversight

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Child Welfare System Oversight (Committee) makes the following recommendations to the 2025 Legislature:

- Case management providers (CMPs) should report at each Committee meeting the number of positions in their organizations filled at that time by unlicensed individuals;
- School districts, CMPs, and the Department for Children and Families (DCF) should take a multi-pronged approach in notifying foster youth of any financial or educational benefits that may be available to them after reaching the age of 18 or graduating;
- Literacy assessments should be required for every child adjudicated to be in need of care;
- Bench cards used by judges and attorneys practicing in child in need of care (CINC) cases should include questions verifying that the guardian *ad litem* assigned in the case has met with the child;
- When a foster youth has a change in placement that requires enrollment in a new school, CMPs need to ensure such enrollment is timely;
- Law enforcement officers should provide written information to parents regarding what is to be expected in the 72 hours following a police protective custody (PPC) removal;
- Legislation providing additional resources to law enforcement with respect to PPC removals should be supported;
- The Committee should develop a list of questions standardizing the minimum quarterly reporting requirements for family preservation and case management provider (CMP) grantees;
- Legislative staff should inform the family of A.J. Iverson of the process for filing a claim against the State with the Joint Committee on Special Claims Against the State;
- The House Committee on Child Welfare and Foster Care or successor committee should hold informational hearings on the following topics: 1) legislative reforms pertaining to the reporting of suspected child abuse and neglect 2) consideration of legislation granting *Miranda* rights for parents involved with the child welfare system; and 3) whether out-of-state child custody orders are being honored by Kansas courts;
- Kinship care placements should be made as early as possible and legislation considering a child's attachment to kinship caregivers when granting adoptions should be supported;

- DCF should shorten the timelines by which foster youth must receive mental health treatment, and the Committee should consider possible enforcement mechanisms to accomplish this goal;
- DCF should ask contractors to record details pertaining to youth who miss mental health treatment appointments at certified community behavioral health clinics, including the reason for the missed appointment and how frequently appointments are being missed, and compile this data for reporting to the Committee;
- Kansas universities with social welfare programs should present information to the Committee regarding their individual efforts to encourage students to pursue careers in child welfare;
- The State Child Death Review Board should provide education to the general public on safe firearm storage;
- The House Committee on Child Welfare and Foster Care or successor committee should prioritize the consideration of legislation amending the definition of “neglect” in the CINC Code;
- The House Committee on Child Welfare and Foster Care or successor committee should consider DCF’s legislative priorities as presented to the Committee at its November 2024 meeting.

Proposed Legislation: None.

BACKGROUND

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

- Data on child maltreatment and demographic trends impacting the child welfare system;
- The duties, responsibilities, and contributions of the Kansas Department for Children and Families (DCF), the Kansas Department for Aging and Disability Services (KDADS), the Kansas Department of Health and Environment (KDHE), the Department of Corrections, law enforcement, and the Judicial Branch that compose and impact the child welfare system;
- The programs, services, and benefits offered directly or through grants or contracts by DCF, KDADS, KDHE, and the Judicial Branch that impact children and families at risk of becoming involved or who are involved in the child welfare system;
- Trends, performance outcomes, activities, and improvement plans related to the federal Child and Family Services Reviews;
- Reports from child welfare-related groups;
- Implementation of the 2019 Child Welfare System Task Force report recommendations;
- Reports on concerns received from the DCF Ombudsman or customer service department or similar office;

- Data and trends on family foster home licenses pursuant to KSA 2024 Supp. 65-516(b);
- The exception to the State Child Death Review Board confidentiality for city or county entities with the express purpose of providing local review of child deaths (KSA 2024 Supp. 22a-243); and
- Any other topic the Committee deems appropriate.

COMMITTEE ACTIVITIES

The Committee met once during the 2024 Legislative Session, on March 15. The Legislative Coordinating Council authorized the Committee to meet four additional days in the 2024 Interim. The Committee held meetings on June 26, September 11, and November 13-14.

March 15 Meeting

Presentation on Strengthening Policies and Oversight of Child Welfare

A representative of Casey Family Programs presented information on how rates of maltreatment, entry and re-entry into foster care, and substantiated allegations of abuse, neglect, or both in Kansas compare with those rates nationally, and how those rates reflect the performance of a state's child protection system. The representative suggested two opportunities for legislative action: leveraging the Family First Prevention Services Act and evaluating the state's definition of child neglect.

Child Welfare System Presentations from Individuals, Providers, and Organizations

Testimony was presented by two private citizens:

- The sister of an individual who passed away while receiving family preservation services from Saint Francis Ministries (SFM) expressed her frustration that the testimony she presented at the October 4, 2023 meeting was not captured in the livestream recording (A family friend read

this statement on the sister's behalf due to illness.); and

- The mother of the individual described above described the impact the loss of her son has had on her family, and expressed her belief that her son would still be alive if the State had provided him the treatment he needed.

Kansas Division of the Child Advocate Update

The Child Advocate presented the Kansas Division of the Child Advocate (KDCA) annual report noting specific recommendations from the report. She also provided a review of the complaints KDCA received in 2023. The Child Advocate stated the most common complaints received have involved family separations and inadequate communication between families and DCF and case management providers (CMPs).

Case Management in Sedgwick County

A representative of EmberHope Connections (EHC), the CMP beginning case management of foster care in Sedgwick County on July 1, 2024, described the organization's efforts to transfer case management services from SFM.

DCF Update

The Secretary for Children and Families (Secretary) provided a status update on the three requests for proposal (RFPs) that were pending at the October 4, 2023, meeting. New contracts for family preservation services were awarded to existing providers, and an additional contract was awarded to EHC to provide case management services in Sedgwick County. The Secretary explained that these contracts will begin July 1, 2024, and will run through June 30, 2028, with an option to renew for an additional two years. The Secretary noted the RFP for the Comprehensive Child Welfare Information System was still in process, but the agency expected to announce the vendor awarded the contract in April 2024.

The Secretary also reported on four items as requested by the Committee in its last meeting of 2023: the current status of fetal alcohol spectrum disorders screenings in the state, what is being done to address children living in homeless

encampments, what policies utility companies have to avoid terminating services to families with children, and what grant funding is available for nonprofits that support children with disabilities.

Presentation on KanCoach and Resilience Alliance Programs

Two representatives of the Children's Alliance of Kansas presented an overview of the KanCoach and Resilience Alliance programs implemented by a public-private-university collaborative to enhance training for child welfare professionals and provide strategies for those working in child welfare to manage the stress and trauma inherent in this field.

Case Management and Family Preservation Provider Updates

A representative of Cornerstones of Care provided an update of organization statistics and activities related to staffing, caseloads, and new programs.

A representative of DCCCA provided an update on services and programs currently offered by the organization, and noted Medicaid will begin covering certain behavioral health services provided by the organization soon, which will help address barriers to treatment. The representative also noted the organization is working to improve staff retention.

A representative of KVC Kansas (KVC) provided an update on the organization's operations, including entry rates, caseloads, and employee retention rates. The representative noted KVC participates in the KanCoach program.

A representative of SFM provided an update on the organization's programs, employee recruitment and retention efforts, and statistics related to the types of permanency established for children in the organization's care. The representative expressed his opinion that the State needs to improve the ratio of children entering care to those exiting care, and noted more frequent court hearings would help.

A representative of TFI Family Services (TFI) explained that she has assumed the role of Senior Vice President of Permanency and provided an update on TFI's activities since the October 4,

2023, Committee meeting. The representative noted TFI is meeting benchmarks for permanency for those children who have been in care for 24 months or longer, but not for those in care between 12 and 24 months, and noted the organization has improved placement stability for children in its care.

June 26 Meeting

Child Welfare System Presentations from Individuals, Organizations, and Providers

Testimony was presented by five private citizens:

- A father expressed frustration with the way DCF and the court treated him during multiple child abuse investigations that turned out to be unsubstantiated during a custody dispute with his ex-wife;
- An individual expressed the need for accountability, systemic changes, and a focus on family and religious values when evaluating the Kansas child welfare system;
- A grandmother of a child involved in the child welfare system expressed her frustration with the perceived lack of response from the Committee after presenting testimony in previous meetings;
- The mother of an individual who passed away while involved with the child welfare system explained her belief that people do not trust DCF because the agency does not take accountability for its actions; and
- The sister of the individual described above expressed frustration that there has been little follow-through by SFM or DCF with respect to the system changes she has suggested.

A representative of Variety KC provided an overview of the organization, stating it provides therapies and devices for physically disabled

children in the Kansas City metropolitan area exclusively through private donations.

KDCA Update

The Child Advocate provided the KDCA's first-quarter update of 2024, which included investigation outcomes, complaint investigation activities, and top concerns reported. The Child Advocate stated the KDCA was working to make its website more user-friendly and improve its case management system. The Child Advocate also noted that pursuant to 2024 SB 115, KDCA will become the Office of the Child Advocate (OCA) on July 1 and she will become Acting Child Advocate until the Child Advocate is appointed by the Governor and confirmed by the Senate. [Note: The provisions of 2024 SB 115 are codified at KSA 2024 Supp. 75-7601.]

Kansas Judicial Branch Child Welfare Summit Takeaways

A Kansas Supreme Court Justice provided a summary of the 2024 Child Welfare Summit hosted by the Kansas Judicial Branch on April 15–16, 2024, noting key items discussed by child welfare system stakeholders, including:

- Ways to improve collaboration among child welfare professionals;
- Ways to improve communication and to set clear expectations of families and child welfare professionals;
- Recognition of other systemic issues that contribute to challenges experienced by all stakeholders; and

The statutory presumption that children belong with their families, which places the burden on the State to prove removal is necessary.

Achieving Better Outcomes for Children in Need of Care Through the Judicial Process

A representative of Casey Family Programs spoke about the court's role in the child welfare system, effective legal representation for parents and children in child in need of care (CINC) proceedings, and areas of the Revised Kansas Code for Care of Children (CINC Code) that may

need to be clarified to improve outcomes for Kansas children and families.

Case Management and Family Preservation Provider Updates

A representative of Cornerstones of Care reviewed the history of the organization and services offered in Kansas, noting it has recently made contract enhancements by adding addiction counselors and family therapists to its staff.

A representative of DCCCA reviewed the scope of its services and described updates to the foster care licensing regulations affecting foster parents, post-adoption services, the We Kan Drive program for foster youth, and the organization's staffing concerns.

A representative of EHC stated the organization had been busy preparing to replace SFM as the CMP for Sedgwick County and expected to be fully staffed by July 1, 2024, when the contract commences.

A representative of KVC stated the organization is having success reducing foster care entries due to prevention services and noted the organization had reduced the number of youth staying in offices overnight since the previous Committee meeting. The representative also noted that it was developing therapeutic foster homes for high-need foster youth.

A representative of SFM stated the organization continued to recruit employees and noted its staff will decrease with the transition to EHC in Sedgwick County. It is anticipated that following the transition, 62 percent of current SFM employees will become EHC employees in this catchment area.

A representative of TFI stated the organization is partnering with universities across the state to get more of its staff licensed and noted the organization is improving placement stability and reducing the number of children sleeping in offices.

DCF Update

The Secretary presented statistics on the number of children in foster care in the state,

noting the number continues to decline each year. The Secretary noted the agency is implementing changes to relative and non-related kinship licensing regulations, including increasing daily reimbursement rates for these types of foster homes, effective July 1, 2024. The Secretary also noted the agency was working with the Chief Justice to launch a pilot program for family treatment courts aimed at addressing substance abuse issues of parents while keeping families together.

September 11 Meeting

OCA Update

The Acting Child Advocate provided an update on investigation outcomes and activities of the OCA, noting there were 40 complaints in the second quarter, with most complaints related to inadequate contact between parents and children and lack of communication between families and case managers. The Acting Child Advocate also stated the OCA has launched a new website that is more user-friendly across all types of devices.

SOUL Family Legal Permanency Option Update

A representative of FosterAdopt Connect (FAC) provided an update on the work being done by FAC in partnership with DCF with respect to the implementation of the SOUL Family Legal Permanency (SFLP) option.

Two representatives of the SFLP Authentic Youth and Family Engagement Practice Subgroup provided a summary of the work being done by the group, including making recommendations on best practices pertaining to youth and family engagement and training for stakeholders.

What the Research Tells Us About Well-functioning Child Protection Systems

A representative of Casey Family Programs provided information on the various interventions that can be undertaken by states to prevent the out-of-home placement of children. The representative stated the primary drivers of out-of-home placement are parental substance abuse, domestic violence, and untreated mental illness. He suggested states should leverage federal funds to provide mental health and substance abuse treatment and other family support. The representative also suggested states can improve

child welfare outcomes if they implement child poverty reduction programs.

Child Welfare System Presentations from Individuals, Organizations, and Providers

The State Director of the Kansas Court-Appointed Special Advocate (CASA) Association provided a brief overview of the state's network of 20 local CASA programs that recruit, train, and supervise volunteers who serve as advocates for 1,100 children in the Kansas child welfare system. The State Director noted that from January 1 through June 30, 2024, CASA volunteers made 26,000 advocacy contacts with children in the state.

A representative of Pyxis, a day services provider in Sedgwick County, provided information on the organization's operations and requested the Committee's support in its efforts to expand the hours it is allowed to serve youth by becoming a licensed residential facility to provide overnight accommodations to youth it serves. Currently, the youth that are in the organization's care during the day must move to an emergency shelter at night and then come back to their centers in the morning.

A private citizen discussed the loss of her son and the challenges she faced while trying to access services for him through SFM. She also expressed the need for more respite care for foster families.

Written-only testimony was also submitted by a private citizen.

DCF Update

The Secretary provided statistics related to Kansas youth in care at the end of the state fiscal year (FY) 2024, noting that the state has seen a reduction in child removal rates since 2023. The Secretary stated she believes this reduction can be attributed to the work the agency has done to encourage DCF staff and law enforcement to ask the "four questions" prior to a removal:

- What can we do to remove the danger instead of the child;
- Can someone the child or family knows move into the home to remove the danger;

- Can the caregiver and the child go live with a relative or family friend; and
- Could the child move temporarily to live with a relative or family friend.

The Secretary also noted the agency has worked to increase community engagement when a child is at risk for removal due to factors of poverty rather than neglect.

The Secretary also provided an update on the implementation of family treatment courts and work being done to address the findings of The Center for States Leading for Results study on the causes of placement instability. The Secretary also provided an overview of the statewide rate structure used by child placing agencies (CPAs) for youth with intellectual and developmental disabilities.

Presentation on Therapeutic Foster Care

The Deputy Secretary for Children and Families provided an overview of therapeutic family foster homes (TFFHs), which provide safety, permanency, and stability in a family-like setting for children with high acuity needs. She noted the agency has been building TFFH capacity in the state through grants awarded to seven CPAs. She explained the daily payment rate structure for TFFHs, which includes a share paid to the foster home and a share paid to the CPA for administrative costs.

Representatives of these CPAs provided information to the Committee on the services and programs offered through these grants:

- Cornerstones of Care provides therapeutic care services in 11 counties in Northeast Kansas, serving 19 families since March 2024;
- DCCCA provides intensive therapeutic support for both children in foster care and those who are not as a prevention service, and short-term respite care for foster families;
- Eckerd Connects has implemented a foster family mentoring program and weekly

support groups, and it covers expenses for foster families that would not otherwise be covered by the foster care stipend;

- Emberhope Youthville has one licensed TFFH and is working with seven more families to get licensed, and it provides training to build therapeutic relationships within these families;
- FAC offers the Behavioral Interventionist Program in the Kansas City area and is working to expand this program to additional regions of the state;
- KVC currently sponsors eight TFFHs across Kansas, and the organization is working to implement “hub homes” in two locations composed of one licensed foster home, two respite beds, and other resources that can support four, five, or six connected families; and
- Pressley Ridge is developing training curriculum for pre-service and kinship care coaching for child welfare professionals, which was scheduled to roll out in the summer of 2025.

Family Preservation and Case Management Provider Updates

A representative of Cornerstones of Care explained the history and scope of services provided by the organization in Kansas. He stated the organization had 495 foster care clients. The representative explained that because Kansas and Missouri have a border agreement for children in need of placement, Kansas foster children are sometimes temporarily housed in facilities located in Missouri. The representative also noted that the organization has identified 15 youth who would be eligible to choose the SFLP option, with 3 youth currently pursuing this option.

A representative of DCCCA noted several services and programs being operated by the organization, including substance abuse treatment for whole families, with day care provided on site. She also noted its We Kan Drive program, which began in 2021, has helped 730 foster youth learn to drive and obtain driver’s licenses. The

representative described the recent expansion of mental health services that may be covered under Medicaid as an exciting opportunity for the organization to provide more access to mental health services for foster youth.

A representative of EHC summarized the outcomes of the organization's first 2 months of its foster care contract: 25 adoptions had been finalized, 85 referrals had been received, and 26 youth who were formerly night-to-night placements were in long-term placements. The representative also provided information about the organization's Rapid Response Team working to track down runaway youth and the Crossover Youth Practice Model working with justice-involved youth.

A representative of KVC noted the organization's staff retention rate is 75 percent, higher than the national average of 50 percent to 60 percent, but stated the organization is continually working to increase staff engagement and retention through various measures. She stated KVC has been working to reduce overnight stays in the office for youth who are there because of significant behavioral needs that a foster home or facility cannot manage safely. She encouraged the Committee to view a video KVC produced illustrating how and why foster youth sometimes sleep in CMP offices.

A representative of SFM stated the organization was then serving 1,364 youth in out-of-home placement, but that 99.3 percent of children at risk for removal in SFM's catchment area remain in the home after participating in SFM's Family Centered Therapy. He also noted that while 55 youth spent 116 nights in the office over the past fiscal year, the organization had no youth sleeping in offices in July or August.

A representative of TFI explained the organization's range of prevention services, including Parent-Child Interaction Therapy, and noted TFI then sponsored 443 licensed foster families serving 536 youth. The representative stated TFI had a 27 percent reduction of youth in out-of-home placement since 2019, and in FY 2024, the organization had only two cases in which there was a failure to place. The representative noted the organization has identified

seven cases that may benefit from the SFLP option.

Legal Representation for Children in the Child Welfare System

A representative of the National Association of Counsel for Children (NACC) provided examples of best practices for legal representation of children in need of care, and stated both NACC and the American Bar Association recommend client-directed legal representation for children rather than "best-interest" advocacy, which is the model that Kansas uses.

An attorney and guardian *ad litem* who practices in the 18th Judicial District proposed that Kansas create a centralized office for parent and child legal representation, stating many jurisdictions are moving to this type of "multidisciplinary" model for providing effective representation of parties involved in CINC proceedings.

Supreme Court Permanency Planning Task Force

A representative of the Supreme Court Permanency Planning Task Force (Task Force) provided an overview of the Task Force's recent projects, including the development of best practices in CINC proceedings training for attorneys and judges; the implementation of family treatment court pilot programs; and revisions to the CASA and citizen review board (CRB) programs. The representative also noted future projects of the Task Force include attorney training on the "reasonable efforts" standard in CINC proceedings, webinars for CASA and CRB programs, and translation of CINC forms for non-English speakers.

November 13-14 Meeting

Presentation on McIntyre v. Howard Settlement Agreement Period 3 Progress Report

A representative of the Center for the Study of Social Policy, who is the named neutral party (neutral) in the *McIntyre v. Howard* Settlement Agreement (settlement), provided context for the litigation, an overview of the settlement, a review of progress made in Period 3 of the settlement, and recommendations to DCF and the CMPs based on the neutral's findings in this period.

A representative of Kansas Appleseed, counsel for plaintiffs in the *McIntyre* litigation, responded to the findings of the Period 3 Progress Report (report), stating the report highlights a need for accurate data and data sharing among the CMPs and continued concerns related to placement stability, child welfare workforce, and access to mental health services for foster youth. The representative suggested the need to examine the effectiveness of child welfare privatization in light of the report's findings.

The Secretary highlighted successes within the report, including the improvements made with respect to prevention, which has reduced the number of youth in custody in the state, increased relative placements, and increased the number of stable placements and crisis supports. The Secretary acknowledged the agency fell short of the settlement goals in some areas and outlined DCF's plans to improve performance in these areas.

Presentation on Strategies for Safely Narrowing the Door to Child Welfare Systems

A representative of Casey Family Programs offered her perspective of a well-functioning child protection system, stating the goal is to achieve a balance of safety, potential risk, and due process rights of parents and caregivers. The representative also provided an overview of changes made to the child welfare system in Texas, including changing the statutory definition of neglect and moving to a community-based care model.

DCF Update

The Secretary provided updated figures for the number of children in foster care, and noted this number has consistently decreased since she began her tenure as Secretary in January 2019. The Secretary stated DCF intends to take advantage of Title IV-E federal funding for legal representation of children in need of care and for the implementation of the SFLP option. The Secretary also presented DCF's agenda for the 2025 Legislative Session, which includes:

- Reducing the number of days a child in the care of the Secretary can be authorized for court-ordered secure care placements from 60 days to 45 days;

- Reducing the number of months within which the courts must hold a permanency hearing; and
- Changing the statutory definition of neglect to prevent removal of a child from the family solely due to poverty.

Office of the Child Advocate Update

The Acting Child Advocate provided information regarding complaint investigation activities of the OCA. Since the start of calendar year 2024, 204 complaints involving 321 children have been received, 51 cases were opened for formal investigation, and 158 cases achieved a resolution. She noted the complaints pertained to agency conduct, child safety, permanency, and family separation.

Presentation on Challenges of Law Enforcement Related to Child Welfare Intakes

A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association discussed the challenges that law enforcement face when taking children into police protective custody (PPC). He stated one particularly challenging aspect is that DCF staff who have specialized training in this area are available only a small percentage of the time PPC is initiated. The representative offered suggestions to improve law enforcement's ability to assess and respond to calls concerning child safety, including the use of a risk assessment tool designed specifically for use by law enforcement in making a determination whether PPC should be initiated. He also suggested making it easier for law enforcement to contact DCF staff during non-business hours.

Presentation on Children With Special Needs in Foster Care

A representative of Sunflower Health Plan, speaking on behalf of all managed care organizations (MCOs) doing business in Kansas, presented on the MCOs' role in providing health care services for foster youth with special health needs. She explained that the CMP determines the level of care needed and the CPA determines its own pay structure depending on the types of foster homes and services it provides. The representative

noted most CPAs utilize the Intellectual/Developmental Disability Waiver tiered payment system.

Presentation on Court Appointed Special Advocates

A representative of the Kansas CASA Association reviewed the history of the organization and provided information on the current activities of local CASA programs across Kansas. She stated CASA had served approximately 1,000 children per quarter this calendar year and contributed to 330 case closures in the first three quarters.

Child Abuse Review Examinations Network Update

A representative of the Kansas Chapter of the American Academy of Pediatrics provided an update on operations of the Child Abuse Review Examinations (CARE) Network Program, authorized by legislation enacted in 2023. The representative stated 4,137 referrals were made to the program in the period from April 1, 2023, through September 30, 2024, and a medical examination was recommended in 361 cases. The representative noted the program to date has provided training to 74 providers in 27 counties.

Child Welfare System Presentations from Individuals, Organizations, and Providers

A representative of the Sisters of Charity of Leavenworth expressed appreciation for the leadership of the Committee and to the members who will not be returning to the Legislature in 2025.

A private citizen whose son passed away while receiving services from SFM shared memories of her son with the Committee and asked that the State be more responsive to children with special needs that end up in the child welfare system.

A private citizen shared ideas for strengthening families in Kansas to reduce entry into the foster care system.

A private citizen shared her experience attempting to obtain services for her daughter who had been struggling with self-harm and multiple suicide attempts, which resulted in her placement

in state custody in 2023. The citizen stated she has not been able to see her daughter since the daughter entered state custody and has also encountered difficulty with the state recognizing the order of custody granted in Missouri with respect to her other children.

Family Preservation and Case Management Provider Updates

A representative of Cornerstones of Care stated nearly all of the families served through its family preservation programming have been able to avoid entering the foster care system, but noted the organization continues to struggle to find stable placements in all cases. The representative suggested marketing professionals use data to target potential interested persons for recruitment of foster families.

A representative of DCCCA provided its most recent service statistics and noted it is working toward becoming a “hope-centered workplace,” a new initiative that will provide training to DCCCA staff on the science of hope. The representative stated DCCCA will begin Hope Navigator training in January 2025.

A representative of EHC reported on the organization’s recent figures and noted challenges within EHC include a lack of sufficient records for foster youth, night-to-night placements, and youth refusing to go to school or therapy or to take prescribed medications. The representative noted EHC had 109 instances of failure to place involving 31 youth since July 1. She also noted the organization continued to have workforce issues, noting a difficulty in finding applicants who are licensed in social welfare.

A representative of KVC presented a chart illustrating the organization’s compliance with the *McIntyre* settlement goals. She noted the workforce retention rate within the organization is currently 75 percent.

A representative of SFM provided an update of the organization’s range of services. The representative noted SFM employs two staff members whose only job is to locate missing youth and bring them back to care.

A representative of TFI provided statistics on children and families served in its catchment area. She highlighted three areas in which TFI hopes to improve in the coming months: workforce, prevention, and services for high-needs youth. The representative noted TFI continues to partner with social welfare programs at Kansas universities for staff recruitment, and expressed concerns that some universities have discouraged students from pursuing careers in child welfare in the recent past.

Presentation on Environmental Study of Psychiatric Residential Treatment Facility Youth Admissions

A representative of KDADS presented an overview of the environmental study of the psychiatric residential treatment facility (PRTF) system in Kansas that was authorized by a budget proviso enacted during the 2024 Legislative Session. The study was authorized to identify opportunities for KDADS to facilitate improved clinically appropriate treatment for youth, including those who are in the custody of the State. The representative noted the current PRTF system does not have the capacity to treat the number of youth who need this level of care, stating as of June 1, 2024, 136 youth remained on the waitlist for a PRTF.

State Child Death Review Board Annual Report

The Executive Director of the State Child Death Review Board (Board) reviewed the most recent annual report, containing 2022 data. Of 389 child fatalities in 2022, 227 were natural deaths, 74 were unintentional deaths, 22 were homicides, 21 were suicides, and 45 deaths were of undetermined causes. The Executive Director noted the overall rate of child deaths had declined over the previous year, but drug-related deaths due to fentanyl increased significantly from 2019 to 2022. She also noted firearm-related deaths decreased from 44 in 2021 to 30 in 2022. The Executive Director also presented the Board's legislative priorities for the 2025 Session:

- Ensure compliance with KSA 38-2226, specifically with respect to the sections known as Adrian's Law;
- Enforce child care licensing; and
- Enhance coroner training.

Review of Neglect Definitions and Proposed Changes

The Deputy Secretary for Children and Families reviewed the current statutory definition of neglect in the Kansas Statutes Annotated and noted the need to distinguish poverty, economic insecurity, or hardship from actual neglect. The Deputy Secretary presented model language from seven other state laws pertaining to neglect definitions.

CONCLUSIONS AND RECOMMENDATIONS

Following discussion, the Committee agreed to the following recommendations:

- CMPs should report at each Committee meeting on how many positions in their organizations are filled at that time by unlicensed individuals;
- School districts, CMPs, and DCF should take a multi-pronged approach in notifying foster youth of any financial or educational benefits that may be available to them after reaching the age of 18 or graduating;
- Literacy assessments should be required for every child adjudicated to be in need of care;
- Bench cards used by judges and attorneys practicing in CINC cases should include questions verifying that the guardian *ad litem* assigned in the case has met with the child;
- When a foster youth has a change in placement that requires enrollment in a new school, CMPs need to ensure such enrollment is timely;
- Law enforcement officers should provide written information to parents regarding what is to be expected in the 72 hours following a PPC removal;

- Legislation providing additional resources to law enforcement with respect to PPC removals should be supported;
- The Committee should develop a list of questions standardizing the minimum quarterly reporting requirements for family preservation and CMP grantees;
- Legislative staff should inform the family of A.J. Iverson of the process for filing a claim against the State with the Joint Committee on Special Claims Against the State;
- The House Committee on Child Welfare and Foster Care or successor committee should hold informational hearings on the following topics: 1) legislative reforms pertaining to the reporting of suspected child abuse and neglect 2) consideration of legislation granting *Miranda* rights for parents involved with the child welfare system; and 3) whether out-of-state child custody orders are being honored by Kansas courts;
- Kinship care placements should be made as early as possible and legislation considering a child's attachment to kinship caregivers when granting adoptions should be supported;
- DCF should shorten the timelines by which foster youth must receive mental health treatment, and the Committee should consider possible enforcement mechanisms to accomplish this goal;
- DCF should ask contractors to record details pertaining to youth who miss mental health treatment appointments at certified community behavioral health clinics, including the reason for the missed appointment and how frequently appointments are being missed, and compile this data for reporting to the Committee;
- Kansas universities with social welfare programs should present information to the Committee regarding their individual efforts to encourage students to pursue careers in child welfare;
- The State Child Death Review Board should provide education to the general public on safe firearm storage;
- The House Committee on Child Welfare and Foster Care or successor committee should prioritize the consideration of legislation amending the definition of "neglect" in the CINC Code;
- The House Committee on Child Welfare and Foster Care or successor committee should consider DCF's legislative priorities as presented to the Committee at its November 2024 meeting.

Report of the Joint Committee on Fiduciary Financial Institutions Oversight to the 2025 Kansas Legislature

CHAIRPERSON: Senator Jeff Longbine

VICE-CHAIRPERSON: Representative Nick Hoheisel

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

CHARGE

Monitor and Make Recommendations on Fiduciary Financial Institutions in Kansas

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

January 2024

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Joint Committee on Fiduciary Financial Institutions Oversight

ANNUAL REPORT

Conclusions and Recommendations

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

- **Liquidation.** Explore updates to the Technology-enabled Fiduciary Financial Institutions (TEFFI) Act as it relates to the voluntary or involuntary liquidation of a Kansas TEFFI;
- **Application fee.** Consider a change in application fee;
- **Operational changes.** Consider changes in daily statement and monthly trust statement requirements, call report cadence, and lending limits;
- **Digitalization.** Consider updates to the definitions of alternative assets and alternate asset custody accounts to reflect continued modernization and digitization of asset ownership;
- **Charities.** Reconsider the provisions of 2024 SB 204, which would revise definitions of charitable beneficiaries and qualified charities so as to no longer require nonprofit beneficiaries to be federally tax-exempt;
- **Safety and soundness examination.** Consider the Office of the State Bank Commissioner's authority to examine the financial aspects of TEFFIs for safety and soundness;
- **Industry consultation.** Reach out to other financial institutions to determine why the industry has yet to grow; and
- **Committee continuation.** Consider the longevity of the Committee itself and whether it remains necessary.

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

Proposed Legislation: None.

BACKGROUND

The Joint Committee on Fiduciary Financial Institutions Oversight was established by the enactment of 2021 Senate Sub. for HB 2074,

Section 29, codified at KSA 46-4001. This nine-member committee is required to:

- Monitor, review, and make recommendations regarding fiduciary

financial institutions' operations in the state of Kansas;

- Monitor, review, and make recommendations regarding the FidFin Fiduciary Institution Pilot Program (pilot program); and
- Receive a report from the Office of the State Bank Commissioner (OSBC). [*Note:* The bill also required the OSBC to submit an initial report prior to December 31, 2021, that provided an update on the implementation of the Technology-enabled Fiduciary Financial Institutions (TEFFI) Act and pilot program. The bill required this report to include recommendations from the OSBC for any legislation necessary to implement provisions of the TEFFI Act.]

The Legislative Coordinating Council authorized the Committee to meet for one day during the 2024 Interim.

COMMITTEE ACTIVITIES

The Committee met on November 21, 2024, to review law regarding fiduciary financial institutions, perform the oversight assigned to the Committee, and receive updates on fiduciary financial institutions' operations and activities in the state. Testimony was provided by representatives of the TEFFI recognized by the 2021 law. [*Note:* Beneficient Fiduciary Financial (BFF), LLC, is the TEFFI granted charter in Kansas and, as of 2024, is the only TEFFI in the country. The Beneficient Company Group, LP, is the parent company, and is often referred to as "Ben."]

As head of the regulatory authority authorized by the 2021 legislation, the State Bank Commissioner (Commissioner) testified before the Committee. A representative of the Kansas Department of Commerce (Department) also testified.

Overview of Technology-enabled Fiduciary Financial Institutions Act and Statutory Requirements

Staff from the Office of Revisor of Statutes provided a summary of the statutory requirements under the TEFFI Act (KSA 9-2301 *et seq.*) as it applies to both the TEFFI and the OSBC.

Statutes in the TEFFI Act specify requirements for TEFFIs on the following topics:

- Application and approval for a charter and applicable distributions (KSA 9-2302);
- Application and examination fees (KSA 9-2303);
- Capitalization (KSA 9-2305);
- Board of directors (KSA 9-2306);
- Report to the Commissioner (KSA 9-2307(a));
- Naming and advertising restrictions (KSA 9-2308);
- Maintaining office space (KSA 9-2309(a) and (d));
- Principal office and maintenance of records (KSA 9-2309(c));
- Fiduciary and required distributions (KSA 9-2311);
- Disclosure to customers (KSA 9-2311(h));
- Notification when engaging a party to provide certain services (KSA 9-2312); and
- Custodial services (KSA 9-2313).

The OSBC is subject to the following requirements:

- Notification of approval or disapproval of application (KSA 9-2302(g));
- Assessment of fees and examination expenses (KSA 9-2303);
- Examinations (KSA 9-2307(b));
- Adoption of rules and regulations (KSA 9-2322); and
- Annual report to the Joint Committee on Fiduciary Financial Institutions Oversight (KSA 46-4001(g)).

Updates on Fiduciary Financial Institutions' Operation in the State of Kansas

Beneficient Fiduciary Financial, LLC

The BFF Chief Executive Officer (CEO) and Chairman of the Board, the BFF President and Chief Fiduciary Officer, and the BFF Managing Director and Chief Operating Officer; and a representative from Crossroads Legal Solutions, provided an overview of recent Beneficient and BFF activities, an update on BFF operations, a report on economic growth zone (EGZ) milestones and achievements, and legislative requests.

[*Note:* BFF representatives submitted two reports for the Committee's reference and record: Beneficient Fiduciary Financial, LLC Management Report — an asset and distribution statutory allocation reporting of the Kansas Department of Commerce and Beneficient Heartland Foundation, Inc. activities; and Legislative Report for Kansas TEFFI Charitable Activity — including audited consolidated financial statements for the Kansas TEFFI Economic Growth Trust and the Beneficient Heartland Foundation, Inc. — for the Fiscal Year, ended March 31, 2024.]

Update from the Chief Executive Officer

BFF's CEO and Chairman of the Board presented information on the nature of the TEFFI, its board, and market factors that have slowed industry growth.

The CEO described the alternative assets with which the TEFFI works as illiquid assets, such as private equity and structured credit funds, and the TEFFI serves to provide liquidity to its clients. The CEO reported that the initial public offerings (IPO) market and the merger and acquisitions (M&A) market have shut down over the past few years, reducing their liquidity, but that major institutions expect the markets to reopen in coming months.

The CEO described various company announcements over the past year, including:

- A new primary capital financing product aimed at managers of alternative assets;
- The Machine Automated Pricing System to streamline pricing and improve capacity to process more transactions;
- The anticipated expansion of the company's balance sheet by \$5 billion in the next three to five years;
- Implemented transactions reclassifying certain company-preferred equity issuances to improve permanent equity; and
- A new director assigned to the Audit Committee.

The CEO explained the issues the company faced after its IPO, when the company that held 90 percent of its shares in a "lock up" agreement went bankrupt and voided the agreement. He stated the company is now broadly held and the stock is fully distributed. The CEO reported that BFF's first profitable quarter was the first quarter of 2024. He also stated two other companies have expressed interest in becoming TEFFIs. The CEO concluded his presentation by detailing the economic development projects, including a grocery store, in Hesston, Kansas, that are supported by BFF's Economic Growth Trust.

Update from the Chief Operating Officer

The Chief Operating Officer presented information on the Bank Secrecy Act, information

technology, and compliance examinations that the TEFFI has undergone in 2022 and 2024.

The Chief Operating Officer discussed regulatory issues the TEFFI faces as a non-traditional financial institution and suggested amending KSA 9-2304, which applies provisions of the Kansas Banking Code to TEFFIs, to exempt TEFFIs from the following:

- Daily statement and monthly trust statement requirements (KSA 9-1130(b)(4));
- A 30-day reporting cadence for call reports (KSA 9-1705); and
- Lending limits (KSA 9-1104).

Update from the Chief Fiduciary Officer

The President and Chief Fiduciary Officer explained that 2.5 percent of BFF revenues is directed to the Kansas TEFFI Economic Growth Trust and is then split between the Beneficient Heartland Foundation and the Kansas Department of Commerce.

The Chief Fiduciary Officer also discussed the following legislative proposals:

- Lowering the application fee to lower the barrier to entry to the TEFFI market;
- Update definitions of alternative assets and alternate asset custody accounts to reflect continued modernization and digitization of asset ownership; and
- Revise the definition of “charitable beneficiaries” and “qualified charities” under the TEFFI Act to include:
 - Charities, contributions to which are allowable as a deduction pursuant to Section 170 of the federal Internal Revenue Code; or
 - One or more Kansas nonprofit corporations regardless of their federal income tax treatment. [Note: This was proposed in 2024 SB 204.]

Discussion

In discussion with Committee members, conferees testified that most of the similar economic initiatives had paused over the past several years, related to the closing of the IPO and M&A markets. One conferee indicated at least two other states have worked on TEFFI legislation in the past, including Illinois and Delaware, and he predicted that states will reconsider such legislation in the coming months.

The Chief Fiduciary Officer responded to a question about the status of bill language and reported that BFF has been working with the Office of Revisor of Statutes to develop language, but the Revisor’s software had not yet been set up for the new biennium, so the bill drafts were not yet ready to be shared with the Committee.

Office of the State Bank Commissioner

The Commissioner provided a report on the regulatory activities conducted by the OSBC regarding the sole TEFFI chartered and existing in Kansas, BFF.

Update on Regulatory Activities

Charter; TEFFI Act. The Commissioner acknowledged his 2023 testimony and reiterated that the Legislature, not the OSBC nor the State Banking Board, granted the charter to BFF during the 2022 Legislative Session (enactment of SB 337, which allowed the charter to be retroactive to December 31, 2021). The Commissioner noted subsequent amendments to the TEFFI Act in the 2022 Session (HB 2489) and the Act’s codification within the Kansas Banking Code (Chapter 9, Article 23). He stated the OSBC has not received any additional applications or inquiries from potential TEFFI organizers.

The TEFFI Act established that each TEFFI pay an annual assessment of at least \$1 million to the OSBC, which then remits all moneys to the State Treasury. Three-quarters of each remittance is credited to the Bank Commissioner Fee Fund, and one quarter is credited to the TEFFI Development and Expansion Fund with the Department of Commerce.

Examination and oversight. The Commissioner noted the OSBC is the sole

regulator for TEFFIs, unlike other financial institutions and entities that have a federal regulatory counterpart.

The Commissioner indicated the OSBC had completed two examinations of BFF in the previous 12 months and began a third earlier that week. The first two examinations focused on the Information Technology systems and compliance with the Bank Secrecy Act and Anti-Money Laundering laws and were presented to BFF's senior management and Board of Directors. He noted that these examination reports are confidential, in accordance with KSA 9-1712(a).

The third pending examination will consist of a review of BFF's administrative and operational practices and procedures, as well as a review of selected FidFin transactions. This examination, the Commissioner continued, will evaluate potential areas of risks pertaining to BFF's business model and the State of Kansas.

Regulatory concerns: safety and soundness examination. The Commissioner discussed his ongoing concerns with some of the regulatory components contained in the TEFFI Act. He noted those concerns would exist for any entrant into the TEFFI marketplace, as the TEFFI legislation is not specific for just BFF, but rather legislation that will govern any future TEFFI, should there be interest from other entities.

The Commissioner stated it is still impossible to conduct a meaningful safety and soundness examination. He highlighted the standard CAMELS rating system (which takes its name from its elements of review of capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk) used for state-regulated banks that follows international industry standards and assigns ratings in compliance with a uniform ratings system. The Commissioner also noted examinations of regulated trust companies and trust departments assign ratings (*e.g.*, Management Operations, Internal Controls and Audits, Earnings, and Compliance and Asset Management), which are components of a uniform trust rating system. The Commissioner further stated the TEFFI Act specifically disallows an examination to consider earnings as a component and assigns any goodwill asset as a capital component, which departs from the Uniform

Financial Institutions Rating System, the Uniform Interagency Trust Rating System, and Generally Accepted Accounting Principles (GAAP). No standard exists to determine the financial safety and soundness of a TEFFI. The Commissioner suggested that the Legislature revisit this provision if a worthwhile safety and soundness examination is desired by policymakers.

Regulatory concerns: liquidation. The Commissioner stated that BFF is one of several subsidiaries of Beneficient. As a holding company, Beneficient actively maintains control of its subsidiaries. The OSBC monitors the financial condition of the holding company through its filings to the Securities and Exchange Commission and press reports. Recent filings and share prices have indicated significant stress on the company, which could extend to BFF. The Commissioner stated the TEFFI Act does not contain any provisions or directions addressing either the voluntary or involuntary liquidation of a Kansas TEFFI. He suggested the Legislature revisit this potential exposure.

Discussion

Committee members asked the Commissioner for potential reasons for the absence of new TEFFI applicants, and the Commissioner responded that, without any inquiries or communication from potential organizers, any suggestion would be speculative. The Commissioner responded to questions regarding safety and soundness examinations, other examinations, and the process the OSBC used to gain information and monitor TEFFIs.

Update on the Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund and Distribution to the Economic Growth Zones and Promotion of Development, Growth, and Expansion

Kansas Department of Commerce

The Director of Legislative Affairs (Director) for the Department of Commerce (Department) addressed requirements in the TEFFI Act that established the Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund, which is administered by the Department. The Act requires Fund expenditures to be used for

economic development projects in the EGZ in Kansas; promoting and facilitating the development and growth of trust banks, fidfin activities, and custodial services in Kansas; and location of trust bank office space in an EGZ.

SEED Program. The Director explained that, after receiving funding, the Department developed the Strategic Economic Expansion and Development (SEED) grant program, specifically designed to award grants that support the economic revitalization of Kansas communities with population less than 5,000 people through investments in quality-of-life initiatives. The total amount of available funding is dependent on the annual assessments paid by each chartered TEFFI. The Director reported the Department was then reviewing applications for the third round of SEED grants.

During the first round of awards, 109 applications were received, with a total of \$4.7 million requested. The first year's funding to the Department was \$2.7 million. With those funds, the Department awarded grants to 61 applicants in December 2022.

In the second round of awards, the Department received \$270,000 to disburse and received 68 applications, the Director reported. The Department awarded grants to 13 applicants in December 2023. For the third round of the SEED grant program, the Department has \$250,000 in available funding and received 48 applications.

The Director shared details and photos of several of the projects that received awards.

Discussion

The Committee and the Director discussed recurring applicants; the unique nature of the SEED grant program that focuses funding on community vibrancy, libraries, and senior centers in smaller communities; and use of the Fund for marketing and promotional purposes.

CONCLUSIONS AND RECOMMENDATIONS

Following the presentations and updates, the Committee agreed to the following comments and recommendations reflecting its discussion:

- **Liquidation.** Explore updates to the TEFFI Act as it relates to the voluntary or involuntary liquidation of a Kansas TEFFI;
- **Application fee.** Consider a change in application fee;
- **Operational changes.** Consider changes in daily statement and monthly trust statement requirements, call report cadence, and lending limits;
- **Digitalization.** Consider updates to definitions of alternative assets and alternate asset custody accounts to reflect continued modernization and digitization of asset ownership;
- **Charities.** Reconsider the provisions of 2024 SB 204, which would have revised the definitions of charitable beneficiaries and qualified charities so as to no longer require nonprofit beneficiaries to be federally tax-exempt;
- **Safety and soundness examination.** Consider the OSBC's authority to examine the financial aspects of TEFFIs for safety and soundness;
- **Industry consultation.** Reach out to other financial institutions to determine why the industry has yet to grow; and
- **Committee continuation.** Consider the longevity of the Committee itself and whether it remains necessary.

The Committee directs its report to the relevant standing committees of the Kansas Legislature for additional review during the 2025 Session.

Report of the Joint Committee on Information Technology to the 2025 Kansas Legislature

CHAIRPERSON: Senator Mike Petersen

VICE-CHAIRPERSON: Representative Kyle Hoffman

RANKING MINORITY MEMBER: Senator Jeff Pittman

OTHER MEMBERS: Senators Tom Holland, Rick Kloos, and Caryn Tyson; and Representatives Pam Curtis, Kirk Haskins, Carl Turner, and Barb Wasinger

CHARGE

Review, Monitor, and Report on Technology Plans and Expenditures

The Committee is directed to:

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

January 2025

Joint Committee on Information Technology

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Information Technology submits the following recommendations and considerations to the 2025 Legislature:

- Review data retention laws, regulations, and best practices. As part of its review, the Legislature should consider practices pertaining to the sale and use of such data by entities offering services to the State and its political subdivisions;
- Review policies pertaining to artificial intelligence and its use. As part of this review, the Legislature should consider algorithmic bias and discrimination and options for mitigating their possible impacts;
- Review provisions of law created or amended by 2024 House Sub. for SB 291 prior to the repeal of such provisions on July 1, 2026, and seek additional comments and feedback; and
- Commend state information technology (IT) staff for the work they have done to modernize and secure the State's IT infrastructure and equipment and the work toward developing a secure IT culture among state agencies.

Proposed Legislation: Legislation to amend KSA 75-7245 to include the Joint Committee on Information Technology as one of the recipients of the State IT Consolidation Report from the Information Technology Executive Council and the project cost estimates from the Judicial Branch IT Services for county and district court employees.

BACKGROUND

The Joint Committee on Information Technology has statutory duties assigned by its authorizing legislation in KSA 46-2101 *et seq.* The Committee may set its own agenda, meet on call of its Chairperson at any time and any place within the state, and introduce legislation. The Committee consists of ten members: five senators and five representatives. The duties assigned to the Committee by KSA 46-2101 and KSA 2018 Supp. 75-7201 *et seq.* are as follows:

- Study computers, telecommunications, and other information technologies (IT) used by state agencies and institutions. The state governmental entities defined by KSA 75-7201 include executive, judicial,

and legislative agencies and State Board of Regents institutions;

- Review IT project plan summaries, prior to the release of a request for project proposal, that are determined to have a significant business risk as established per Information Technology Executive Council policy. In instances when requested by Committee members, conduct a meeting to advise and consult on such projects prior to the release of a request for proposal. This process is provided for in KSA 75-7209;
- Review proposed new acquisitions, including implementation plans, project

budget estimates, and three-year strategic IT plans of state agencies and institutions. All state governmental entities are required to comply with the provisions of KSA 75-7209 *et seq.* by submitting such information for review by the Committee;

- Monitor newly implemented technologies of state agencies and institutions;
- Make recommendations to the Senate Committee on Ways and Means and the House Committee on Appropriations on implementation plans, budget estimates, and three-year plans of state agencies and institutions; and
- Report annually to the Legislative Coordinating Council (LCC) and make special reports to other legislative committees as deemed appropriate.

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

KSA 75-720 requires the Executive, Judicial, and Legislative Chief Information Technology Officers (CITOs) to annually submit to the Committee all IT project budget estimates and revisions, all three-year plans, and all deviations from the State IT architecture. The Committee is directed to review the estimates and revisions, the three-year plans, and the deviations and make recommendations to the Committee regarding the merits of an appropriation for the projects. In addition, the Executive and Judicial CITOs are required to report to the Legislative CITO the progress regarding implementation of projects and proposed expenditures, including revisions to such proposed expenditures.

COMMITTEE ACTIVITIES

The Committee met during the 2024 Legislative Session on March 18, 2024. The Committee also met during the 2024 Interim, as authorized by the LCC, on August 27, September 26, October 30, and November 21, 2024.

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

At the March 18, 2024, meeting, the Committee elected Senator Petersen as Chairperson, Representative Hoffman as Vice-chairperson, and Senator Pittman as Ranking Minority Member for the 2024 calendar year.

Executive Branch Quarterly IT Project Reports

At the August 27, 2024, meeting, the Chief Information Technology Architect (CITA) provided the Committee with a presentation of the 2024 Quarter 2 (April–June) IT Project Reports. The CITA reported that Quarter 2, 2024 had 18 approved, 29 active, 2 completed, and 8 planned projects with 1 additional project on hold. Of the active projects, 3 were in caution status and 7 were in alert status. [*Note:* Projects are in alert status if they exceed 20 percent variance of one or more project performance metrics.] The following projects were in alert status:

- Department of Administration Capitol Complex Security Infrastructure Project;
- Department for Children and Families (DCF) Child Support Services Re-Platforming Project;
- Kansas Department for Aging and Disability Services (KDADS) Electronic Health Records Project;
- Kansas Department of Health and Environment (KDHE) Early Childhood Data Integration and System Enhancements Project;
- Kansas Bureau of Investigation (KBI) ABIS II Project;
- Kansas Sentencing Commission Electronic Journal Entries; and
- Kansas Department of Wildlife and Parks SmartCop Record Management System.

The Committee also heard presentations on the following newly active projects:

- Kansas Public Employees Retirement System Pension Administration System Modernization; and
- Kansas Department of Transportation (KDOT) US-169 Dense Wavelength Division Modernization.

At the November 21, 2024, meeting, the CITA provided the Committee with a presentation of the 2024 Quarter 3 (July–September) IT Projects Report. The CITO reported that there were 18 approved, 29 active, 2 completed, and 8 planned projects with 1 project on hold. Of the active projects, 3 were in caution status and 6 were in alert status. The projects in alert status were the same as reported in Quarter 2, with the exception of the KBI ABIS II Project, which was no longer in alert status.

Other Executive Branch IT Updates

Kansas Information Technology Office Reportable Projects Updates

At the March 18, 2024, meeting, the CITA provided an update on the KITO Approval and Reporting System (KARS). He stated that 126 projects had gone through the KARS process to date to determine whether or not the IT project was reportable to the Kansas Information Technology Office (KITO). He also provided the Committee with examples of projects that were and were not reportable under the new KARS process.

At the August 27, 2024, meeting, the Committee heard presentations on the following new IT project demands that were KITO reportable:

- KDHE Early Childhood Development Services Database Management Project;
- KDHE Ryan White Program Database and Claims Project;
- Department of Administration ACFR Consolidation Software;

- Board of Tax Appeals Modernization Initiative–Enterprise Content Management Project; and
- Kansas Highway Patrol South Haven Weight Station.

The Committee also heard presentations on the following new IT project demands that were not KITO reportable:

- KBI Microsoft 365 Implementation Fund Project;
- KBI Master Data Management Project;
- Kansas Corporation Commission RBDMS Replacement/Upgrade Project;
- Office of the Attorney General Victim Notification System Project;
- KDHE BOW State Revolving Fund Project;
- KDHE CARE ePASRR Project; and
- University of Kansas Syllabus Management Tool Project.

At the November 21, 2024, meeting, the Committee heard presentations on the following new IT project demands, both KITO reportable and not KITO reportable:

- KDHE EpiTrax Genomics (KITO reportable);
- DCF National Youth in Transition Database (not KITO reportable); and
- KBI Sexual Assault Kit Tracking System (not KITO reportable).

Cybersecurity Updates

At the September 26, 2024, meeting, the Executive Branch CITO provided the Committee with an update on state agencies' efforts to comply

with the requirements of 2024 House Sub. for SB 291. He noted the Information Technology Executive Council (ITEC) began meeting monthly in August with the Executive Branch CITO, who became the permanent chairperson of ITEC. Voting membership was reduced from 17 to 13 members. Additionally, the Office of Information Technology Services (OITS) is working to develop specifications for consultant assistance with consolidation planning, assessing current state IT expenditures, and analyzing the current cybersecurity staffing that is embedded with state agencies. At the November 21, 2024, meeting, the Executive Branch CITO provided further updates to the Committee on ITEC's continued work to comply with the provisions of 2024 House Sub. for SB 291, current cybersecurity staffing levels, and discussed the agency's philosophy on how it is approaching staffing with both in-house staff and third-party vendors.

The CITO also updated the Committee on the State and Local Cybersecurity Grant Program as well as other cybersecurity training offerings being carried out for state and local government staff. The Committee also received additional updates from the CITO during the September 26, 2024, meeting in Executive Session.

Agency Staff Announcements

At the March 18, 2024, meeting, the Executive Branch CITO introduced John Godfrey as the new State Chief Information Security Officer.

At the October 30, 2024, meeting, the Executive Branch CITO announced that the CITA had left the agency and had taken a position as the Judicial Branch CITO. Additionally, the agency was wanting to hire a Chief Data Officer to assist with data security, cross-agency collaboration, and other tasks.

Other Presentations

At the November 21, 2024, meeting, the Executive Branch CITO presented the Committee with the three-year IT Plans from all Executive Branch agencies as well as the Legislative and Judicial branches.

The CITO also updated the Committee on the Executive Branch's generative artificial intelligence (AI) policy. He said that a new version

of the policy is being drafted and will seek to achieve the following goals:

- Create an AI inventory and assessment process for all current generative AI use cases;
- Require state agencies to clearly identify or notify citizens when interacting with AI;
- Require state agencies to note when content is generated by AI; and
- Establish clear procurement guidelines related to AI.

The CITO also provided the Committee with an update on the datacenter as a service contract. The current contract with Unisys is set to expire on October 31, 2025. The agency is currently working on a new contract to begin on October 31, 2025, but a vendor is still being determined. The new contract will be similar in scope and requirements to the current one with the addition of cloud readiness assessments and possible migrations.

Judicial Branch Updates

At the August 27, 2024, meeting, the Acting CITO for the Office of Judicial Administration provided the Committee with an IT update. The Acting CITO discussed the branch's response to the Fall 2023 cybersecurity incident and how the Judicial Branch has since hired a CISO and adopted a Zero Trust policy, enforcing a strict identity verification and least privilege access, ensuring access is only granted as needed and reassessed constantly. She additionally discussed the progress the branch has made on implementing the provisions of 2024 House Sub. for SB 291 and the continued migration to the centralized case management system.

At the November 21, 2024, meeting, the new CITO introduced himself to the Committee. He presented the Committee with his plan for his first 90 days as CITO. His goals are to learn about the organization, understand its priorities, evaluate its current IT environment, and then create a charter to establish an operating model. The Judicial

CITO also provided the Committee with the Judicial Branch's three-year IT Plan and addressed actions taken by the branch to comply with the requirements of 2024 House Sub. for SB 291.

Legislative Branch Updates

Legislative Branch IT Staff and Project Updates

At the March 18, 2024, meeting, the Legislative CITO announced their retirement on June 7, 2024.

At the August 27, 2024, meeting, the Director of Legislative Administrative Services introduced himself to the Committee as the Interim Legislative CITO while the LCC reviews candidates for the permanent CITO. Legislative staff from the Kansas Legislative Office of Information Services (KLOIS) also provided updates on various IT projects, including the legislative computer refresh, Microsoft Exchange migration, data center infrastructure update, and the biennium rollover.

At the September 26, 2024, meeting, KLOIS staff updated the Committee on the Microsoft Exchange migration and stated that 95 percent of the migration was complete.

At the October 30, 2024, meeting, KLOIS staff updated the Committee on the current status of the legislative email migration, legislative laptop refresh, and the necessity to establish a secure wireless network in the Statehouse for use by legislators and legislative staff due to OITS decommissioning the secure network for the Capitol complex.

KLISS Modernization Update

At the August 27, 2024, meeting, KLOIS staff provided an update on the KLISS modernization project. Stating user acceptance testing began on July 8, 2024, with the third round of testing commencing on August 26, 2024. User acceptance testing for system integration to other system components was also scheduled to begin on September 3, 2024. Additionally, the project's steering committee chose to have the new system hosted by the software vendor in a private cloud-managed service.

Cybersecurity Presentations

At the August 27, 2024, meeting, Office of the Revisor of Statutes staff provided the Committee with an overview of 2024 House Sub. for SB 291 regarding the transfer of cybersecurity services to the oversight of each governmental branch's CITO, creating legislative and judicial CISOs, and other cybersecurity-related matters.

KLOIS staff also provided the Committee with an update on cybersecurity initiatives within the Legislative Branch, such as the Legislative Security Operations Center implementation, intrusion prevention and detection practices, new policy implementation aligned with National Institutes of Standards and Technology standards, and other cybersecurity-related topics.

At the October 30, 2024, meeting, KLOIS staff provided an update on ongoing cybersecurity efforts by KLOIS and legislative agencies as well as statistics for how current policies and measures are working.

IT Audits

At the August 27, 2024, meeting, staff from the Legislative Division of Post Audit (LPA) presented to the Committee the Security Controls Across State Agencies and School Districts audit. LPA also presented the security audit for the Board of Indigents' Defense Services to the Committee in Executive Session.

At the October 30, 2024, meeting, LPA staff presented the following IT security audits to the Committee during Executive Session:

- KBI;
- Kansas State Historical Society;
- Larned State Hospital;
- Osawatomie State Hospital; and
- State Department of Education.

Other Presentations

At the September 26, 2024, meeting, Representative Blake Carpenter presented to the Committee on 2024 House Sub. for SB 291, noting work on the legislation will be necessary in future sessions due to the July 1, 2026, sunset of the legislation.

At the October 30, 2024, meeting, the Committee received a presentation on the ABIS project by the KBI. The KBI discussed the differences between the ABIS system compared with the AFIS system it is replacing. Additionally, the agency discussed the historical timeline of the project and what the next steps will be upon project completion.

The Committee also heard a presentation from the Executive Director of KanRen. He provided the Committee with an overview of KanRen, which is a research and education network, and what services the organization provides to its member institutions. He also updated the Committee on the Middle-Mile Partnership that KanRen has entered into with KDOT and the Kansas Office of Broadband Development to build additional fiberoptic infrastructure in parts of the state.

At the November 21, 2024, meeting, staff of the Kansas Legislative Research Department provided the Committee with a memorandum and presentation on current State requirements regarding the retention of personally identifiable information. The staff noted there are no statutes that broadly address retention requirements or set retention lengths on personally identifiable information for governmental entities or the private sector. The staff also discussed the role of the Kansas State Records Board in approving, altering, or denying retention policies for various state agency-submitted records.

A representative of the KC Tech Council presented to the Committee about the impact that IT jobs have on the Kansas and Missouri economies broadly and on the Kansas City metro economy specifically. She noted that in 2023 the technology sector composed 5.7 percent of the Kansas economy as a whole and 9 percent of the Kansas City metro economy. She also addressed IT job growth in Kansas, the gap between open IT jobs and new graduates from Kansas post-secondary institutions, and cost-of-living comparisons between the Kansas City metro and

other cities in the United States with large IT sectors.

CONCLUSIONS AND RECOMMENDATIONS

At the November 21, 2024, meeting, Committee members made the following conclusions and recommendations to the 2025 Legislature:

- Review data retention laws, regulations, and best practices. As part of its review, the Legislature should consider practices pertaining to the sale and use of such data by entities offering services to the State and its political subdivisions;
- Review policies pertaining to AI and its use. As part of this review, the Legislature should consider algorithmic bias and discrimination and options for mitigating their possible impacts;
- Review provisions of law created or amended by 2024 House Sub. for SB 291 prior to the repeal of such provisions on July 1, 2026, and seek additional comments and feedback;
- Commend state IT staff for the work they have done to modernize and secure the State's IT infrastructure and equipment and the work toward developing a secure IT culture among state agencies; and
- Request legislation to amend KSA 75-7245 to include the Joint Committee on Information Technology as one of the recipients of the State IT Consolidation Report from the Information Technology Executive Council and the project cost estimates from the Judicial Branch IT Services for county and district court employees.

Report of the Joint Committee on Kansas Security to the 2025 Kansas Legislature

CHAIRPERSON: Senator Mike Petersen

VICE-CHAIRPERSON: Representative Eric Smith

OTHER MEMBERS: Senators Rick Kloos, Virgil Peck, Jeff Pittman, Mary Ware; and Representatives David Buehler, Michael Dodson, Jarrod Ousley, Pat Proctor, Virgil Weigel, and Rui Xu

CHARGE

Review Various Security Matters

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

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Joint Committee on Kansas Security

ANNUAL REPORT

Conclusions and Recommendations

Budget-related Recommendations

- The Committee supports the FY 2025 Kansas Highway Patrol (KHP) budget supplement and enhancement request for body-worn cameras, for which the estimate is up to \$2.6 million;
- The Committee recommends the KHP receive \$1.1 million in funding in FY 2025 for urgent safety repairs on the KHP Training Academy campus in Salina, as outlined in its budget supplemental and enhancement request; and
- The Committee notes its concern regarding FY 2024 federal budget cuts to the Emergency Management Grant Program. It recommends the appropriations committees review this issue and consider adding state moneys to maintain funding for emergency preparedness for the Kansas Division of Emergency Management and Kansas local governments.

Recommendations for Legislative Briefings and Review

- The Committee recommends the utility committees of the Legislature receive briefings on the integrated resources available for electricity;
- The Committee recommends the Legislature and the appropriate committees of its House and Senate, such as the House Committee on Transportation and Public Safety Budget and utility committees, receive briefings on integrating floor plans of buildings of concern into the information available to first responders and the costs for doing so;
- The Committee recommends the appropriate committees of the Kansas House and Senate receive presentations from the Kansas Intelligence Fusion Center regarding threats from foreign adversaries, in closed sessions;
- The Committee expresses concern with the recent rapid jump in violent crime and requests the appropriate committees of the Legislature, such as judiciary committees or committees with responsibility for corrections, receive presentations from the Kansas Bureau of Investigation on violent crime, on the causes of these increases, and the demographics of the crime locations and the perpetrators of these crimes; and
- The Committee notes with concern the dangerous drugs readily available in Kansas and their risks and recommends the relevant committees of the Legislature investigate ways to increase education in Kansas K-12 schools regarding those drugs.

Additional Considerations

- The Committee expresses its concern about security for large solar energy installations

and concern about which entity or entities will bear the costs of that security; and

- The Committee recommends a state agency, perhaps the Kansas Department of Transportation or the KHP, review with local officers and officials the compatibility of communications equipment among first responders and other emergency response personnel.

Proposed Legislation: None

BACKGROUND

The 2004 Legislature created the Joint Committee on Kansas Security (Committee) (KSA 2024 Supp. 46-3301) to study, monitor, review, and make recommendations for the following:

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

The statute also directs the Committee to review and monitor federal moneys received by the State for the purposes of homeland security and other related security matters.

COMMITTEE ACTIVITIES

Granted two meeting days by the Legislative Coordinating Council, the Committee met at the Statehouse on October 8 and October 9, 2024.

Some of the presentations to the Committee were conducted in closed session under provisions of KSA 75-4319(b)(12)(C), an exception to the Kansas Open Meetings Act regarding meetings to

discuss security of public bodies, facilities, and information systems. Legislative staff were not present in the closed sessions, and no further information is provided about them in this report.

October 8, 2024, Meeting

At the October 8, 2024, meeting, the Committee heard information on capital projects at the Adjutant General's Department concerning National Guard facilities and emergency management services, election security information from the Secretary of State's Office and the Kansas County Clerks and Elections Officials Association, operational and general updates from the Kansas Highway Patrol and Kansas Bureau of Investigation, security updates from the Department of Administration and the Kansas Information Security Office, and audit findings from the Division of Legislative Post Audit.

In closed session, the Committee heard updates from the Kansas Intelligence Fusion Center, the Kansas Information Security Office, the Kansas Bureau of Investigation, and the Legislative Division of Post Audit.

Adjutant General's Department Updates

Kansas National Guard

The Chief of Government and Legislative Affairs, Adjutant General's Department, provided updates on capital projects at the Adjutant General's Department:

- Construction of the Joint Force Headquarters at Forbes Field is set to be complete and the facility open in 2025;
- The Adjutant General's Department closed on the land purchase for the Hays Armory;

- Construction of the Kansas Division of Emergency Management (KDEM) State Emergency Operations Center is planned to begin in mid-to-late October;
- Two Kansas City armories are being renovated and modernized, one of which is being converted to brigade headquarters; and
- Energy cost reduction projects are underway at several sites.
- The Committee also received updates regarding Kansas Army and Air National Guard activities, including global deployments, fire suppression, cybersecurity and analytic response, and outreach to students regarding science, technology, engineering, and mathematics. The Chief of Government and Legislative Affairs also reviewed legislation from the 2024 Legislative Session.

Kansas Division of Emergency Management

The Deputy Director of KDEM provided updates on recovery operations, funding initiatives, and the state’s continuity of operations plan (COOP). She noted KDEM is the lead agency for COOP planning for all state entities.

The Deputy Director reviewed KDEM activities regarding four federally declared disasters that occurred within the past year and the agency’s continued facilitation of recovery operations through the Federal Emergency Management Agency’s Public Assistance Program, which provides supplemental grants to state, tribal, territorial, and local governments and certain types of private nonprofit organizations to more quickly respond to major disasters or emergencies.

The Deputy Director briefly discussed counties eligible for Small Business Administration low-interest disaster loans to help businesses, renters, and homeowners recover from declared disasters. Currently, four Kansas counties qualify for these loans:

- Allen County;
- Bourbon County;
- Linn County; and

- Pottawatomie County.

The Deputy Director expressed concern relating to the Emergency Management Performance Grant, which was reduced by 10.1 percent this year in association with a reduction in the budget of the U.S. Department of Homeland Security (DHS). The grant requires a 50 percent match. Kansas planned to receive \$4.1 million to fund personnel, operation costs, training, exercises, planning activities, and awards to county emergency management programs that meet standards set by KDEM.

Election Security

The Director of Elections, Office of the Secretary of State (Office), noted Kansas has a decentralized election administration system in which counties are responsible for conducting elections, and the role of the Office is to provide guidance and perform certain tasks. He noted elections systems have been designated as part of the nation’s critical infrastructure and therefore there is greater access to DHS information and security resources. The Director reviewed the various security systems utilized for voting purposes, noting he could not provide specifics, and provided information regarding the physical security grant program facilitated by the Office, which uses federal security funds provided under provisions of the Help America Vote Act of 2002 (HAVA) to upgrade and improve areas of physical security for election equipment, ballots, election offices, and staff to each of the 105 county election offices. Requests from 84 counties have been approved for improvements in providing security for digital voting equipment and for the storage of ballots.

Kansas County Clerks and Election Officials Association

The President of the Kansas County Clerks and Election Officials Association (KCCEOA) discussed the importance of security of election equipment and election sites, stating the security processes and duties fall under the list of tasks for county clerks and election officials.

The KCCEOA official explained the Cybersecurity and Infrastructure Security Agency’s Elections Infrastructure Information Sharing and Analysis Center regularly shares

election security-related information, guidance, webinars, and notifications of active or potential threats to election security. While this is a helpful tool to members of the KCCEOA, the KCCEOA official stated that limited time, resources, staff, and budget constraints factor into the prioritization and implementation of security.

The KCCEOA official briefly discussed information technology (IT) departments and services utilized in different counties, highlighting that most counties do not have the funding or staff to focus entirely on physical security or cybersecurity.

He noted the HAVA moneys available to enhance the physical security of election equipment and storage facilities in election offices throughout the state. Each county is required to fund 10.0 percent of total costs of its project.

The KCCEOA official expressed that the biggest concern to members of KCCEOA is personal protection and security of election officers and their staff, including poll workers.

Kansas Highway Patrol Update

Operations

The Executive Officer of the Kansas Highway Patrol (KHP) discussed recent agency operations. He stated that 199 pounds of fentanyl have been seized at this point in 2024, more than three times the fentanyl seized by KHP in 2023. Additionally in 2024, 12 illegal firearms were seized and 600 arrests were made for driving under the influence of alcohol or drugs. Trends based on six months of data for 2024 indicated decreases in firearm seizures, felony arrests, and issuance of speeding citations.

Organizational Realignment

The Executive Officer described KHP reorganization in 2024 to better align units with similar functions. He said the:

- Field Operations Bureau consists of eight regional Field Troops organized under North and South Bureaus focusing on core traffic safety services;

- Protective Services Bureau includes the Capitol Police, Executive Protection Units, and Homeland Security/Emergency Operations;
- Special Operations Bureau includes the KHP Training Academy, Aircraft Unit, and the Special Response Team;
- Technical Operations Bureau consists of Public and Governmental Affairs, Motor Carrier Safety Assistance Program, Communications, and Records;
- Investigative Operations Bureau is made up of investigators for felony cases, the Critical Highway Accident Response Team, the Vehicle Identification Number (VIN)/Motor Vehicle Theft Unit, and Criminal Interdiction; and
- Administrative Services Bureau includes fiscal, human resources, fleet operations, facilities, and information technology.

Trooper Recruitment

The Executive Officer stated 475 sworn officer positions were filled as of the date of the meeting, which is 2 below the 10-year high in FY 2019. KHP expected to graduate 22 troopers from its training academy in 2024, not including the 6 who have already graduated this year.

Technology Improvements

The Executive Officer stated that KHP has integrated technology in 2024 to enhance its functions and better serve citizens through the following:

- KHP aircraft now utilize Earthscape, a cloud-based video management tool allowing pilots to store and distribute video recorded during flight;
- Citizens in high-volume locations may now schedule appointments online for VIN inspections; and

- KHP partnered with Secure Passage to provide the agency with data analytics that measure performance, ensure policy is being observed, and provide a statewide view of law enforcement activities.

Future Initiatives

The Executive Officer stated KHP initiatives include addressing excessive speeding, which has increased 120.0 percent since 2014, through requesting legislation; the transition for Capitol Police to begin mail scanning operations; the Department of Administration’s implementation of new building access cards; and the reassessments of various KHP properties.

Budget Requests

The Executive Officer provided the Committee with a list of enhancement requests for FY 2025 and FY 2026. The list includes the following enhancement requests:

- Body-worn cameras;
- Safety repairs on the KHP Training Academy Campus in Salina;
- Security, weather, and plumbing updates at the KHP Salina campus;
- Construction of a new KHP General Headquarters in Topeka;
- Construction of a KHP aircraft hangar in Wichita;
- Implementation of IT infrastructure improvements; and
- Replacement of a Cessna aircraft.

Department of Administration Update

The Deputy Secretary of Operations, Department of Administration, provided an overview of current efforts underway or in planning to address the security of the Capitol Complex, such as physical barriers for new buildings. He also provided information regarding the implementation of additional requirements for

state-leased property statewide, such as information for first responders, solid core doors, and security cameras.

Kansas Information Security Office Update

The Chief Information Technology Officer (CITO) of the Kansas Information Security Office (KISO) provided information regarding the relocation of the Office of Information Technology Services, current efforts in the implementation of 2024 House Sub. for SB 291 regarding IT consolidation, and the assessment of cybersecurity staffing and funding available to the agency, and he introduced the new Chief Information Security Officer (CISO).

The CITO reviewed planning underway to integrate all executive branch IT services in the Office of Information Technology Services and additional planning to be reported to legislative committees early in 2025. He noted the executive CISO is to review contracts related to IT to reduce security vulnerabilities.

The newly introduced CISO provided general cybersecurity updates relating to state and local programs, staffing, cybersecurity and operations technology training provided across the state, and funding. He noted training provided by the KISO, the Kansas Department of Health and Environment, and the federal Cybersecurity and Infrastructure Security Agency to water supply operators and cybersecurity awareness training provided to state and local officials. Additionally, the CISO provided the Committee with policy suggestions being reviewed by the Information Technology Executive Council pursuant to House Sub. for SB 291 and information regarding the newly acquired space for a Security Operations Center.

Kansas Bureau of Investigation Update

Crime Trends

The Executive Officer of the Kansas Bureau of Investigation (KBI) provided an overview of Kansas property and violent crime trends, noting the more than 80,000 reported index crimes in 2023 represented a 1.5 percent increase from the number in 2022. The Executive Officer stated the statistics represent the crimes reported by law enforcement agencies covered 97.45 percent of the

population of Kansas. Of those crimes, violent crimes such as murder and rape were down 4.3 percent but property crimes were up by 2.6 percent.

Crimes against children. The Executive Officer reported crimes against children remain a priority area for the agency. The National Center for Missing and Exploited Children reports the number of tips that come in regarding child sexual abuse material or exploitation of children online has increased 300.0 percent since 2021.

The Executive Director explained the KBI Child Victim Unit takes on an average of 35 investigations per year. The Committee also received information regarding KBI's Child Victim Task Force, which is split into three regions (Northeast, Southeast, and West, with two special agents in each). He noted the Northeast Child Victim Task Force had 200 tips awaiting assignment.

Drug trafficking. The Executive Officer explained the High Intensity Drug Trafficking Area (HIDTA) Program, which consists of multi-state federally operated HIDTA units, reports fentanyl is the top drug threat to Kansans, with more than 1,000 positive KBI laboratory submissions in FY 2024, a 10.0 percent increase from FY 2023. He noted methamphetamine is still the most commonly used drug within Kansas, stating more than 4,756 positive tests have come through the KBI laboratory submissions in FY 2024.

Juvenile crime. The Executive Officer noted an increase in juvenile crimes in 2023 to 1,387, and he provided information on suspect age and type of weapon used.

Domestic violence homicides. The Executive Officer noted the number of domestic violence homicides has increased over the past 10 years, with 32 in 2023. He stated these homicides make up 20.0 percent of all homicides in Kansas.

Sexual Assault Kit Initiative

The Executive Officer reported to the Committee the backlog on sexual assault kit submission and testing was brought up to date in 2021 and KBI's Laboratory Information

Management System is currently being upgraded to better track sexual assault kits. He noted KBI is striving to have a 30-to-45-day turnaround on the testing of every kit submitted.

Biometric Identification

The Executive Officer provided an update regarding the transition from KBI's automated fingerprint identification system to a biometric identification system, which is now operational.

Organizational Changes

The Executive Officer noted the following roles at KBI had been filled within the past two years:

- Director;
- Associate Director;
- Two Assistant Directors
- Executive Officer;
- Human Resources Director;
- Chief Information Officer;
- Information Services Director; and
- General Counsel.

KBI Enhancement Budget Requests

The Executive Officer provided information regarding budget requests for various projects in FY 2025 and FY 2026, including:

- New KBI Headquarters;
- A recruitment and retention package;
- A cybersecurity upgrade;
- Laboratory equipment; and
- Offender registration compliance through the Kansas Offender Registration Tool (KSORT), which needs an upgrade or replacement.

October 9, 2024, Meeting

On October 9, 2024, the Committee heard an operational update from the 911 Coordinating Council; a Grid Security and Resiliency presentation from the Kansas Corporation

Committee (KCC), the Southwest Power Pool (SPP), and Evergy; a briefing regarding Grid Resiliency grants and award updates; and a security and planning presentation from KC2026, the organization overseeing preparations for 2026 World Cup activities in the region.

911 Coordinating Council Operational Update

The Executive Director of the 911 Coordinating Council (Council) reviewed the Council's general practices and its transition to becoming a state agency (State 911 Board) by July 1, 2025, through the enactment of 2024 HB 2690. She explained the Council performs the following responsibilities:

- Regulating the collection and distribution of calls to public safety answering points (PSAPs);
- Regulating the use of 911 fees;
- Enabling economies of scale for NextGeneration 911 (NG911), which allows individuals to send and first responders to use texts, images, videos, and other digital information via 911 centers;
- Applying for federal grants on behalf of the State and administering awarded grants;
- Providing training to PSAPs on NG911;
- Monitoring 911 services from the telephone carriers to the PSAPs; and
- Providing subject matter expertise.

The Executive Director also provided information regarding 911 Supporting Security Radius and Lightning, companion applications that relay data about 911 calls. Radius would provide mapping and data delivery in the PSAP, and Lightning would provide first responders a view of the same maps, including interior maps of certain buildings, and data while also providing the responder's location to users of both applications. She described the Council's hosted solution for

NG911, used by all PSAPs outside of the Mid-America Regional Council area, the cost savings for local PSAPs from using that hosted solution, and upgrades to connections to the PSAPs needed for broadband.

The Executive Director also described, in general, security measures in place for 911, including mandatory annual security training for all end users and security standards for the NG911 hosted solution.

Resource Adequacy and Electric Reliability in Kansas

The Deputy Director of Utilities, Kansas Corporation Commission (KCC), and the Vice President of Engineering, Southwest Power Pool (SPP), provided an update on grid security and resiliency in terms of electric capacity.

Statutory Obligations and Reports

The Deputy Director noted KSA 66-101bh requires electric public utilities to provide efficient and sufficient service and grants the KCC the power to act to "establish and maintain just and reasonable rates" in order to maintain "reasonably sufficient and efficient service." He also noted KSA 66-1282 requires biennial reporting of electrical generation capacity and demand. This report is then presented to the Senate Committee on Utilities and the House Committee on Energy, Utilities, and Telecommunications.

Integrated Resource Planning

The KCC Deputy Director explained the KCC requires Evergy to provide Integrated Resource Planning (IRP) reports every three years with annual updates regarding resource modeling to forecast infrastructure needs and planning. Evergy IRPs require load and supply forecasts for 10 to 20 years, resource modeling, input sensitivity analysis, contingent scenario analysis, and a range of alternative futures evaluation to ensure that the plan is robust and flexible. He noted standards applying to other electricity providers and Federal Energy Regulatory Commission (FERC) reliability standards.

Generator Interconnection Update

The SPP Vice President of Engineering provided an update on generation interconnection

statuses, stating the current generator interconnection active queue consists of 419 projects, totaling 85.4 gigawatts. He estimated only 168 additional projects will come online over the next six years. He explained the SPP has been working closely with FERC to clear a backlog of interconnection projects, estimating a five-year phase-in process.

Resource Adequacy

The SPP Vice President of Engineering provided a list of resource adequacy challenges, which include influxes of intermittent renewable generation, resource under-performance and unavailability, increasing load and volatility, extreme weather events, and reduced margins.

He explained the SPP requires load-responsible entities to demonstrate sufficient accredited capacity to meet peak demand and reserve requirements. It was noted excess capacity in the SPP has been declining and the planning reserve margin requirement has been increased from 12.0 percent to 15.0 percent.

The SPP Vice President reported the 2023 summer peak load was 5.5 percent higher than the previous summer peak, and the 2022-2023 winter peak was 8.0 percent higher than the previous winter peak. He stated the Load Forecasting Task Force assesses how load forecasts are determined and provides guidance and policy recommendations to increase assurance that the best practices are implemented.

2024 Integrated Transmission Planning

The Vice President explained the 2024 integrated transmission planning (ITP) goals include improving intra-regional transfer capability, enhancing renewable energy access for more members and neighbors, and collaborative engagement of stakeholders. The 2024 ITP portfolio is composed of reliability, winter weather, economic, short circuit, and operational projects that will mitigate 1,512 system issues.

Consolidated Planning Process

The Vice President concluded by providing the Committee with information regarding SPP's consolidated planning process, which allows for simultaneous planning of transmission, as opposed

to the piecemeal process currently utilized. This new process will allow for jointly funded and mutually benefiting transmission solutions.

Planning for the Future of Power Generation in Kansas

The Senior Director of Strategy and Long-term Planning at Evergy provided the Committee an overview of Evergy's service territory, capacity, and energy profiles, and the core tenets of Evergy's generation strategy: affordability, reliability, and sustainability.

Evergy's 2024 Preferred Portfolio

The Senior Director reviewed various project retirements and additions, noting 11,128 megawatts (MW) of planned resource additions over the next 20 years and 4,817 MW of fossil fuel retirements.

The Senior Director provided the Committee a list of future IRP considerations, which include delays in adding renewable and thermal energy resources, whether coal-using facilities will remain as part of the mix, and review of the feasibility of nuclear, long-duration energy storage and hydrogen technologies.

Security Update

The Senior Director explained Evergy's cybersecurity Defense in Depth model, which he stated protects against denial-of-service attacks; ensures only authorized traffic enters the internal networks; protects against unauthorized software entering the network; and uses software to detect known viruses, malware, and trojans; Evergy's Security Operations and Network Infrastructure Center responds to security events.

The Senior Director noted Evergy's use of a multi-layered approach with intentional redundancies increases the security of a system as a whole and addresses various attack vectors.

Substation Security

The Senior Director explained Evergy has developed a tiered system for Evergy substations based on industry best practices, known risk, and impact. He stated high-priority substations are equipped with 12-foot-tall concrete ballistic walls

with expanded steel gates and enhanced physical security technology packages, which include, but are not limited to, updated cameras, access control, and an audio notification system. He stated Evergy is conducting proof-of-concept testing for advanced radar intrusion detection.

Grid Resiliency Grants Update

The Executive Director of the KCC provided an overview of Grid Resiliency Grant programs, funding, and grant application approvals in Kansas. The Kansas federal allocation for two years is \$13.3 million, with nearly \$2.0 million in state match required. Eligible investments to improve the resilience of the electric grid against disruptive events include hardening of various types of systems, monitoring, replacement and relocation of equipment, and weatherization. Eleven Kansas city and electric cooperative projects have been approved; additional requirements apply to subawardees. She noted the application deadline for the second round will be in January 2025.

World Cup 2026 Update

The Chief Executive Officer of KC2026, the nonprofit organization overseeing strategy and delivering host city duties for FIFA World Cup 26, provided background information regarding the World Cup, noting the event would begin 609 days from the meeting date and Kansas City plans to host 6 matches over a 26-day span. The Chief Executive Officer provided the Committee with history of viewership of the World Cup (noting it is the most-watched competition in the world), ticket sales, 2026 World Cup venues, and a World Cup match schedule.

World Cup Visitors and Attendees

The Chief Executive Officer explained KC2026 anticipates as many as 650,000 visitors, including FIFA officials, FIFA contractual guests, FIFA invited guests, and ticketed and non-ticketed fans in the region.

Economic Impact

The Chief Executive Officer stated \$179.1 million in direct personal income will be generated. She further explained Kansas has more than 18,000 hotel rooms within 2.5 hours of the event site available to World Cup attendees,

bringing an estimated \$155.0 million to \$167.0 million in economic impact to the state.

Key Sites

The Chief Executive Officer stated the competition venue will be Arrowhead Stadium in Kansas City, Missouri. She also provided information about various potential training and Fan Fest sites, with the primary one being at the National World War I Museum and Memorial, and planned locations for events in other communities. She noted host city supporters, donors, and sales partners who are contributing to FIFA World Cup 2026 and the planning for transportation.

Event Strategy

The Chief Executive Officer explained KC2026 plans to use events to fully engage and elevate the region; create experiential elements that surprise and delight, and are distinctly Kansas City; maximize revenue from official FIFA events to offset costs for hosting; drive additional revenue opportunities with KC2026 and donor events; and communicate clearly to all event stakeholders.

She noted KC2026 has a list of events currently under consideration to further implement KC2026 event strategies.

CONCLUSIONS AND RECOMMENDATIONS

After discussion of topics including Adjutant General's Department major projects, information relating to the Kansas Army and Air National Guard, a need for continued emergency management operations and programs, continuity of operations plans, election security procedures and operations, agency and operational updates and budget requests from KHP and KBI, cybersecurity in Kansas, resource adequacy and electric reliability, grid resiliency grants, and World Cup 2026 planning, the Committee agreed to the following:

Budget-related Recommendations

- The Committee supports the FY 2025 KHP budget supplement and enhancement request for body-worn cameras, for which the estimate is up to \$2.6 million;

- The Committee recommends the KHP receive \$1.1 million in funding in FY 2025 for urgent safety repairs on the KHP Training Academy campus in Salina, as outlined in its budget supplemental and enhancement request; and
- The Committee notes its concern regarding FY 2024 federal budget cuts to the Emergency Management Grant Program. It recommends the appropriations committees review this issue and consider adding state moneys to maintain funding for emergency preparedness for the Kansas Division of Emergency Management and Kansas local governments. It was suggested this also be reviewed in federal and state affairs committees.

Recommendations for Legislative Briefings and Review

- The Committee recommends the utility committees of the Legislature receive briefings on the integrated resources available for electricity;
- The Committee recommends the Legislature and the appropriate committees of its House and Senate, such as the House Committee on Transportation and Public Safety Budget and utility committees, receive briefings on integrating floor plans of buildings of concern into the information available to first responders and the costs for doing so;
- The Committee recommends the appropriate committees of the Kansas House and Senate receive presentations

from the Kansas Intelligence Fusion Center regarding threats from foreign adversaries, in closed sessions;

- The Committee expresses concern with the recent rapid jump in violent crime and requests the appropriate committees of the Legislature, such as judiciary committees or committees with responsibility for corrections, receive presentations from the KBI on violent crime, on the causes of these increases, and on the demographics of the crime locations and the perpetrators of these crimes; and
- The Committee notes with concern the dangerous drugs readily available in Kansas and their risks and recommends the relevant committees of the Legislature investigate ways to increase education in Kansas K-12 schools regarding those drugs.

Additional Considerations

- The Committee expresses its concern about security for large solar energy installations and concern about which entity or entities will bear the costs of that security; and
- The Committee recommends a state agency, perhaps the Kansas Department of Transportation or the KHP, review with local officers and officials the compatibility of communications equipment among first responders and other emergency response personnel. It was suggested this topic be reviewed by legislative committees dealing with public safety.

Report of the Joint Committee on Pensions, Investments and Benefits to the 2025 Kansas Legislature

CHAIRPERSON: Senator Jeff Longbine

VICE-CHAIRPERSON: Representative Nick Hoheisel

OTHER MEMBERS: Senators Brenda Dietrich, Michael Fagg, Cindy Holscher, and Pat Pettey; and Representatives Bill Clifford, Cindy Neighbor, Tobias Schlingensiepen, Sean Tarwater, Carl Turner, Laura Williams, and Rui Xu

CHARGE

Monitor, Review, and Make Recommendations Regarding the Retirement System

KSA 46-2201 directs the Committee to monitor, review, and make recommendations regarding investment policies and objectives formulated by the Kansas Public Employees Retirement System (KPERS) Board of Trustees; review and make recommendations relating to benefits for KPERS members, the confirmation of members of the KPERS Board, and the inclusion of city and county correctional officers as eligible members of the Kansas Police and Firemen's Retirement System; and review reports regarding working-after-retirement exceptions (KSA 74-4914 and 74-4937). In addition to its statutory duties, the Committee will consider these pensions matters:

- Implementation of 2024 HB 2711 (working-after-retirement changes; an increase in the lump sum death benefit for KPERS retirees; revision of the statutory cap on alternative investments, KPERS Board investment policy; and the Countries of Concern Divestment Act, requirements on state-managed funds); and
- Possible options relating to KPERS Tier 3 plan design and its overall benefit value (continued study).

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Joint Committee on Pensions, Investments and Benefits

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on Pensions, Investments and Benefits submits the following recommendations:

- **Extraordinary transfer.** The Committee recommends the appropriate standing committees (House Committee on Appropriations, Senate Committee on Ways and Means) consider transferring \$1.0 billion from the State General Fund to the Kansas Public Employees Retirement Fund to make an additional contribution toward the reduction of the Kansas Public Employees Retirement System (KPERs) unfunded actuarial liability (UAL);
- **Deferred Retirement Option Program.** The Committee recommends the appropriate standing Committees (House Committee on Financial Institutions and Pensions, Senate Committee on Financial Institutions and Insurance) continue to research and study the Deferred Retirement Option Program, including the advantages and disadvantages of expanding the program;
- **Cost-of-living adjustments.** The Committee recommends the appropriate standing Committees (House Committee on Financial Institutions and Pensions, Senate Committee on Financial Institutions and Insurance) review cost-of-living adjustments (COLAs), including the fiscal impact of implementing a COLA; and
- **KPERs 3 Cash Balance Plan.** The Committee recommends the appropriate standing Committees (House Committee on Financial Institutions and Pensions, Senate Committee on Financial Institutions and Insurance) continue to research and study potential enhancements to the KPERs 3 cash balance plan. The Committee further recommends the costs for any changes to be financed at the time of enactment and not to increase the UAL.

Proposed Legislation: None.

BACKGROUND

The Joint Committee on Pensions, Investments and Benefits (Committee) was created in 1992 and is authorized by KSA 46-2201 to:

- Monitor, review, and make recommendations regarding investment policies and objectives formulated by the Kansas Public Employees Retirement

System (KPERs or the Retirement System) Board of Trustees (Board);

- Review and make recommendations related to KPERs benefits;
- Consider and make recommendations on the confirmation of members nominated

by the Governor to serve on the Board;
and

- Introduce legislation it determines to be necessary.

COMMITTEE ACTIVITIES

The Legislative Coordinating Council authorized one meeting day for the Committee during the 2024 Interim. The Committee met on November 20, 2024, to receive reports and updates and hold discussion on the KPERS 2023 actuarial valuation, KPERS budget and pension administration system modernization, pensions obligation bond proceeds, membership and retirement trends, investment performance, and implementation of 2024 law.

Review of KPERS Law and Legislation

A Senior Assistant Revisor, Office of Revisor of Statutes, reviewed legislation pertaining to KPERS: two bills enacted into law in 2024, two bills with legislative consideration, and other KPERS-related bills introduced during the 2024 Legislative Session.

KPERS Bills Enacted into Law

HB 2711 created the Countries of Concern Divestment Act, which requires state-managed funds' divestment from investments with countries of concern, prohibits investments and deposits with a bank or company domiciled in a country of concern, and indemnifies state-managed funds with respect to actions taken in compliance with the Act; amended KPERS working-after-retirement provisions; increased the lump-sum death benefit for a KPERS retiree; and amended law governing the Kansas Public Employees Retirement Fund (KPERS Trust Fund) and investment standards to increase a statutory limitation ("cap") on alternative investments, from 15.0 percent to 25.0 percent, placed on the Board.

Speaking to the bill, the Chief Investment Officer, KPERS, indicated the Board adopted language for the System's Statement of Investment Policy, Objectives and Guidelines in May 2024. The System identified and liquidated 12 securities of 10 companies found to be subject to divestment

under the Act, all of which were in Hong Kong or China.

HB 2483 eliminated the requirement for the Legislative Division of Post Audit to conduct recurring audits of the implementation of the 911 system, KPERS audits, and certain economic development incentive audits.

KPERS Bills Receiving Legislative Consideration

HB 2646 would have reopened the closed KPERS 2 plan to certain teachers who will become members on July 1, 2024. The bill would also have provided that teachers who are currently KPERS 3 members would become KPERS 2 members by January 1, 2025.

SB 505 would have increased the benefit multiplier for KPERS-Correctional members to 2.0 percent for any member who retires on or after July 1, 2024. The bill would also have provided for the full payment of the unfunded actuarial liability (UAL) associated with this retirement benefit increase by directing a transfer from the State General Fund (SGF).

Other KPERS Bills Introduced

HB 2563 would have authorized a post-retirement benefit payment of \$500 to certain KPERS retirees.

HB 2619 would have expanded the Deferred Retirement Option Program (DROP) to all KPERS members. Under current law, DROP is only available for Kansas Police and Firemen's Retirement System (KP&F) members.

SB 388 would have increased the amount of retiree compensation subject to the statutory contribution rate to the first \$40,000 earned by a retiree in a calendar year. This policy was subsequently enacted as part of HB 2711.

SB 396 would have reduced the waiting period for a KPERS retiree to return to work for a participating employer.

SB 502 would have terminated the KPERS 3 cash balance plan and transferred members of such plan to the KPERS 2 plan.

KPERS 2023 Actuarial Valuation Report

The Committee reviewed the latest actuarial valuation, which serves as a snapshot of the financial condition of the Retirement System as of December 31, 2023. The Executive Director of KPERS indicated all membership groups remain at the full actuarial required contribution (ARC) rate, which is a key factor in reducing the UAL and improving funded ratios of each group. [Note: This annual actuarial valuation, which measures assets and liabilities, provides the basis for calculating future employer contribution rates.]

The 2023 valuation is used to set the fiscal year (FY) 2027 contribution rates for State/School employers and calendar year (CY) 2026 contribution rates for local employers, and it serves as the baseline for any cost studies performed in the 2025 Legislative Session.

Key Findings

Assets. As of December 31, 2023, the actuarial value of assets totaled \$27.6 billion. Actuarial assets are calculated by averaging, or “smoothing,” investment gains and losses over a five-year period. There is a net loss of almost \$1.2 billion to be realized in the outlying years. Net investment on a market value basis was 10.6 percent in CY 2023. Due to smoothing, the return on actuarial assets was 6.9 percent.

Funded ratio and unfunded actuarial liability. The Retirement System’s overall funded ratio of assets to liabilities increased from 73.4 percent (2022 valuation) to 74.0 percent. [Note: The standards for public pension plans suggest a public retirement system should be funded between 80.0 percent and 100.0 percent of future liabilities owed.] The UAL for the Retirement System increased from \$9.6 billion (2022 valuation) to \$9.7 billion.

The Executive Director noted that, if all funding assumptions are met in future years, the State/School Group UAL would increase until CY 2028 due to deferred investment losses, after which it would resume declining. Under these conditions, the legacy UAL for the State/School Group would be paid off in the 2039 valuation.

Contribution rates. The report indicated the ARC rates for KPERS State/School employers

decrease from 11.68 percent in FY 2026 to 11.32 percent for FY 2027. The statutory employer contribution rate continues to be at the full ARC rate for FY 2027, which will be the seventh consecutive year the statutory and actuarial rates have been equal.

Pension Obligation Bond Proceeds

The Executive Director addressed pension obligation bonds, which serve as a form of arbitrage intended to reduce future employer contributions and improve the solvency of KPERS. Bond proceeds also serve to improve the funded status of the Retirement System. He reviewed the three series of pension obligation bonds the State has issued to date. The first was in 2004 for a total of \$500.0 million, gross of fees; the second in 2015 for \$1.0 billion, net of fees; and the third in 2021 for \$500.0 million, net of fees.

Series 2004C. The 2004 Legislature approved a \$500.0 million bond issue, which was issued with a 30-year maturity and an interest cost of 5.39 percent. KPERS received \$440.165 million in net proceeds. Annual debt service is approximately \$33 million from the Expanded Lottery Act Revenues Fund. As of June 30, 2023, the remaining principal balance was approximately \$292 million.

Series 2015H. The 2015 Legislature approved a \$1.0 billion bond issue, which was issued with a 30-year maturity and an interest cost of 4.68 percent. KPERS received \$1.0 billion in net proceeds. Annual debt service is approximately \$65 million from the SGF. As of June 30, 2023, the remaining principal balance was approximately \$857 million.

Series 2021K. The 2021 Legislature approved a \$500.0 million bond issue, which was issued with a 30-year maturity and an interest cost of 2.65 percent. KPERS received \$500.0 million in net proceeds. Annual debt service is approximately \$24 million from the SGF. As of June 30, 2023, the remaining principal balance was approximately \$475 million.

Total returns. Average annualized total returns on the Retirement System’s investment portfolio have exceeded the interest cost of all three bond issues. As of August 31, 2024, average

annualized total returns were 7.53 percent for 2004C, 7.84 percent for 2015H, and 3.85 percent for 2021K. The value added by the three bond series collectively total approximately \$1.1 billion (\$658 million for 2004C, \$465 million for 2015H, and \$20 million for 2021K).

Investment Performance

The Chief Investment Officer (CIO), KPERS, provided an overview of the KPERS Trust Fund performance in FY 2024: a positive return of 9.7 percent, exceeding the actuarial rate of return of 7.0 percent but trailing the policy index, or asset class benchmark, of 11.0 percent. The portfolio's market value increased from \$25.6 billion in FY 2023 to \$27.3 billion in FY 2024.

The CIO noted the Board regularly conducts asset/liability studies, which are used to establish long-term asset targets. The most recent study was completed in September 2024, and the Board recommended the following targets for the portfolio:

- 23 percent U.S. equity,
- 18 percent international equity,
- 13 percent real return,
- 12 percent real estate,
- 12 percent core fixed income,
- 11 percent private equity,
- 8 percent yield-driven assets, and
- 3 percent cash equivalents.

Fund performance. In the past 3, 5, 10, 20, and 25 years, the portfolio experienced a low return of 3.9 percent for the 3-year average and a high return of 7.7 percent for the 5-year average. Compared with the policy index, or asset class benchmark, the Fund ranges from underperforming by 1.3 percent to outperforming by 0.7 percent for the above time periods.

In FY 2024, the portfolio experienced negative returns on real estate (8.7 percent), largely due to interest-rate-sensitive asset classes that responded to broader market changes. By contrast, the domestic equity portfolio returns were about 23.0 percent as of June 30, 2024.

Economic and market observations. The CIO indicated domestic equity markets have

continued to demonstrate considerable strength, closing FY 2024 up 23.0 percent. The CIO noted the market expects the U.S. Federal Reserve to continue easing the Federal Funds interest rate, although further movement will depend heavily on inflation, employment, and economic growth. Other potential influences include the impact of the incoming presidential administration's various policy proposals as well as geopolitical risks that may create short-term volatility.

KPERS Operating Budget and Pension Administration System Modernization

KPERS Operating Budget

The Executive Director of KPERS detailed the KPERS operating budget, which includes general expenses (such as staff, contracts, and office space), investment-related expenses (such as manager fees and investment staff), and administration of the Death and Disability and KPERS 457 programs.

KPERS estimates expenditures totaling \$85.8 million in FY 2025 and \$92.5 million for FY 2026, the majority of which is financed by the KPERS Trust Fund (\$84.4 million and \$91.0 million, respectively). General and investment-related expenses compose the largest portion of the operational budget, \$32.6 million and \$52.0 million, respectively, in FY 2025.

Benefits payments are considered non-expense items for budgeting purposes and are not included when discussing operational expenditures. KPERS estimates total benefits expenses of \$2.348 billion in FY 2025 and \$2.438 billion for FY 2026.

KPERS Pension Administration System Modernization

The Executive Director outlined the purposes of the pension administration system, which provides the functionality needed to collect data and contributions from employers and to process and pay benefits. KPERS started using its present system in 2005. The existing system remains capable of providing these processes but, due to the required customizations over the years, has become less efficient and more unstable over time.

In 2020, the Board made the decision to begin the multi-year modernization effort. Additionally,

the Legislature authorized a comprehensive system assessment, which was completed in September 2020 by The Segal Group, a consulting firm. The assessment helped clarify how the database could be restructured to provide better service to all customers. In 2021, KPERS used the findings from the assessment to begin establishing requirements for the new system. After an “Analysis and Retool” phase completed by the current contractor, Sagitec, KPERS engaged with Sagitec to gauge the possibility of upgrading the existing system.

In 2022, KPERS determined Sagitec was unable to upgrade the existing system to meet established requirements. Accordingly, the Board approved a request for proposal (RFP) on a new pension administration system.

In 2023, the Kansas Information Technology Office approved the project and KPERS released the RFP for bid. KPERS received two qualified candidates, underwent a review process, and participated in product demonstrations.

In 2024, the Board negotiated contract terms with Tegrity Software Ventures and its Arrivos pension platform. The project has a five-year time frame with a total cost of \$74.0 million to implement.

In 2025, KPERS will begin implementation of the new system. KPERS anticipates modernization expenditures totaling \$12.0 million in FY 2025 and \$14.1 million for FY 2026, all financed from the KPERS Trust Fund. Most expenses will be for contractual services paid to the vendor.

Contemporary KPERS Topics and Issues

Representatives from KPERS provided information on the DROP, the alternative investment cap (HB 2711), proxy voting (2023 HB 2100), KPERS 3 plan design, and cost-of-living adjustments.

Deferred Retirement Option Program

Under the DROP, eligible members with normal unreduced retirement initiate the calculation of retirement benefits but choose to defer the actual receipt of the benefits for a three-, four-, or five-year period. During the DROP period, the member does not earn additional

service credits but continues to work and contribute into DROP. Retirement benefits are held in a separate account and, at the end of the period, the member receives the lump sum with interest. The DROP account can earn interest according to a statutory formula; currently, the formula allows for 3.0 percent interest in any year in which KPERS investments reach the 7.0 percent investment return assumption.

In 2015, the DROP was created as a five-year pilot program for troopers, examiners, and officers of the Kansas Highway Patrol. In 2019, the DROP was expanded to include agents of the Kansas Bureau of Investigation.

In 2023, HB 2196 expanded eligibility further to include all eligible KP&F members who choose to participate and extended the sunset date to January 1, 2031. The KPERS Planning and Research Officer noted participation in DROP has increased significantly since the program was extended to all eligible KP&F members and employers, nearly doubling since enactment of the bill. As of September 30, 2024, 139 members were enrolled in the DROP.

Alternative Investments Cap

Among its provisions, HB 2711 increases the statutory cap on alternative investments from 15.0 percent to 25.0 percent. Following enactment of the bill, the Retirement System revisited the 2023 Asset/Liability Study, which was completed in May 2023 under the 15.0 percent cap. Accordingly, in May 2024, the Board commenced the Asset Allocation Review Project to evaluate asset allocation strategies available with the increased cap. In September 2024, the Board approved new interim and long-term allocation targets, to be achieved in the next three- and five-plus years, respectively.

The CIO noted increasing the cap allowed the System to set long-term allocation targets and reduce risk while maintaining target returns. The CIO further indicated only a portion of the 25.0 percent cap has been utilized—approximately 19.0 percent of the long-term allocation target.

Proxy Voting

HB 2100 established requirements for a proxy voting advisor and established restrictions on

environment, social, and governance criteria for investments. Speaking on implementation, the Planning and Research Officer said the Retirement System's Statement of Investment Policy, Objectives, and Guidelines was updated to align with, and add definitions used but not defined in, the bill, including social, political, or ideological interests.

HB 2100 required engagement of a proxy voting advisor to manage and vote the Retirement System's proxy ballots—a role previously held by investment managers, the CIO noted. Subsequent to enactment of the bill, the Board hired Egan-Jones Ratings Company (Egan-Jones) to vote proxies to its investment managers beginning in FY 2024. Egan-Jones is required to cast proxy votes in accordance with the Retirement System's Proxy Voting Policy, which directs vote recommendations protect and enhance investor wealth.

In FY 2024, a total of 55,229 votes were cast across 8 investment managers. Approximately 2.5 percent of the voting activities were on shareholder proposals, of which approximately half were identified as environmental or social issues. The CIO stated no votes cast by the Retirement System were identified as being in violation of Kansas statute.

KPERS 3 Plan Design

The Planning and Research Officer for KPERS provided an overview of the KPERS Tier 3 cash balance plan. In response to the 2008 recession and a 2011 study commission, the 2012 Legislature created a cash balance plan for members who begin employment on or after January 1, 2015. Differing from KPERS Tier 1 and 2 plan design, the KPERS Tier 3 plan is based on the member's contributions and earning retirement credits from the employer, which are tracked throughout the member's career. Interest is applied to the two accounts, and the benefit is based on the total account balance at retirement and has nothing to do with the number of years worked or finalized average salary.

The two components of interest credited under the cash balance plan are the guaranteed portion and the dividend. The guaranteed interest credit rate on the member and employer accounts is 4.0

percent, and the discretionary dividend credit is a dividend design (KSA 74-49,306) equal to 75.0 percent of the five-year average net compound rate of return above 6.0 percent, as determined by the Board for the calendar year and the four preceding years. [Note: Since 2015, the Tier 3 plan serves as the primary retirement plan for new KPERS members. Some employees in corrections positions continue to be enrolled in KPERS Tier 2.]

The Planning and Research Officer indicated KPERS 3 has not been in place long enough to make direct comparisons between KPERS 1, 2, and 3 retirement benefits. Replacement ratios can be used to measure how much of a member's pre-retirement income will be replaced by retirement benefits. Using anecdotal examples, the Planning and Research Officer compared what a member's benefits would be under KPERS 1 and 3.

Speaking on potential solutions, the Planning and Research Officer provided a comparison of general plan design components in defined benefit, defined contribution, and cash balance plans. In particular, he indicated the KPERS 3 cash balance plan design has three components that can be adjusted to enhance benefits: increasing employer credits, increasing interest crediting, and increasing the annuity rates.

The State Treasurer modeled various options to the Committee, noting the costs and benefits of potential adjustments to KPERS 3.

Adequacy from Stakeholders

A representative of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association highlighted critical shortages in recruiting and retaining dispatchers and jailers, particularly due to low pay and inadequate benefits. Comparing benefits across KPERS plans, the representative requested an end to KPERS Tier 3 in its current form, preferably with a return to KPERS Tier 2.

A representative of the Kansas Coalition of Public Retirees testified that KPERS 3 is not sufficient, referencing an audit presented to the Legislative Post Audit Committee in February 2024. The representative also praised the provisions of HB 2646, which would have

transferred teachers from the KPERS 3 cash balance plan to the KPERS 2 plan. Speaking to potential alternatives, the representative suggested several options, including implementing a Thrift Savings Plan and converting members from KPERS 3 to KPERS 2.

Cost-of-living Adjustments

The Planning and Research Officer provided an overview of cost-of-living adjustments (COLAs), which modify benefits to counteract the impact of economic changes, such as inflation. In 2004, the average retirement benefit was about \$10,300. By 2024, the purchasing power of that benefit has decreased to approximately \$6,100.

COLAs may be implemented as either an automatic adjustment, occurring on a regular, predetermined schedule, and may be tied to an index such as the Consumer Price Index for all Urban Consumers, or as an *ad hoc* adjustment approved by the plan sponsor or delegated authority. According to the National Association of State Retirement Administrators report of public sector plan COLAs, a selection of 101 plans showed that 74 plans included an automatic COLA and 27, including Kansas', utilized *ad hoc* COLAs.

Adequacy from Stakeholders

A representative of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association mentioned that over the course of KPERS' existence, 16 *ad hoc* COLAs were implemented and 5 one-time benefit payments were made to retirees, as well as a 13th benefit check paid to members from 1980 to 1987. The representative compared KPERS benefits with benefits of the Wichita Employees' Retirement System, which has similar benefits in relation to retirement benefit calculations but with an annual 2.0 percent COLA beginning 36 months after retirement.

A representative of the Kansas Coalition of Public Retirees testified that the UAL is the primary reason why the cost of COLAs appears high and is the result of underfunding for 25 years, from 1994 to 2019.

CONCLUSIONS AND RECOMMENDATIONS

The Committee submits the following comments and recommendations:

- **Extraordinary KPERS payment.** The Committee recommends the appropriate standing committees consider transferring \$1.0 billion from the SGF to the KPERS Trust Fund to make an additional contribution toward the reduction of the KPERS UAL;
- **Deferred Retirement Option Program.** The Committee recommends the appropriate standing committees continue to research and study DROP, including the advantages and disadvantages of expanding the program;
- **Cost-of-living adjustments.** The Committee recommends the appropriate standing Committees review COLAs, including the fiscal impact of implementing a COLA; and
- **KPERS 3.** The Committee recommends the appropriate standing committees continue to research and study potential enhancements to the KPERS 3 cash balance plan. The Committee further recommends the costs for any changes to be financed at the time of enactment and not to increase the UAL.

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**Report of the
Joint Committee on State Building
Construction
to the
2025 Kansas Legislature**

CHAIRPERSON: Senator Carolyn McGinn

VICE-CHAIRPERSON: Representative Leo Delperdang

RANKING MINORITY LEADER: Senator Marci Francisco

OTHER MEMBERS: Senators Rick Billinger, J.R. Claeys, and Usha Reddi; and Representatives John Alcalá, Avery Anderson, Jarrod Ousley, and Bill Sutton

CHARGE

Study, Review, and Make Recommendations on Capital Improvement Expenditures and Other State-owned Properties and Leases

The Committee is authorized by KSA 46-1701, which includes provisions allowing the Committee to meet on call of its chairperson at any time and any place within the state and to introduce legislation. The Committee is authorized to study, review, and make recommendations on all agency five-year capital improvements plans, leases, land sales, and statutorily required reports by agencies, and to travel throughout the state to observe state-owned buildings.

January 2024

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Joint Committee on State Building Construction

ANNUAL REPORT

Conclusions and Recommendations

All five-year capital improvement plans were reviewed and recommended by the Committee, which requests the following:

- More accurate information regarding the Hutchinson Correctional Facility replacement, including cost and location;
- Additional information on requirements that restrict disposing of demolition materials more than twice in one location and what criteria must be met for any requested exemptions; and
- Revised expenditures and ending balances of the three building funds: Kansas Educational Building Fund, State Institutions Building Fund, and Correctional Institutions Building Fund.

Proposed Legislation: None.

BACKGROUND

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

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

The Committee may meet at any location in Kansas on call of the Chairperson and is authorized to introduce legislation (KSA 46-1701).

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

Each state agency budget estimate for a capital improvement project is submitted to the Committee, the Division of the Budget, and the State Building Advisory Commission by July 1 of each year. Each estimate includes a written

program statement describing the project in detail (KSA 75-3717b). The budget estimate requirement does not apply to federally funded projects of the Adjutant General's Department or to projects for buildings or facilities of the Kansas Correctional Industries of the Department of Corrections that are funded from the Correctional Industries Fund. In those instances, the Adjutant General reports to the Committee each January regarding federally funded projects, and the Director of the Kansas Correctional Industries advises and consults with the Committee prior to commencing such projects for the Kansas Correctional Industries (KSA 75-3717b and 75-5282).

The Secretary of Administration issues monthly progress reports on capital improvement projects, including all actions relating to change orders and changes in plans. The Secretary of Administration is required to first advise and consult with the Committee on each change order or change in plans that increases project cost by \$125,000 or more, prior to approving the change order or change in plans (KSA 75-1264). Similar requirements were prescribed in 2002 for projects undertaken by the State Board of Regents for research and development facilities and the state educational facilities (KSA 76-786).

If the Committee will not be meeting within ten business days, and the Secretary of Administration determines it is in the best interest of the State to approve a change order or change in plans with an increase in project costs of \$125,000 or more, KSA 75-1264(d) provides an alternative method for achieving approval by the Committee. A summary description of the proposed change order or change in plans is transmitted to each member of the Committee, and a member may request a presentation of the proposal at a meeting of the Committee. If, within seven business days of the date the notice was transmitted, two or more members notify the Director of Legislative Research of a request to have a meeting on the matter, the Director will notify the Chairperson, and the Chairperson will call a meeting as soon as possible. At that point, the Secretary of Administration is not to approve the proposed action prior to presentation of the matter at a meeting of the Committee. If one or no members request the proposed matter be heard by the Committee, the Secretary of Administration is deemed to have advised and consulted with the

Committee and may approve the proposed change order or change in plans.

The "comprehensive energy bill," 2009 Senate Sub. for HB 2369, required the State to establish energy-efficient performance standards for state-owned and -leased real property and for the construction of state buildings. State agencies are required to conduct energy audits at least every five years on all state-owned property, and the Secretary of Administration is prohibited from approving, renewing, or extending any building lease unless the lessor has submitted an energy audit for the building or it is not economically feasible to conduct such energy audit (KSA 75-37,128).

Each year, the Secretary of Administration is required to submit a report to the Committee that identifies properties where an excessive amount of energy is being used (KSA 75-37,128).

COMMITTEE ACTIVITIES

The LCC approved three meeting days for the Committee during the 2024 Interim. The Committee met October 9 and December 16 to review five-year plans, and its members toured state-owned facilities on December 17, 2024. During those meetings, the Committee reviewed all agency five-year capital improvement plans; received the Department of Transportation's Excess Right-of-Way Annual Report; and reviewed three leases, two land sales, and ten change orders over \$125,000.

Presentation of Five-year Capital Improvement Plans

Department of Administration. A representative of the agency reviewed the five-year capital improvement plan for the Capitol Complex. Discussion topics included the Judicial Center; Cedar Crest; Statehouse; Curtis, Docking, Eisenhower, and Landon state office buildings; Memorial Hall; Myriad Building; the new laboratory for the Kansas Department of Health and Environment (KDHE); and parking lots.

Kansas Department of Health and Environment Laboratory. Historically, the agency does not produce a five-year capital

improvement plan because maintenance of the current laboratory is the responsibility of the Department of Administration. The agency did submit a five-year plan solely for the construction of the new laboratory. Once the new laboratory is in need of routine maintenance, the Department of Administration will cover the costs in its five-year plan. The finalization of the laboratory and tour by the Committee was discussed by a representative of the Department of Administration.

Department of Labor. An agency representative presented the five-year capital improvement plan and discussed preventative maintenance at its facilities over the next five years. The major projects discussed included replacement of the air conditioning units, air handlers, boilers, windows, and exhaust fans.

Kansas Highway Patrol. An agency representative discussed the Troop J training academy projects, construction of a new aircraft hangar, and a new dispatch facility in Salina.

Kansas Bureau of Investigation. A representative of the agency provided information on the three properties in Topeka and one property in Great Bend the agency owns and maintains. The agency was conducting a needs assessment to determine the efficiency of renovating the 1929 headquarters building or building a new facility.

Adjutant General's Department. An agency representative discussed 18 maintenance projects in the 4 regions across the state. Most of the projects are federally funded and require a state match, with a few exceptions.

State Board of Regents. A representative for the State Board of Regents presented its five-year plan and discussed the funding the Legislature has provided the Board for demolition of buildings and campus restoration at the universities. The representative asked that this funding continue.

Kansas State Fair. An agency representative presented the five-year capital improvement plan and discussed the rehabilitation and repair of the Bison Arena, race track, grandstand stage, and asphalt around the grounds and parking.

Wichita State University. A representative of Wichita State University presented its five-year

plan. Three large projects recently completed include the Welcome Center addition, the Success Center, and the remodel of the alumni center. The Wichita Biomedical Campus is under construction; it is a joint project with the University of Kansas Medical Center.

Fort Hays State University. A representative of Fort Hays State University, presenting its five-year plan, discussed the completion of Forsyth Library, the athletic complex, and the Stroup Hall addition.

Pittsburg State University. A representative of Pittsburg State University, presenting its five-year plan, discussed Block 22 is expanding downtown and stated new student housing is expected to open in fall 2026. Projects on campus include HVAC work, repairing tunnels for utility lines, and the demolition of the Shirk Complex.

Emporia State University. A representative of Emporia State University presented its five-year plan. Demolition is continuing and paves the way for a future nursing and student wellness center. Current projects include a chiller, upgrading water lines, roofing, and foundation repairs.

Kansas State University. A representative of Kansas State University presented its five-year plan. Current projects include the Innovation Center, animal science arena, and renovations to the Salina campus, and a new dairy teaching facility is planned for the future.

University of Kansas. A representative of the University of Kansas presented its five-year plan. The Evans Scholarship House was sold. Current projects include chiller plant #4 and installation of new hot water lines.

University of Kansas Medical Center. A representative of the University of Kansas Medical Center, presenting its five-year plan, discussed current demolition, HVAC, and the new Cancer Center.

Department of Corrections. The Secretary of Corrections presented the agency's five-year plan. Major projects include the new health facility at the Topeka Correctional Facility, a new work release unit, sewer line replacements, and HVAC improvements.

Kansas Department for Aging and Disability Services. A representative from the agency presented the five-year capital improvement plan, which covered the agency and the four state mental hospitals. The Biddle Building renovation is complete at Osawatomi State Hospital. There was discussion on demolition at the facilities and disposal of solid waste materials. The agency is working with KDHE for exemptions from solid waste disposal requirements.

Department of Wildlife and Parks. A representative of the agency discussed maintenance of parks, public lands, fish and wildlife management areas, dams, wetlands development, boating access, shooting ranges, road and bridge maintenance, and river access. There was discussion on the Flint Hills Trail, which is 118 miles of trail from Osawatomi to Herington, crossing 6 counties, and connecting to other trail systems.

Kansas Department for Children and Families. A representative of the agency discussed repair projects at the Topeka Service Center, including repairs to the roof and parking garage.

Department of Transportation. Representatives for the agency provided information on the age of many buildings that need to be replaced because of access or size of equipment for road construction and maintenance. Due to larger equipment, the buildings need to be increased in size, including the door height. There was also discussion on the geodesic dome-style buildings, which were cheaper to build but are more costly to maintain; therefore, this style of building is being phased out.

Kansas Office of Veterans Services. A representative of the agency discussed maintenance at the veterans' homes across Kansas. Two current projects include a columbarium wall at the Fort Dodge facility and expansion of the veterans cemetery in Winfield.

Judicial Branch. A representative from the agency discussed two projects, which included an on-site, interactive learning center and reconfiguration of the garden level of the judicial building.

Kansas State Historical Society. An agency representative presented the five-year capital improvement plan, including the annual State General Fund (SGF) appropriation the agency receives for emergency repairs and annual maintenance issues, which the agency is asking for an increase of the funding. An update on the purchase of the Curtis House was also provided.

Kansas State School for the Blind. A representative from the agency sorted projects into four major sections: safety and security, HVAC, rehabilitation and repair, and renovation.

Kansas State School for the Deaf. The agency representative discussed electrical upgrades, hazardous material abatement, and finalizing repairs and reconditioning the tunnel.

Department of Commerce. A representative of the agency provided information on projects at the Topeka Workforce Center, which included replacing doors and windows and a new roof at the Topeka Workforce Center. There are also plans to replace the roof at the Hays Workforce Center.

Building Leases and Land Sales

A representative from the Department of Administration presented a new lease for the State Board of Indigents' Defense Services Kansas City office. The new lease includes 14,000 square feet at a rate of \$22.50 per square foot.

A representative from the Department of Administration presented a new lease for the State board of Indigents' Defense Services Hutchinson office. The new lease is for 5,739 square feet at a rate of \$12.00 per square foot.

A representative from the Department of Administration presented a new lease for the Department for Aging and Disability Services office in Wichita. The new lease includes 10,570 square feet at a rate of \$13.50 per square foot.

A representative from the Kansas State Fair proposed to sell two surplus properties currently owned by the agency. The properties are residential and were originally purchased in 2005 and 2015 to be torn down and the land converted to a parking lot. The project was never done and

the properties were deemed surplus by the State. The properties were appraised and put up for sale.

Change Orders over \$125,000

A representative of the Department of Administration presented a change order for the Kansas Department of Corrections for the industrial building at the Topeka Correctional Facility. The change order in the amount of \$845,135 is for reinclusion of the tenant fit-out, which was in the original scope but had been removed.

A representative of the Department of Administration presented a change order for the Department of Corrections for the industrial building at the Topeka Correctional Facility. The change order is for replacement of a water line.

A representative from the Department of Administration presented two change orders for the Kansas National Guard at the National Guard/Reserve Center building at Forbes Field in Topeka. The first change order is to add an option for a patio on the north side and additional data outlets at the G1 Med fit-out area. The second change order is to add landscaping and additional lockers at the G1 Med fit-out area.

A representative of the Department of Administration presented a change order for the Department of Corrections Topeka Correctional Facility for a new permanent parking lot to replace parking the current construction will remove.

The following change orders were reviewed and the Secretary of Administrative deemed to have advised and consulted the Committee pursuant to KSA 75-1264(d):

- A representative of the Department of Administration presented a change order for Emporia State University for a change in supplier and materials for electrochromatic glass at the Nursing and Student Wellness Center;

- A representative of the Department of Administration presented a change order for the Kansas National Guard facility at Fort Riley for remediation of window glazing that contains asbestos and replacement of broken window panes;
- A representative of the Department of Administration presented a change order for the Kansas Department for Aging and Disability Services at the Kansas Neurological Institute for replacement of damaged roof; and
- A representative of the Department of Administration presented a change order for Wichita State University. Additional excavation is necessary at the National Institute for Aviation Research Hub based on unforeseen soil conditions. The change order is for an additional \$172,031.

CONCLUSIONS AND RECOMMENDATIONS

All five-year capital improvement plans were reviewed and recommended by the Committee, which also requests the following:

- More accurate information regarding the Hutchinson Correctional Facility replacement, including cost and location;
- Additional information on requirements that restrict disposing of demolition materials more than twice in one location and what criteria must be met for any requested exemptions; and
- Revised expenditures and ending balances of the three building funds: Kansas Educational Building Fund, State Institutions Building Fund, and Correctional Institutions Building Fund.

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Report of the Joint Committee on State-Tribal Relations to the 2025 Kansas Legislature

CHAIRPERSON: Representative Will Carpenter

VICE-CHAIRPERSON: Senator Larry Alley

OTHER MEMBERS: Senators Elaine Bowers, David Haley, Tom Holland, and Dan Kerschen; and Representatives John Alcala, Christina Haswood, Tom Kessler, and Sean Tarwater

CHARGE

Receive Information and Make Recommendations on State and Tribal Relations

KSA 46-2303 directs the Joint Committee to recommend modification of proposed gaming compacts and to meet, discuss, and hold hearings on issues concerning state and tribal relations. KSA 46-2303 also permits the Joint Committee to establish and transmit to the Governor proposed guidelines reflecting the public policies and state interests the Joint Committee will consider in reviewing proposed gaming compacts, make recommendations to the Governor that any gaming compact provide for the imposition and collection of state sales and excise taxes of non-gaming goods and services, hold public hearings on proposed gaming compacts, make recommendations on issues concerning state and tribal relations, and introduce legislation as deemed necessary.

Joint Committee on State-Tribal Relations

ANNUAL REPORT

Conclusions and Recommendations

The Joint Committee on State-Tribal Relations recommended the approval of the proposed amendment to the Iowa Tribe of Kansas and Nebraska-Kansas Gaming Compact and introduced resolutions to that effect. [Note: On April 2, 2024, those resolutions were adopted: SR 1750 was adopted by the Senate, and HR 6045 was adopted by the House of Representatives.]

Proposed Legislation: None.

BACKGROUND

The Joint Committee on State-Tribal Relations (Committee), created in 1993, is required by KSA 46-2302 to:

- Recommend modification of proposed gaming compacts and introduce resolutions approving proposed gaming compacts submitted by the Governor and recommend that such resolutions be adopted or be not adopted, or report such resolutions without recommendation, and notify the Governor, in writing, of the Committee's action; and
- Meet, discuss, and hold hearings on issues concerning state and tribal relations.

KSA 2023 Supp. 46-2303 authorizes the Committee to:

- Establish and transmit to the Governor proposed guidelines reflecting the public policies and state interests, as embodied in the constitution, statutes, and case law of the State of Kansas, consistent with the Indian Gaming Regulatory Act (25 USC § 2701 *et seq.*), that the Committee will consider in reviewing proposed compacts;
- Recommend to the Governor that any gaming compact provide for the imposition and collection of state sales

and excise taxes on sales of non-gaming goods and services to persons other than tribal members and imposition and collection of state income tax on revenues derived from sales of non-gaming goods and services;

- Hold public hearings on proposed gaming compacts submitted to the Committee by the Governor;
- Make recommendations on issues concerning state and tribal relations;
- Introduce legislation as deemed necessary in performing its functions; and
- Meet at any time and place within the state on the call of the chairperson.

The Committee is composed of 12 members: 5 from the House of Representatives; 5 from the Senate; the Governor, or the Governor's designee; and the Attorney General, or the Attorney General's designee. At the commencement of each regular session of the Legislature, the Governor, or the Governor's designee, is statutorily required to call an organizational meeting of the Committee to elect a chairperson, vice-chairperson, and ranking minority member from its membership.

COMMITTEE ACTIVITIES

The Committee met twice during the 2024 Session (February 28 and April 1) and once during the 2024 Interim (September 11), as authorized by the Legislative Coordinating Council.

February 28 Meeting

The Committee met for the purposes of organizing. A representative of the Office of the Governor called the organizational meeting of the Committee to elect the Committee's leadership, pursuant to KSA 2023 Supp. 46-2303. The Committee elected a chairperson, vice-chairperson, and ranking minority member.

The Committee also heard from representatives of three Tribes in Kansas: Prairie Band Potawatomi Nation, Iowa Tribe of Kansas and Missouri (Iowa Tribe), and Kickapoo Tribe in Kansas. The Tribal Chairperson of each Tribe discussed various issues, including tribal recognition, water supplies, road construction and maintenance, taxes, and state oversight and collaboration.

April 1 Meeting

The Committee met to consider proposed amendments to the gaming compact between the Iowa Tribe and the State of Kansas.

Review of Committee Statutory Responsibilities

A Senior Assistant Revisor of Statutes, Office of Revisor of Statutes, reviewed a memorandum discussing the statutory provisions governing the Committee's review of gaming compacts. The Senior Assistant Revisor stated the Committee could take one of four actions:

- Recommend changes to the proposed gaming compact;
- Approve the proposed gaming compact;
- Reject the proposed gaming compact; or
- Report the proposed gaming compact to the Legislature without recommendation.

The Senior Assistant Revisor noted the statute prohibits the Governor, or the Governor's designee, and the Attorney General, or the Attorney General's designee, from voting on any

motion to approve, reject, or report the proposed gaming compact without recommendation.

Review of Proposed Amendments

The Chief Counsel, Office of the Governor, explained the amendment applies to the 1995 Compact between the State of Kansas and the Iowa Tribe and consists of ten sections. The Chief Counsel briefly explained each section. The Chief Counsel also stated the amendment was negotiated with the Council for the Iowa Tribe; the negotiations proceeded in good faith; and those involved in the negotiations were pleased to bring the amendment before the Committee for consideration.

The Outside Counsel for the Iowa Tribe stated the proposed amendment between the Iowa Tribe and the State of Kansas complies with federal law.

September 11 Meeting

The Committee met to review various topics related to state-tribal relations and receive an update from each of the four federally recognized Tribes in Kansas: the Iowa Tribe, Prairie Band Pottawatomi Nation, Kickapoo Tribe in Kansas, and Sac and Fox Nation of Missouri in Kansas and Nebraska.

Review of Topic and Resources

A Senior Research Analyst from the Kansas Legislative Research Department (KLRD) reviewed the Committee's study topic and additional resources provided by staff.

Historical Overview of the Joint Committee on State-Tribal Relations

A Research Analyst from KLRD provided an overview of the Committee's meeting history and stated the Committee has met for purposes beyond organizing ten times.

Review of Recent State-Tribal Legislation

A Senior Research Analyst from KLRD provided brief summaries of state-tribal legislation introduced, passed, or enacted in Kansas since 2013 and state-tribal legislation enacted in other states since 2019.

Overview of the Kansas Native American Affairs Office

The Executive Director provided an overview of the Kansas Native American Affairs Office (KNAA) and stated KNAA is responsible for maintaining and enhancing the State's government-to-government relationship with the four sovereign Tribal Nations of Kansas.

The Executive Director explained KNAA works with the constitutionally elected tribal officials to assist with issues on tribal lands and to access programs and services throughout state agencies.

The Executive Director briefly discussed the history of the four federally recognized Tribes in Kansas, including the locations of the Tribes' reservations and treaties between the Tribes and the federal government. The Executive Director also provided a brief overview of the structure of each Tribe, which includes a Tribal Constitution approved by the U.S. Secretary of the Interior.

The Executive Director provided detailed information about federal recognition of a tribe, tribal sovereignty, tribal self-determination, tribal citizenship, and tribal jurisdiction.

The Executive Director also highlighted KNAA's 2025 initiatives: re-instituting the Native American Law Symposium and assuming the responsibilities of the Native American Legislative Day at the Capitol.

Overview of the Kansas State Gaming Agency

The Executive Director of the Kansas State Gaming Agency (KSGA) provided an overview of the agency, including the agency's mission and goal of protecting the integrity of gaming by ensuring compliance with Tribal-State Compacts, the Tribal Gaming Oversight Act, and all applicable federal and state laws.

The Executive Director stated the KSGA's staff includes enforcement agents who are sworn law enforcement officers, special investigators, and technical and support staff. The Executive Director also stated the KSGA is responsible for conducting background investigations on all employees connected with gaming operations at each casino and on each vendor that sells more

than \$10,000 of gaming equipment to a tribal casino in Kansas each year.

The Executive Director provided a brief history of the gaming compacts between the State of Kansas and the four Tribes in Kansas and the establishment and operation of Class III casinos. The Executive Director noted that two Class II casinos located in the State of Kansas are not subject to a current gaming compact and are not regulated by the State.

The Executive Director also briefly discussed the KSGA's relationship with the Kansas Racing and Gaming Commission and the differences between the two agencies.

Presentation on Tribal Water Rights

A professor from Washburn University School of Law presented information about tribal water rights and tribal sovereignty and justice.

The professor discussed the basic principles of western water law, issues associated with water rights, and over-appropriation as the result of those issues.

The professor discussed the Kansas Water Appropriation Act of 1945 (KWAA). The KWAA adopted the prior appropriation doctrine ("first in time, first in right") statewide for both surface water and groundwater and put the administration of all water rights in Kansas under the jurisdiction of the Chief Engineer. The professor explained the KWAA and the administration thereof has contributed to over-appropriation of water resources and the under-protection of senior water rights.

The professor briefly discussed Kansas water rights data and highlighted the decrease in thickness of the Kansas High Plains Aquifer using data from the Kansas Geological Survey. He also provided information from the Kansas Department of Agriculture regarding groundwater pumping and the depletion of stream flows statewide.

The professor discussed historical events, legislation, and court decisions impacting tribal rights from time immemorial through 1981. Legislation highlighted included the General Allotment Act of 1887, which allowed for tribal

land that was held by the tribe as a corporate body to be individually parceled out and allotted to individual members of the tribe. Three court decisions were discussed:

- *Winters v. United States* (1908);
- *Arizona v. California* (1963); and
- *Colville Confederated Tribes v. Walton* (1981).

Based on the findings in these decisions, the professor stated, tribal water rights are strong, established, and consistently recognized under federal law. However, he further explained, even though courts may find that a tribe is entitled to large amounts of water and has a senior water right, there is no guarantee that such tribe will get the actual water to which it is entitled. He stated that political support is crucial to translate legal rights into actual water and water projects.

The professor explained three sovereigns are involved when recognizing and adjudicating tribal water rights:

- The United States;
- Native American Tribes; and
- The State of Kansas.

The professor also noted that adjudications are a way to reconcile the federal system of water rights and state systems of water rights and are typically authorized by state legislation.

The professor also provided information about tribal water right settlements, common settlement terms, and examples of settlements in other states.

The professor concluded by stating that negotiated settlements are superior to litigated results; states, tribes, and the United States have accomplished creative and effective solutions; trustworthy data and enforceable laws are critical; congressional support is usually the most difficult obstacle; and Kansas faces fewer obstacles in terms of hydrology and state-tribal relations to reaching effective settlements than do other western states.

Update from the Prairie Band Potawatomi Nation

The Tribal Chairman of the Prairie Band Potawatomi Nation (PBPN) provided historical

information about PBPN. The Chairman explained that the PBPN was a Great Lakes Tribe that was removed to Illinois, Missouri, and Iowa due to the Indian Removal Act of 1830. The PBPN later purchased more than 900 square miles within Kansas with funds that came from the land ceded in Illinois and Iowa; the PBPN began occupying its current reservation in Kansas in 1847. The Chairman also explained the “checkerboard” effect the General Allotment Act of 1887 had on the reservation land.

The Chairman reviewed the Kansas Act of 1940 and noted that, because of this act, Indians are the only individuals who may be prosecuted in three different courts.

The Chairman also highlighted various provisions of the *U.S. Constitution*, the *Kansas Constitution*, the Kansas-Nebraska Act of 1854, and the Act for the Admission of Kansas into the Union concerning tribal sovereignty.

The Chairman reviewed the PBPN’s struggle with county official overreach, legal representation, utility project developments, federal legislation, and taxes and stated that more must be done to support tribal sovereignty, self-sufficiency, and self-determination.

The Chairman also recommended the Legislature remove all blood quantum references from state laws and rules and regulations.

Update from the Iowa Tribe of Kansas and Nebraska

The Tribal Historic Preservation Officer discussed the Iowa Tribe’s history and relocation, explained the State of Iowa is named after the Iowa, and stated Iowa is the heart of the Iowa Tribe’s homelands. The Deputy Tribal Historic Preservation Officer also discussed the importance of regaining tribal sovereignty.

The Tribal Chairman discussed concerns about the Iowa Tribe’s reservation lands located in northeast Kansas and southeast Nebraska, wildlife and hunting, water, law enforcement, and taxes. The Chairman stated that state-issued hunting permits have been used on Iowa Tribal lands and requested the Committee look into the issue. The Chairman also discussed water quality issues, such

as high nitrate levels. The Chairman stated the Iowa Tribe is in support of contesting the Kansas Act of 1940 and returning jurisdiction to the Tribes. The Chairman also stated that revenue from road maintenance performed by the Iowa Tribe is going to the county in which they reside through taxes.

Update from the Kickapoo Tribe in Kansas

The Tribal Council Secretary provided a presentation on the Kickapoo Tribe in Kansas' (Kickapoo Tribe) treaties and agreements with foreign entities. The Kickapoo Tribe has treaties and agreements with numerous foreign entities, including Canada, France, Great Britain, Mexico, and Spain, as well as the United States. The most recent treaty signed by the Kickapoo Tribe was with the United States in 1854, and all three bands of Kickapoo (the Kickapoo Tribe in Kansas, the Kickapoo Tribe of Oklahoma, and the Kickapoo Traditional Tribe of Texas) maintain treaty rights established by this treaty.

The Tribal Council Secretary highlighted provisions of the Kansas-Nebraska Act of 1854 and the Act for the Admission of Kansas into the Union concerning tribal sovereignty and provisions of the Kansas Act of 1940 that give criminal jurisdiction to the State of Kansas over Indian reservations.

The Tribal Council Secretary also discussed various tax-related issues the Kickapoo Tribe faces and suggested a tax compact between the Kickapoo Tribe and the State of Kansas as a possible solution to address the issues. The Tribal

Council Secretary provided examples of tax compacts entered into by other tribes and states and highlighted the key features of those compacts.

The Environmental Director for the Kickapoo Tribe discussed the Kickapoo Tribe's programs, grants, and initiatives to safeguard water. The Environmental Director also discussed the Kickapoo Tribe's challenges related to water resources and infrastructure. The Environmental Director concluded by providing several ideas to the Committee to further engagement, collaboration, and legislative support for the Kickapoo Tribe and clean water.

The Tribal Chairwoman requested that the Legislature establish subcommittees to address tribal issues.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommended the approval of the proposed amendment to the Iowa Tribe of Kansas and Nebraska-Kansas Gaming Compact and introduced corresponding resolutions to provide legislative approval of the amendment to the compact.

[*Note:* On April 2, 2024, those resolutions were adopted: SR 1750 was adopted by the Senate, and HR 6045 was adopted by the House of Representatives.]

The Committee made no additional recommendations to the 2025 Legislature.

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Report of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight to the 2025 Kansas Legislature

CHAIRPERSON: Representative Brenda Landwehr

VICE-CHAIRPERSON: Senator Beverly Gossage

OTHER MEMBERS: Senators Molly Baumgardner, Michael Fagg, Pat Pettey, and Mark Steffen; and Representatives Barbara Ballard, Emil Bergquist, Will Carpenter, Susan Concannon, and Susan Ruiz (Substitute members: Senators Renee Erickson, Virgil Peck, and Mark Steffen)

CHARGE

Oversee Long-term Care Services and KanCare

KSA 2023 Supp. 39-7,160 directs the Joint Committee to oversee long-term care services, including home and community based services (HCBS). The Joint Committee is to oversee the savings resulting from the transfer of individuals from state or private institutions to HCBS and to ensure that any proceeds resulting from the successful transfer be applied to the system for the provision of services for long-term care. Further, the Committee is to oversee the Children's Health Insurance Program, the Program for All-Inclusive Care for the Elderly, and the state Medicaid program (KanCare), and monitor and study the implementation and operations of these programs including, but not limited to, access to and quality of services provided and any financial information and budgetary issues.

January 2024

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

ANNUAL REPORT

Conclusions and Recommendations

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

- The Kansas Department of Health and Environment implement the graduate medical education program for the Kansas Behavioral Health Center of Excellence, with an 18-month timeline for implementation;
- A budget proviso be drafted to address the three pending issues pertaining to the Children’s Health Insurance Program (CHIP): CHIP eligibility in current law that is tied to 250.0 percent of the 2008 federal poverty level and federal regulatory changes regarding waitlists and lockout periods;
- The social services budget committees review providing grant funding for local communities to apply for a grant to make digitally available a local resource guide based upon the out-of-print “Explore Your Options” Resource Guide;
- A budget proviso be drafted providing for additional substance use disorder (SUD) state funding through a grant fund to supplement federal funding for those SUD providers that have expended their allocated funds;
- The adoption of conferee rules for the Committee; and
- Program for All-Inclusive Care for the Elderly Medicaid rates continue to be rebased annually through a budget proviso.

Proposed Legislation: The Committee requests:

- A Committee bill be introduced using the 2024 omnibus budget proviso language regarding funding for the Mental Health Intervention Team program and keeping the program within the Kansas Department for Aging and Disability Services and legislation;
- Support for the Kansas Behavioral Health Center of Excellence;
- A change in the home plus definition in KSA 2024 Supp. 39-923 to increase the maximum number of beds from 12 to 16 for both stand-alone home plus facilities and adult care home wings that convert to a separate but contiguous home plus facility;
- The Department of Administration be required to adopt a written policy governing the

negotiated procurement of managed care organizations to provide Medicaid services pursuant to a contract with the Kansas Program of Medical Assistance. The policy shall include prohibition on the destruction of records that complies with the Kansas Open Records Act, adoption of a tie-break procedure if part of the evaluation process used to make award recommendations involves scoring, and a requirement to be transparent with the Legislature to the full extent permitted by law. The adopted policies shall be made available to the public and potential bidders; and

- A rural emergency hospital (REH) be allowed to be granted a waiver from the physical environment requirement of a new facility for skilled nursing beds that need to be included for hospitals to be able to transition to a REH, without having to meet the requirements for a new facility.

BACKGROUND

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services (HCBS) and KanCare Oversight (Committee) operates pursuant to KSA 2024 Supp. 39-7,159, *et seq.* The previous Joint Committee on HCBS Oversight was created by the 2008 Legislature in House Sub. for SB 365. In HB 2025, the 2013 Legislature renamed and expanded the scope of the Joint Committee on HCBS Oversight to add the oversight of KanCare (the State's Medicaid managed care program). The Committee oversees long-term care (LTC) services, including HCBS, which are to be provided through a comprehensive and coordinated system throughout the state. The system, in part, is designed to emphasize a delivery concept of self-direction, individual choice, services in home and community settings, and privacy. The Committee also oversees the Children's Health Insurance Program (CHIP), the Program for All-Inclusive Care for the Elderly (PACE), and the state Medicaid programs.

The Committee is composed of 11 members: 6 from the House of Representatives and 5 from the Senate. Members are appointed for terms that coincide with their elected or appointed legislative terms. The Committee is statutorily required to meet at least once in January and once in April when the Legislature is in regular session and at least once for two consecutive days during both the third and fourth quarters, at the call of the chairperson. The Committee is not to exceed six total meetings in a calendar year; however, additional meetings may be held at the call of the chairperson when urgent circumstances require such meetings.

In its oversight role, the Committee is to oversee the savings resulting from the transfer of individuals from state or private institutions to HCBS and to ensure proceeds resulting from the successful transfer be applied to the system for the provision of services for LTC and HCBS, as well as to review and study other components of the State's LTC system. Additionally, the Committee is to monitor and study the implementation and operations of the HCBS programs, CHIP, PACE, and the state Medicaid programs, including, but not limited to, access to and quality of services provided and financial information and budgetary issues.

As required by KSA 39-7,160, at the beginning of each regular session, the Committee is to submit a written report to the President of the Senate, the Speaker of the House of Representatives, the House Committee on Health and Human Services, and the Senate Committee on Public Health and Welfare. The report is to include the number of individuals transferred from state or private institutions to HCBS, as certified by the Secretary for Aging and Disability Services, and the current balance in the HCBS Savings Fund. [*Note: See Appendix A for the 2024 report.*]

The report also is to include information on the KanCare Program regarding:

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

- Integration and coordination of health care procedures for individuals receiving state Medicaid services under KanCare;
- Availability of information to the public about the provision of state Medicaid services under KanCare, including access to health services, expenditures for health services, extent of consumer satisfaction with health services provided, and grievance procedures, including quantitative case data and summaries of case resolution by the KanCare Ombudsman;
- Provisions for community outreach and efforts to promote public understanding of KanCare;
- Comparison of caseload information for individuals receiving state Medicaid services prior to January 1, 2013, with the caseload information for individuals receiving state Medicaid services under KanCare after January 1, 2013;
- Comparison of the actual Medicaid costs expended in providing state Medicaid services under KanCare after January 1, 2013, with the actual costs expended under the provision of state Medicaid services prior to January 1, 2013, including the manner in which such cost expenditures are calculated;
- Comparison of the estimated costs expended in a managed care system providing state Medicaid services before January 1, 2013, with the actual costs expended under KanCare after January 1, 2013; and
- All written testimony provided to the Committee regarding the impact of the provision of state Medicaid services under KanCare upon residents of adult care homes.

In developing its report, the Committee is also required to consider the external quality review

reports and quality assessment and performance improvement program plans of each managed care organization (MCO) providing state Medicaid services under KanCare.

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

COMMITTEE ACTIVITIES

The Committee met once during the 2024 Session (February 2) and three times during the 2024 Interim (June 24, August 26-27, and October 22-23). In accordance with its statutory charge, the Committee's work focused on specific topics described in the following sections.

KDHE KanCare Overview and Update

At the February 2, 2024, meeting, the Secretary of Health and Environment (Secretary, in the KDHE portion of this report) provided an overview of the agency as part of the KDHE update. The Secretary provided an update on the Medicaid Governance Committee, listing the committee members and explaining the committee's purpose and changes to key staffing positions in the organizational structure.

At the June 24, 2024, meeting, the Secretary stated the agency had been working on 13 major initiatives. The governance council created in 2024 is helping with organization and strategic direction. KDHE is continuing to integrate Medicaid, the work of KDADS, and public health to better align with physical health and behavioral health priorities of the State and the funding for such services. KDHE has been working on the restructure and reorganization of the Medicaid program with assistance from the Boston Consulting Group. KDHE also has been preparing for the implementation of KanCare 3.0, which was in the readiness and review phase.

The Medicaid Director provided information on Medicaid eligibility improvements to the renewal form, permanent unwinding flexibilities, a new fax system, and a new communication tool.

At the August 26-27, 2024, meeting, the Medicaid Director provided a chart reflecting the breakdown of beneficiaries by MCO, noting there were 443,087 beneficiaries as of May 2024. She also provided information regarding processed and denied claims, MCO profit and loss, resolved member grievances and appeals, resolved provider grievances, and customer service center metrics.

The Medicaid Director stated that, in Kansas, open enrollment begins November 1, 2024, and runs for 60 days. She noted a new MCO will begin to provide services in January 2025, and a member will have until March 31, 2025, to change plans.

At the October 22-23, 2024, meeting, the Medicaid Director stated KDHE completed the reorganization of the Managed Care Bureau and Medical Bureau and created a Data, Research, and Analytics Bureau to support additional oversight of KanCare. The areas of focus for each bureau were provided. The call center metrics were reviewed. The Medicaid Director stated the Centers for Medicare and Medicaid Services (CMS) is requiring all states to complete a compliance assessment to demonstrate compliance with federal renewal requirements for CMS review and approval. She noted any areas of non-compliance must be resolved by December 31, 2026. A review of the compliance assessment and plan on federal renewal requirements was provided. Kansas will submit its assessment to CMS by the December 31, 2024, deadline.

KDHE provided a list of the statutory reports that KDHE provides to the Legislature during a calendar year.

KanCare Updates

At each of the quarterly meetings, a representative of KDHE provided updates on KanCare. The KanCare Executive Summary for the prior quarter was provided as well. The quarterly reports include MCO profit and loss summaries, as well as a variety of data points.

1115 Waiver Renewal

At the February 2, 2024, meeting a representative of KDHE provided information regarding the transition from a waiver under Section 1115 of the Social Security Act (1115 waiver) to the companion Section 1915(b) waiver, which occurred on December 31, 2023. This transition allows the state to bypass the budget neutrality cap. Kansas retained a small 1115 waiver to cover items that could not be moved to the 1915(b) waiver. The items in the remaining 1115 waiver were listed in the testimony. Items that transitioned to the State Plan Authority to be eligible to receive federal matching funds were reviewed.

Autism Services under EPSDT

At the June 24, 2024, meeting, the Medicaid Director noted children who age out of the Autism waiver at age nine would be eligible to receive 60 to 70 percent of the services under the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program. CMS has communicated to KDHE that more services should be provided in the EPSDT program than under the HCBS waiver, and KDHE is taking a comprehensive look at how that change could impact eligibility under the Autism waiver.

For clarification, the KDADS Deputy Secretary of Programs stated children who age out of the Autism waiver are not placed on the Intellectual and Developmental Disability (I/DD) waitlist.

The KDHE Director of Operations for Medicaid discussed the EPSDT program, which was established as part of original Medicaid services for all children in the Medicaid program and covers individuals from birth to age 21. Recipients who participate in the program are assessed during regular checkups with their medical providers. The KDHE representative also clarified that eligibility for a HCBS waiver ceases if the individual does not use at least one waiver service, which differs from eligibility requirements for Medicaid.

Child Care Facility Exceptions

At the June 24, 2024, meeting, the KDHE Director of the Bureau of Public Health discussed

the exceptions provided by the agency to allow child care facilities to remain open. The exceptions to KDHE child care licensing regulations allow KDHE to respond to special circumstances. Since 2019, 783 out of 917 requests for an exception have been granted. Circumstances are reviewed to balance the service and ensure health and safety standards.

CHIP Eligibility and Premiums

At the June 24, 2024, meeting, the Medicaid Director explained how CHIP eligibility works and the new rule beginning January 2025 that no longer requires the CHIP premium be paid monthly to continue coverage. However, the new CHIP premium payment rule requires any outstanding CHIP premium to be paid before CHIP coverage can continue beyond the 12-month period. Under CHIP, families with incomes below 134.0 percent of the federal poverty level (FPL) pay no premium, but premiums are required for families with incomes up to the cap of 255.0 percent of FPL.

KanCare Clearinghouse

At the February 2, 2024, meeting, the KDHE Medicaid Director reviewed the status of Medicaid eligibility applications. The representative reported 21,745 total applications were in house, with 1,798 pending for more than 45 days, of which 491 were in active status and ready to be processed, and 1,307 applications in pending status for more than 45 days waiting for more information. The call center metrics were provided.

At the August 26-27, 2024, meeting, the Medicaid Director provided information regarding Medicaid eligibility application status reflecting 9,683 applications in house, with 1,061 applications over 45 days, 51 applications over 45 days in active status, and 1,010 applications over 45 days in pending status. Call center metrics were reviewed.

At the October 22-23, 2024, meeting, the Medicaid Director presented a review of the Medicaid eligibility application status. There were 8,268 total applications in house, and 1,139 applications over 45 days, with 68 applications over 45 days in active status and 1,071 applications over 45 days in pending status.

MCO Contract Procurement

At the February 2, 2024, meeting, a representative of KDHE noted seven bids were received for the KanCare MCO contract reprocurement. The representative provided the anticipated timeline for the review of the bids, negotiations, bid protest period, contract awards, implementation, and readiness reviews, with a launch date of January 1, 2025.

Additional information on the KanCare 3.0 procurement process, protests, and appeals are located at the end of the KDHE Updates section.

Medicaid Rate Study

At the February 2, 2024, meeting, a representative of KDHE noted KDHE was contracting with an outside consulting service to conduct a comprehensive Medicaid rate study to better inform decisions on rate increases or adjustments. A list was provided of all items being studied.

At the June 24, 2024, meeting, the Medicaid Director provided details on the KDHE rate study that will also include HCBS rates. The intention is to have the results of the rate study available no later than fall 2024. To make the rate study process more manageable, KDHE intends to complete the rate study work every two to three years but review only certain sets of codes at one time instead of all codes, the Director reported.

At the October 22-23, 2024, meeting, the Medicaid Director reviewed the KDHE rate study. Phase 1 looked at code-based reimbursements and not payment methods. Phase 2 included other payment methodology rates. Comparisons to Medicare benchmarks were used when available, as well as comparisons with surrounding states. She noted that all rate increases approved by the 2024 Legislature and implemented in July and August will be included in the rate study. Evaluation and management codes and dental and vision codes are complete. KDHE was close to having Phase 1 posted. Phase 2, with the more complex reimbursement methodology that is not a one-for-one comparison, was in progress and will include KDHE's attempt to provide an analysis of how Kansas rates compare with rates of other states.

Medicaid Unwinding

At the February 2, 2024, meeting, the Medicaid Director provided a review of the Medicaid unwinding data as of January 4, 2024.

At the June 24, 2024, meeting, the Medicaid Director discussed data on the unwinding of continuous Medicaid eligibility. The Medicaid Director noted data were insufficient to determine when individuals enrolled during the public health emergency (PHE) no longer met Medicaid eligibility standards in order to calculate the amount of capitation payments resulting from increased unwinding enrollment, because no renewals were done during the PHE at federal direction. Using the proxy method described, the Medicaid Director stated Kansas spent between \$642.0 million and \$784.0 million in all funds during the PHE on capitation payments for individuals potentially not eligible, with 40.0 percent of that amount in SGF. Kansas received more than \$1.0 billion in enhanced federal medical assistance percentage (FMAP) during the same time period. The Medicaid Director confirmed federal payments exceeded state capitation payments by \$600 million to \$700 million during the PHE.

Regarding HCBS disenrollment, the Medicaid Director stated an estimated 782 persons over a 13-month window April 2023 through May 2024) over all HCBS waivers were no longer eligible, and 1,280 were disenrolled for other reasons during the same period.

The Medicaid Director stated 114,000 fewer individuals were enrolled in Medicaid during the unwinding period, of which about two-thirds were children. With the exception of a few individuals who were still within the 90-day window for possible Medicaid reinstatement at the time of the meeting, Kansas had completed its Medicaid unwinding. She noted those who lost Medicaid coverage could have obtained coverage as follows: children who were removed from Medicaid may have been eligible for CHIP, some families may have sought coverage on the federal Marketplace, and others are uninsured.

At the August 26-27, 2024, meeting, the Medicaid Director noted Kansas finished the unwinding process in May 2024. In May 2024, the

signature page in the renewal form was moved to page three due to the number of applications being returned with no signature. The change resulted in the percentage of unsigned reviews dropping from 3.25 percent to 0.06 percent. A review of the proactive communication tool implemented in July 2024, which allows KDHE to target messages, and its results were provided.

Medically Needy Program

At the February 2, 2024, meeting, the Medicaid Director provided an update on the Medically Needy (MN) Program for certain populations whose income exceeds state eligibility limits. These populations include pregnant women, children under 19 years of age, and senior citizens 65 years of age and older. The Medically Needy income limit (MNIL) has been frozen at \$475 for a household of one or two for many years. KDHE had identified a path forward that would tie the MNIL to 100.0 percent of Supplemental Security Income (SSI), which is adjusted annually. The preliminary estimate of such a change in the MNIL is \$1.8 million all funds, including \$940,000 from the State General Fund (SGF).

At the June 24, 2024, meeting, the Medicaid Director reviewed Option 1 to tie the MNIL to 100.0 percent of SSI and explained a second option. Option 2 would apply an income disregard to eliminate the spenddown altogether. Under this option, any child, pregnant woman, or aged and disabled applicant who fails to meet the Medicaid or CHIP income limits would be eligible for Medicaid without any spenddown requirement.

At the August 26-27, 2024, meeting, the Medicaid Director provided an update on the MN program. A breakdown of the MN population by age was provided. It was determined in discussions with CMS that states have the option to disregard types or amounts of income that are used to determine the protected income limit. KDHE previously identified two options to improve the spenddown. Another review of Option 1 and Option 2 was provided.

The Medicaid Director stated Option 2 would create disparity in the LTC population as it does not eliminate income disregard for all LTC populations. Federal regulations prohibit the

application of disregards when calculating a Medicare recipient's share of cost (resident liability) for nursing facility home care. The result would be that individuals with income under 300.0 percent of FPL who qualify for traditional Medicaid would be required to pay toward the cost of nursing home care. Individuals with incomes above 300.0 percent of FPL qualifying under the MN program would have their share of cost waived. The annual mid-point range of the fiscal note for Option 2 was estimated at \$61.7 million all funds, \$24.6 million SGF, and a federal financial participation of \$37.2 million.

At the October 22-23, 2024, meeting, the Medicaid Director reminded the Committee that KDHE recommended Option 1, which would increase the current MNIL from the 1997 Temporary Assistance for Needy Families rate to SSI. She noted Option 2 was not recommended as it would result in treating income disregards differently for eligible populations.

Payment Error Rate Measurement Program

At the October 22-23, 2024, meeting, the Medicaid Director presented an overview of the Payment Error Rate Measurement Program (PERM). PERM is required by CMS to estimate the amount of improper payments in Medicaid and CHIP annually. Each state is measured once every three years by auditing a sample of payments. The improper payment rate is not a "fraud rate" but simply a measurement of payments that did not meet statutory, regulatory, or administrative requirements. Kansas last completed a PERM audit in 2022, which covered the time frame from July 2020 to June 2021. The error rate was 6.82 percent, which was lower than the national rate of 15.62 percent. A description and examples of the PERM error types were reviewed.

Sedation Dentistry

At the June 24, 2024, meeting, the Medicaid Director provided a report on sedation dentistry, identifying the dental code rates as compared with the rates of other states, as well as the unduplicated number of dental providers providing the service (225) and their locations by county. Data was also provided on sedation dentistry services at Indian Health Services clinics and federally qualified health centers.

Vaccine Requirements

At the February 2, 2024, meeting, a representative of KDHE provided an update on vaccine requirements. A list of the relevant statutes was provided relating to the vaccine requirements for school admission and attendance and the exemption alternatives to the vaccine requirements. The list of the diseases for which vaccines are required was provided, as listed in KAR 28-1-20, published July 18, 2019, in the *Kansas Register*. The vaccine ages and the number of doses required follow the Advisory Committee on Immunization Practices standards. The representative noted KDHE cannot just add a required vaccination to the list.

The KDHE representative noted statutes authorize school boards to adopt policies that may exclude a student not in compliance with the statutory vaccination requirements and, based upon that policy, the school board may exclude non-complying students from attendance in that school district. An explanation of the notice requirements to parents or guardians, the process for requesting medical and religious exemptions, enforcement of vaccination requirements, and the limitations on KDHE's role in those processes was provided.

The KDHE presentation included a graph reflecting the statewide vaccination exemption rate by academic year from 2010-2011 to 2022-2023, as well as a breakdown of the 2022-2023 kindergarten vaccine coverage exemption rate by type.

The representative of KDHE noted each college and university must have in place policies and procedures requiring meningitis vaccinations for all incoming students residing in residence halls. The colleges and universities set and enforce the policies.

Workforce

At the February 2, 2024, meeting, the KDHE representative stated KDHE was operating at about 89 percent of staffing capacity. A staffing breakdown by agency section was provided.

KanCare Doula Services and Rates

At the August 26-27, 2024, meeting, the KDHE Medicaid Director of Operations provided information regarding KanCare doula coverage, noting the severe maternal morbidity (SMM) rate in Kansas has steadily increased from 56.1 in 2016 to 71.4 in 2020 per 10,000 delivery hospitalizations, with an annual percentage change of 6.4 percent. Non-Hispanic black women had a significantly higher rate than any other race and ethnicity. Women enrolled in Medicaid or from low-income zip codes were more likely to experience SMM. The non-clinical support of a doula during the prenatal, pregnancy, birth, and post-partum process has shown to be an effective best practice that enhances the birthing process, reduces complications, improves birth outcomes, and addresses racial disparity in maternal health outcomes. Twenty-one states provide doula services. Data show a differential between the rates for physicians and rates for other provider types licensed for nine obstetrics global codes, including advanced practice registered nurses (APRNs) and certified nurse midwives (CNMs). Effective October 1, 2024, the rate differential for same services provided by APRNs and CNMs will be removed, the Medical Director of Operations reported. All other codes for CNMs will remain below the physician reimbursement. The obstetrics global codes billed by physicians as well as current and new reimbursement rates were provided. Doulas can bill only three codes: non-clinical prenatal support, attendance at labor and delivery, and postpartum visits.

A representative of the Kansas Medical Society (KMS) provided testimony on the Medicaid physician fee schedule. The representative noted KMS had been advocating for comprehensive fee enhancements to the Medicaid fee schedule for the past several years. The Legislature ultimately approved a 9.0 percent fee increase in 2024 for all physician codes without qualification. Unfortunately, global codes utilized by a variety of physician specialists and physician extenders were not included, which is problematic for services related to maternal care and childbirth. The increase was not applied across all physician codes as the Legislature had intended and doulas were added as a reimbursed provider for maternal care, although no additional appropriation was requested. There had been no discussion with KDHE on how the rate increase would be applied.

Due to the delays in implementing the increases, KMS is uncertain of the fiscal impact of the policy changes. The KMS representative stated an inadequate fee schedule creates a real disincentive for health care providers to include larger numbers of Medicaid patients in their practices. A recommendation for increases in physicians and global codes was provided to the Committee.

A representative of the Kansas Chapter of the American College of Obstetrics and Gynecology provided testimony regarding Medicaid reimbursement rates. The representative noted a review of Medicaid total reimbursement rates for global codes for vaginal deliveries, cesarean sections, and vaginal births after cesarean section revealed that the rates are significantly lower than Medicare rates. Surrounding states offer substantially higher Medicaid reimbursement rates, in some cases up to 2.2 times more than Kansas does. The recent increases in Medicaid rates do not extend to the global rates for prenatal and delivery care. This leaves a critical gap in funding that directly impacts the availability and sustainability of obstetric services, leaving some Kansans at higher risk of preventable poor health outcomes. The representative stated enhanced compensation would enable obstetrics and gynecology physicians to continue providing essential care, thereby improving access and outcomes for mothers and babies.

Written-only testimony was provided by the Kansas Hospital Association related to its work with current and new KanCare contractors for transition into the KanCare 3.0 contract period, the implementation of the Medicaid centralized credentialing project to maintain provider regulatory compliance and facilitate insurance reimbursement, and its involvement on numerous initiatives to increase supply and capacity of the healthcare workforce in Kansas.

KanCare MCO Contract and Protest Process

At the June 24, 2024, meeting, the KDHE Medicaid Director provided a brief summary on the request for proposal (RFP) process for the MCO Medicaid contracts that involved stakeholder input and led to the KanCare 3.0 contract program enhancement focus areas. The enhancement focus areas are care coordination, access to services and workforce, provider experience, maternal and infant health, social

determinants of health, and ensuring quality of health and health care across all populations. The current RFP includes more attention to care coordination and consistency across the three MCOs, as well as monitoring and ensuring compliance and reviewing whether program goals are being met. Some of the contract requirements are prescriptive and others permit each MCO some flexibility in how they implement the requirement. The Committee was provided with the KanCare 3.0 RFP Technical Proposal Evaluation Report and Procurement Negotiating Committee's Request for Cost Proposals.

The Secretary of Administration briefed the Committee on the procurement protest process. The Office of Procurement and Contracts (OPC) implements the process as stipulated by the OPC Procurement Policies and Procedures Manual. OPC received two protests on the KanCare 3.0 RFP by the deadline, from Aetna Better Health of Kansas (Aetna) and CareSource. Resolution of the protests is decided by the Director of Purchases and OPC. Once a decision is made, no further administrative appeal is available from that decision. The protesters may proceed through the judicial process.

The Secretary of Administration stated the Department of Administration was moving forward to implement the awarded contracts.

The Plan President for Aetna posed a number of questions about the contract process during her testimony, including transparency, RFP scoring, and tie-break criteria. The June 5, 2024, Aetna RFP protest letter submitted to the OPC and letters of support were provided.

The Market President for CareSource Kansas provided background on the not-for-profit agency, noting it has been in Kansas for three years and partnered with three Kansas organizations to submit a bid for the KanCare contract: InterHab, the Children's Alliance of Kansas, and the Association of Community Mental Health Centers of Kansas (ACMHCKS). The CareSource protest involved procedural and evaluation concerns in the contract award process. The CareSource June 4, 2024, KanCare RFP protest letter submitted to OPC was provided.

In response to a Committee request, after adjournment of the June 24, 2024, meeting, the Department of Administration provided information on the number of contract protests that resulted in a change to the contracts. The agency noted that, since 2023, one protest had resulted in the Director of the OPC overturning the RFP results. Subsequently, the Department of Administration re-issued the RFP.

KanCare 3.0 RFP Formatting for Scoring, Prescriptive and Non-prescriptive Contract Provisions, Protest Update, and Update on MCO Signed Contracts for 2025

At the August 26-27, 2024, meeting, the Chief Counsel for the Department of Administration provided a statement regarding the KanCare 3.0 procurement. The legal counsels of the Department of Administration, KDHE, and KDADS advised the respective agency Secretaries to not testify before the Committee due to the then-current litigation with Aetna. The Chief Counsel noted there had been a court hearing on August 2, 2024, on the appeal by Aetna regarding the KanCare 3.0 procurement process, but the Shawnee County District Court had not issued a decision. The attorneys for the agencies would stand for questions, but the responses provided by counsel for each agency—the Department of Administration, KDHE, and KDADS—at the meeting could not cross over into legal arguments or analysis.

The Aetna Plan President provided testimony regarding Aetna's protest of the KanCare 3.0 procurement process. Testimony provided included a timeline of key procurement events and supporting documents to illustrate that the process that followed was far from transparent and did not focus on yielding an objective outcome. The Plan President expressed the following concerns: there was no tie-breaking protocol established to address a potential scenario of a tie; all the parties entrusted with leading the process agreed to destroy individual assessment and grading documents, which would have been critical in a tie-breaking situation where the Procurement Negotiating Committee (PNC) needed additional information to render a decision; the PNC was also not allowed to use the results of oral evaluations; and there was an issue with accuracy; examples of these errors were provided to the Committee. Aetna had formally submitted a petition for

judicial review and for an injunction to halt the process.

The Chief Counsel for the Department of Administration, the Aetna Plan President, and the KDHE General Counsel responded to numerous questions on topics including the KanCare 3.0 process; the destruction of individual evaluation notes; and the differences between the procurement processes in KanCare 1.0., 2.0, and 3.0.

The KDHE General Counsel provided numerous KanCare 3.0 RFP documents requested by the Committee. Information regarding provider network was not provided. The Chief Counsel for the Department of Administration explained the State was not privy to or a party to Healthy Blue's provider network as the MCO may be developing that network. Those provider contracts are not public contracts. Those contracts will be discussed with Healthy Blue as part of the readiness review in mid-September. When asked whether the provider network information would be available for the October Committee meeting, the Chief Counsel stated that information is part of the readiness review. Open enrollment began November 1, 2024.

The Chief Counsel responded to another series of questions regarding the KanCare 3.0 process.

Update on KanCare 3.0 Litigation and Continuing Process

At the October 22-23, 2024, meeting, the Chief Counsel for the Kansas Department of Administration provided an update on the KanCare 3.0 litigation. After the August 26-27 Committee meeting, Aetna's request for a judicial review of the OPC Director's decision to deny Aetna's bid protest of the KanCare 3.0 awards was denied. The litigation regarding Kansas Open Records Act issues remained outstanding with no motions pending. The Chief Counsel reported Aetna had filed an appeal of the District Court's decision with the Kansas Court of Appeals. The Chief Counsel stated he would answer questions that did not cross over into legal arguments or analysis that could impact ongoing litigation.

In response to a question from the Committee regarding provider network in the MCO decision,

the Chief Counsel stated it was one factor in the PNC's decision.

The Medicaid Director also updated the Committee on the status of the KanCare 3.0 litigation, noting on October 11, 2024, Aetna filed a request for a stay. The Medicaid Director stated KDHE was proceeding with a January 1, 2025, implementation of KanCare 3.0. The MCOs were required to submit Dual Special Needs Plan contracts to CMS by the first Monday of July 2024, and that deadline was met. KDHE submitted signed KanCare 3.0 contracts to CMS on May 14, 2024, and there have been bimonthly meetings to review the contracts. KDHE received draft feedback from CMS on items that needed to be amended, and KDHE is working on changes. A list of items that must be submitted to CMS before final approval was provided. She provided a summary of each KanCare 3.0 MCO's provider network, noting Healthy Blue's network will continue to increase as additional contracts are signed.

The Medicaid Director presented a review of open enrollment for the period from October 1 to December 17, 2024, and noted current Aetna members were sent a letter noting that Aetna was no longer an option for 2025. Aetna members will be assigned to Healthy Blue if they do not make another plan choice.

Regarding penalties for Aetna for noncompliance with the KanCare 2.0 contract, the Medicaid Director stated the \$5 million bond applies if Aetna breaks the KanCare 2.0 contract before December 31, 2024. After that date, a capitation payment will be withheld. Aetna has been sent notification of the withholding and the requirements for payments. The timeline for finishing capitation withholding will probably be six months but could be longer. Technically, a provider has a year to submit claims. Regarding the requirements for keeping the capitation money, the Medicaid Director stated that all claims must be fulfilled, but there are fair hearing requirements, which would be provided.

KanCare 3.0 Covered Services

At the August 26-27, 2024, meeting, the Medicaid Director provided the KanCare 3.0 RFP Appendix C: Covered Services outlining the

services to be covered by the MCOs beginning on January 1, 2025.

At the October 22-23, 2024, meeting, the Medicaid Director provided a list of new KanCare covered services added from July 1, 2023, through October 1, 2024, and scheduled for addition in January 1, 2025, and highlighted a few of the services.

KanCare Ombudsman

The KanCare Ombudsman provided written-only updates at all of the meetings of the Committee on the services provided by the Office of the KanCare Ombudsman (Office). The data provided included the numbers of initial contacts (Q1: 732, Q2: 774, and Q3: 772) and HCBS general concerns (Q1: 53; Q2 : 61, including an increase from 25 to 36 related to the Frail Elderly waiver). During Q3, the Office saw significant increases in inquiries and requests for assistance related to the I/DD waiver (17.0 percent increase), the Serious Emotional Disturbance (SED) waiver (50.0 percent increase), and the Technology Assisted waiver (150.0 percent increase). The Office also experienced a 27.0 percent increase in provider correspondence during Q3. The KanCare Ombudsman reported, on average during Q3, the Office responded within two days of KanCare member contact, and cases were completed within five days of initial contact.

Medicaid Inspector General

At the February 2, 2024, meeting, the Medicaid Inspector General stated the Office of the Medicaid Inspector General (OMIG) was finalizing its 2023 annual report with expected availability in the near future. The OMIG continued to oversee complaints of fraud, waste, abuse, and illegal acts concerning KanCare, MediKan, and CHIP.

The Medicaid Inspector General reviewed an interim report the OMIG issued on November 1, 2023, recommending that Kansas school districts conduct fingerprint-based criminal history background investigations on all school employees on a documented cycle every five years. The report revealed that an estimated 31 percent of Kansas school district employees who provide Medicaid-related services to students do not have background investigations on file. This was

discovered during a performance audit of the KDHE management of school-based fee-for-service Medicaid reimbursements for the State of Kansas. The report recommends the Legislature adopt a law requiring fingerprint criminal history background investigations for all school employees on a five-year cycle. No Kansas statutes require these checks.

The Medicaid Inspector General stated two additional performance audits were in process: the prior authorization process for Medicaid recipients and reviewing the continuing care retirement community registration process for potential fraud, waste, and abuse. A review of the fraud, waste, and abuse awareness training provided to KDHE employees was provided.

At the June 24, 2024, meeting, the Medicaid Inspector General presented highlights from the 2023 OMIG Annual Report. The Medicaid Inspector General stated the OMIG had received an increasing number of complaints regarding either the Medicaid program (KanCare), the MediKan program, or CHIP. The majority of complaints received are reported by the Department for Children and Families (DCF) for potential beneficiary eligibility fraud.

A performance audit was published in April 2024 regarding the continuing care retirement community registration process. Two additional performance audits were ongoing: the prior authorization process in Kansas for Medicaid recipients, including consistency in how each MCO determines a recipient's level of care, and Medicaid reimbursements to schools.

At the August 26-27, 2024, meeting, the Medicaid Inspector General reported the OMIG webpage had been updated and separated from the Office of the Attorney General webpage. The OMIG webpage will have a link to an online contact to report suspected fraud, waste, abuse, and illegal acts. The Medicaid Inspector General stated complaints of fraud, waste, abuse, and illegal acts concerning Medicaid, MediKan, and CHIP have increased each year. Fraud regarding beneficiary eligibility was the topic of the majority of the complaints. The Medicaid Inspector General noted, with the addition of two special agents, the OMIG had been able to conduct investigations of eligibility and provider fraud. Data were provided

on the number of complaints processed and investigations conducted. The Medicaid Inspector General reported eligibility investigations had resulted in MCO capitation payments being stopped, with a savings of \$150,941.60 based on one year of payments. He noted the need for additional staff to conduct further investigations. Information regarding continuing performance audits was provided.

At the October 22-23, 2024, meeting, the Medicaid Inspector General stated the OMIG webpage was in the final stages of being updated. The Medicaid Inspector General provided information on the number of complaints processed to-date in calendar year 2024, noting the increase in complaints from 2020 to 2024 (estimated). The Medicaid Inspector General noted, since calendar year 2021, the OMIG had identified approximately \$300.0 million in wasteful spending, \$6.3 million in overpayments, and \$25.0 million in potential savings and made 34 findings and 83 recommendations. Two performance audits were ongoing.

Overview of Medicaid Program Expenditures

At the February 2, 2024, meeting, a KLRD managing fiscal analyst provided an overview of Medicaid program expenditures. The program requires agency coordination as the program is funded across two agencies, KDHE and KDADS. KDHE maintains financial management and contract oversight of the KanCare program and medical services. KDADS administers portions of the Medicaid program related to behavioral health, nursing facility reimbursement, HCBS waivers, and payments to the state hospitals.

KanCare is the state's managed care model to deliver Medicaid services. KanCare services are provided through the MCOs and include medical, HCBS waiver services, and CHIP. Non-KanCare services are fee-for-service and include services under the Sixth Omnibus Budget Reconciliation Act (SOBRA) (certain services related to childbirth and life-threatening emergency care), MediKan, and PACE. Expenditures included in human services caseloads estimates are limited to the State's entitlement programs. These expenditures are estimated twice a year. Caseloads expenditures consist largely of payments to MCOs

for medical services provided to beneficiaries. Caseloads do not include expenditures for CHIP. A graph reflecting the ten-year history of KanCare caseload expenditures was provided.

A KLRD fiscal analyst provided an overview of Medicaid program expenditures that pertain to KDADS. KDADS administers the HCBS waiver programs outside of caseloads. While individuals may be eligible for the waivers, they are not entitled to services, which is the reason the I/DD and Physical Disability (PD) waivers have waitlists. A list of the waiver programs in Kansas was provided. A graph reflecting the ten-year history of KanCare non-caseloads expenditures was provided.

A report reflecting the actual historical major Medicaid programs expenditures for FY 2014–FY 2022 was provided to the Committee.

Social Services Budget Related to KanCare

At the August 26-27, 2024, meeting, a KLRD managing fiscal analyst provided an overview of the KanCare Budget. A review of the budget process was presented. The legislative changes to the budget typically fall under one of three categories: ongoing funding, one-time funding, or proviso language. Descriptions and examples of each category were provided to the Committee.

The KLRD managing analyst noted KanCare components in the KDHE budget include administration and medical services. Medical services makes up the majority of the KanCare budget. A breakdown of the KDHE Division of Health Care Finance expenditures was provided. The 2023 Health Care Finance expenditures totaled \$3.5 billion all funds, including \$626.7 million SGF. Medicaid is funded using a mix of state and federal funds. The funding ratio is generally 60.0 percent federal funds and 40.0 percent state funds. KDHE pays the MCOs a monthly payment based on the number of beneficiaries enrolled in each eligibility category (per member, per month). Examples of the eligibility categories were provided. MCOs reimburse individual providers and organizations for each service provided. A subset of providers, such as certified community behavioral health centers (CCBHCs) and federally qualified health centers, are paid a set rate for each person served

through a prospective payment system. Each MCO develops its own provider reimbursement rates but must reimburse at or above a minimum rate set by the State. A medical assistance report is created each year; the Kansas report for FY 2024 was provided.

A KLRD senior fiscal analyst reviewed the KDADS Medicaid budget. The various expenditures by program were presented as a percentage of the budget, as well as a monetary breakdown for FY 2023. A breakdown of the Medicaid budget by all funds was also reviewed. Common adjustments to the KDADS budget, such as increases to existing rates, adding new services or programs, adding waiver slots, and adding caseload funding, were reviewed.

At the October 22-23, 2024, meeting, KLRD staff provided a sample form for tracking funding for KanCare-related social services using the Spring 2024 Caseloads Estimates Overview as an example to assist the Committee in understanding the changes in appropriations.

KDADS Overview and Updates

At the February 2, 2024, meeting, the Deputy Secretary of Hospitals and Facilities provided an agency overview. The organizational changes at KDADS, including promotions to Deputy Secretary of Programs and Interim Commissioner of Behavioral Health Services, were shared. KDADS was recruiting for an Aging Services Commissioner.

At the June 24, 2024, meeting, the Secretary for Aging and Disability Services (Secretary in the KDADS portion of this report) provided an agency overview and introduced the new Aging Services Commissioner.

At the August 26-27, 2024, meeting, the Deputy Secretary of Hospitals and Facilities provided an agency overview. The Deputy Secretary stated the Long Term Services and Support Commission had been sending offers to individuals on the waitlist to fill the additional 500 slots on each of the I/DD and PD waivers, work was continuing on the Community Support (CS) waiver, and issues had come up regarding targeted case management (TCM) and conflict of interest. An \$8.0 million grant from the Department of

Housing and Urban Development to advance, create, and renovate housing across the state for individuals with disabilities was awarded to the Kansas Housing Resources Corporation in partnership with KDADS and the KDHE Division of Health Care Finance. Two stakeholder meetings and a stakeholder input hearing on the KDADS budget development for FY 2026 had been held since the end of the 2024 Legislative Session. The nearly 20 provisos attached to the appropriations bills were being implemented, including the provisos on the Mental Health Intervention Team (MHIT) and the supplemental staffing agency requirements. The results of the Kansas University Center on Disabilities Waiting List Study and the final report of the South Central Regional Psychiatric Hospital Advisory Panel were expected to be completed in September 2024.

At the October 22-23, 2024, meeting, the Secretary provided an update on the agency. The Secretary noted that items included in the presentation may require legislative action to address. KDADS provided a list of the statutory reports, budget proviso reports, and other routine reports that are published during a calendar year.

The Secretary responded to a question from the Committee regarding computer infrastructure, stating KDHE is working with the KDHE Division of Healthcare Finance as it relates to data systems. The Secretary shared that the Kansas Management Information System is outdated. KDADS has an RFP and is seeking a system that would allow it to better manage individuals on the waitlists.

Long-term Services and Supports

Corrective Action Plans

In response to Committee questions at the August 26-27, 2024, meeting, KDADS provided the following documents pertaining to corrective actions plans: Summary of Corrective Action Plan for HCBS Compliance, Kansas HCBS Corrective Action Plan, and Kansas Settings Final Rule Approved Corrective Action Plan and Remediation Strategies.

Program of All Inclusive Care for the Elderly

At the February 2, 2024, meeting, a KDADS representative provided an update on the PACE program.

At the October 22-23, 2024, meeting, a representative of the Midland Care PACE program provided an overview of the PACE program. She stated the PACE model is built on the belief that it is better for seniors with chronic care needs and their families to be served in the community whenever possible. The program delivers the medical and supportive services required through the full continuum of care while maintaining seniors' independence at home. The program is for individuals 55 and older. A list of the included services was provided. There are three PACE provider organizations in the state: Midland Care Connection, Bluestem PACE, and Ascension Living Hope. A brief description of each organization was provided. The PACE program was developed to provide more robust services that allow older adults at risk of premature nursing home placement to remain at home. Over the past several years, policy advancements have reduced barriers and increased access to PACE in Kansas. A list of those barriers and access increases was presented and discussed. A barrier to continued growth is the lack of general consumer knowledge of the program. An American Rescue Plan Act of 2021 (ARPA) grant was awarded for PACE Outreach and Engagement. The representative stated the primary request to the Kansas Legislature is for the annual rebasing of PACE Medicaid rates. The representative stated it is vital that PACE Medicaid rates are updated to ensure PACE remains sustainable and continues to save the State of Kansas at least 10.0 percent in Medicaid costs for each client served. Statistics related to the program were provided.

HCBS

Community Service Coordination. At the February 2, 2024, meeting, the KDADS Assistant Commissioner of Long Term Services and Supports (LTSS) noted the State is planning to implement TCM-related services for HCBS PD, Brain Injury (BI), and Frail Elderly (FE) waiver populations as part of the new MCO contracts. The new service will be called Community Service Coordination. The new program is estimated to cost \$8.3 million all funds, \$3.2 million SGF, annually.

Community Support waiver. At the February 2, 2024, meeting, the KDADS Assistant Commissioner of LTSS provided an update on the CS waiver for individuals with I/DD, indicating

the plan was to have a contractor in place by March or April 2024 to help with the development of the waiver. The CS waiver will have a proposed annual \$20,000 annual cap per participant. A phased rollout of the CS waiver is expected for 500 participants funded by 60.0 percent federal and 40.0 percent state funds. Once a contractor is on board, the application for the CS waiver will be submitted to CMS for approval as soon as possible. After CMS approval, services are expected to begin in the latter half of 2025.

At the August 26-27, 2024, meeting, the Commissioner of LTSS stated KDADS had brought on a contractor to assist in the development of the CS waiver, and internal CS waiver staff had been hired. CS waiver services will include transportation, employment support, personal care, respite, and various therapies. Due to network adequacy, a phased rollout is planned starting with 500 participants, funded 60.0 percent with federal funds and 40.0 percent with state funds for Year 1. Year 2 will add 1,000 participants. The estimated cost was provided for Years 1 and 2 and at full implementation. A timeline for the CS waiver was provided, with anticipated CMS approval by April 2026.

HCBS waiver enrollment and waitlists. A KDADS representative provided an update on the HCBS waiver enrollment and waitlists at every Committee meeting.

At the February 2, 2024, meeting, the Assistant Commissioner of LTSS noted, as of December 2023, the waitlist for the I/DD waiver was 5,187, and the waitlist for the PD waiver was 2,361. Approximately 27,000 individuals were receiving HCBS services.

At the June 24, 2024, meeting, the Commissioner of LTSS noted, as of June 13, 2024, the waitlist for the I/DD waiver was 5,407, and the waitlist for the PD waiver was 2,428.

At the August 26-27, 2024, meeting, the Commissioner of LTSS noted, as of July 14, 2024, the waitlist for the I/DD waiver was 4,692, and the waitlist for the PD waiver was 1,356.

At the October 22-23, 2024, meeting, the Commissioner of LTSS reviewed the process for additional offers to the I/DD waiver and the PD

waiver. The Commissioner stated 519 individuals accepted the I/DD waiver offer; the I/DD waitlist was 4,549 as of October 10, 2024; 440 individuals accepted the PD waiver offer; and the PD waitlist was 1,069 as of October 10, 2024. The Commissioner noted 1,000 slots were open for the current number on the PD waitlist, and the goal is to not have anyone on the PD waitlist by the first of calendar year 2025. Regarding the I/DD waitlist, the Commissioner stated the additional offers have shortened the I/DD waitlist and the wait is now at eight years.

Kansas University Center on Disabilities Waiting List Study. At the February 2, 2024, meeting, the KDADS Assistant Commissioner of LTSS provided an update on the Kansas University Center on Disabilities (KUUCD) Waiting List Study, including two aims for the study. The purpose of Aim One was to understand the general characteristics of people on the I/DD and PD waitlist to aid in planning for services that will meet their needs. It would also create a predictive model for services needed and potential crisis exceptions. The purpose of Aim Two was to collect data from people on the waitlist to understand their demographics, needs, and experiences; identify people at risk for entering services through a crisis exception in the next three to five years; forecast service and support needs; and identify important health, employment, community living, and support needs of people on the waitlist. The survey was to continue through May 2024.

At the June 24, 2024, meeting, the Commissioner of LTSS discussed preliminary findings of a report on the I/DD waitlist. About 30 percent of individuals who are on the waitlist are children; the average age of a caregiver is 47 years; and most persons prefer to stay home, utilizing a family member as the caregiver. CMS permits paying family members as caregivers. Transportation is a crucial need for the I/DD population, as it enables or enhances the ability to hold a job, participate in social activities, and obtain health care. A representative of KUUCD provided an HCBS Waiting List Caregiver Survey Interim Report.

At the August 26-27, 2024, meeting, the Commissioner of LTSS stated the final KUUCD waitlist study report was due in October 2024 and

would include the amount of original funding for the study and the amount spent to-date.

At the October 22-23, 2024, meeting, a representative of KUUCD provided an update on the waitlist study, stating the goal of the project is to inform KDADS decision making regarding system capacity and reducing waitlists. The study notes a uniform, transparent data collection system would allow an understanding of the overall makeup of the people on the I/DD and PD waitlists and aid in the planning for services to meet the needs of individuals currently on the waitlists. The study also looked at the actual services needed and potential risk exceptions. Charts were provided reflecting the approximate ages of people on the I/DD waitlist; the approximate ages of people on the PD waitlist; and the I/DD crisis exceptions. He noted the caregiver needs led the list for I/DD crisis exceptions, and imminent risk of nursing facility placement was the primary PD crisis exception. A summary of the recommendations for data systems, policy and procedures, and CS waiver, as well as a copy of the Kansas Waiting List Final Report were provided.

A KDADS representative reported the cost of the waitlist survey was \$971,607.63.

Quarterly HCBS report. An appendix with additional data on HCBS waiver enrollment, census, and caseload and state hospital census was provided at each meeting.

Waiver Rate Standardization

At the February 2, 2024, meeting, the KDADS Assistant Commissioner of LTSS reviewed a cost estimate for waiver rate standardization to increase HCBS personal care service rates to align with current I/DD rates.

Behavioral Health

At the June 24, 2024, meeting, in addition to the information specified below, KDADS also provided the form for Behavioral Health Client Assessment, Referral, and Evaluation (CARE).

988 Suicide and Crisis Lifeline

At the June 24, 2024, meeting, the Behavioral Health Services Commissioner provided an update on the 988 suicide and crisis lifeline. The lifeline

went live on July 16, 2022. Callers are given the options of choosing a Spanish-speaking counselor or a counselor trained for military veteran callers. The network of responders includes several community mental health centers (CMHCs) and Headquarters, based in Lawrence. The lifeline was meeting national criteria for calls answered.

Certified Community Behavioral Health Clinics

At the February 2, 2024, meeting, the KDADS Interim Commissioner of Behavioral Health Services presented an update on CCBHCs. All 9 of the first cohort of CCBHCs have been fully certified, with 14 of the remaining 16 provisionally certified. The two remaining CMHCs were expected to “go live” as CCBHCs by July 1, 2024. KDADS planned to submit an application for a federal Demonstration Program in March 2024, with an anticipated start date of January 1, 2025. The full rebase of the original CCBHCs has been completed. The nine original CCBHC locations have gone through the Certification Full Fidelity Review and were awaiting the full certification certificate. KDADS was assisting the two remaining CMHCs with their move through the CCBHC provisional certification process. KDADS was working to develop a review process to include additional elements outside of the CCBHC program for evaluation. A map noting areas in Kansas covered by CCBHCs was provided.

CCBHC history and funding. At the June 24, 2024, meeting, the KDADS Behavioral Health Services Commissioner provided testimony regarding the history and funding of the CCBHCs and presented the background and current status of the Kansas CCBHC system. The CCBHC model is an integrated system of care addressing mental health, substance use, and primary care. It uses a prospective pay system (PPS) of reimbursement in which Medicaid payment is a pre-determined fixed amount representing the average cost per encounter of all persons receiving services from a particular clinic. The PPS rate is the annual allowable cost per annual daily visit. Requirements for CCBHC certification include staffing, availability and accessibility of services, care coordination, scope of services (nine core services are required and described in testimony), quality reporting, organizational authority, and governance accreditation. ARPA, as well as some

COVID-19 funding sources, were used in funding the staffing requirements.

The Behavioral Health Services Commissioner provided a list of agencies involved in care coordination activities. Care coordination is the primary component of the CCBHC structure, and it includes nine core services that CCBHCs must provide directly or through formal partnerships. Four evidence-based practices are also required of CCBHCs. Additionally, 22 measurable metrics (13 clinic-led and 9 state-led) must be reported to the federal government. The State has established a data warehouse to collect information such as demographics, age, location, current procedural terminology codes and programs, visits, and services over time.

The Behavioral Health Services Commissioner noted Section 223 of the federal Protecting Access to Medicare Act (H.R. 4302), enacted in 2014, established CCBHCs. To participate in the CCBHC Demonstration Program, each state was required to first apply for a Substance Abuse and Mental Health Services Administration (SAMHSA) CCBHC Planning Grant. In Kansas, the one-year planning grant was awarded in March 2023. The State has been accepted into the four-year demonstration program, which will begin on January 1, 2025, and continue through December 31, 2028. During the demonstration period, the State will receive an enhanced FMAP match rate, enhanced technical assistance from the National Council for Mental Wellbeing, and support from CMS, SAMHSA, and other federal entities.

An infographic was provided showing the number of CCBHCs that are fully certified, provisionally certified, and in the review process. The providers that do not meet the CCBHC full certification requirements by January 1, 2025, can request a full certification review within nine months. If the full certification requirements are not met upon review, the provider would have to wait one year (until September 2026) to reapply. Thirteen Kansas CMHCs are fully certified CCBHCs: Bert Nash, Central Kansas, ComCare, Four County, High Plains, Horizons, Johnson County, Pawnee, Prairie View, South East, Spring River, Valeo, and Wyandot. Six CMHCs were provisionally certified, and another seven were in the review process.

The Behavioral Health Services Commissioner stated, as of May 2024, more than 86,500 unduplicated individuals were served by CCBHCs in Kansas.

At the August 26-27, 2024, meeting, the Behavioral Health Services Commissioner provided follow-up information in response to questions posed regarding CCBHCs at the June 24, 2024, meeting regarding the difference in TCM between that provided by CCBHC/CMHCs and the I/DD waiver population (KDADS TCM memo); CCBHC measurable metrics (CCBHC Criteria report); the type of transportation provided by CCBHCs, specifically around the Individual Placement and Support supported employment model; the number of unduplicated individuals served by CCBHCs in the state, the number of CCBHCs fully certified in 2024; the ability of the CCBHC Data Warehouse to track data on the drugs used, including psychotropic drugs; the adequacy of the PPS rate and the impact on MCOs' costs; and data on improvement in CCBHC workforce shortage. Specific metrics tracked by the CCBHC Data Warehouse on the drugs used, including psychotropic drugs, was provided at the October 22-23, 2024, meeting.

At the October 22-23, 2024, meeting, the Behavioral Health Services Commissioner provided follow-up information from CCBHCs on medications that were dispersed and included graphs reflecting the percentage of each type of drug dispersed. The specific metrics used to track medication usage and their significance were reviewed. The Commissioner noted the CCBHC Demonstration Project begins January 1, 2025. KDADS will provide outcomes and measures based on the required measurements from SAMHSA and CMS in 2025.

I/DD Crisis Stabilization System

At the August 26-27, 2024, meeting, the KDADS Commissioner of Behavioral Health Services provided an update on I/DD and crisis stabilization. Six I/DD crisis stabilization projects were successfully implemented between December 1, 2023, and June 30, 2024, increasing community capacity to prevent crisis incidents and provide effective crisis response. Johnson County and Lake Mary Center were creating kits to be distributed to law enforcement agencies when responding to calls involving people with I/DD,

behavioral health needs, or dual diagnoses. Approximately \$3.5 million in ARPA funding has been awarded for Mobile Crisis Training and Enhancement of Supportive Services for Individuals with I/DD and co-occurring behavioral health needs to provide statewide training for I/DD professionals, first responders, and others to prevent or stabilize crisis events for these individuals. The funds must be drawn down by December 2025. The vendor award was pending for this RFP. The Behavioral Health Services Commissioner reported on an enhanced FMAP opportunity through the ARPA funds awarded to the state in coordination with the LTSS Commission.

At the October 22-23, 2024, meeting, the Behavioral Health Services Commissioner reviewed the six I/DD Crisis Stabilization projects that were successfully completed between December 1, 2023, and June 30, 2024. An RFP had been awarded to Guidehouse, Inc., to improve the quality of crisis services provided to individuals with complex behavioral health needs and I/DD. The funding is from federal ARPA enhanced Medicaid HCBS, and the project will run from September 24, 2024, to September 30, 2025. The project provides statewide training to prevent or stabilize crisis events when experienced by an individual with I/DD and co-occurring behavioral health needs.

The Director of the Johnson County Community Developmental Disability Organization provided follow-up information regarding Johnson County and crisis stabilization funds.

Opening Mental Health Codes

At the February 2, 2024, meeting, the KDADS Behavioral Health Commissioner presented information about state plans to expand certain Medicaid reimbursement codes. Due to the increased demand for mental health and substance use disorder services, the KDADS Behavioral Health Services Commission planned to open certain mental health billing codes to providers outside of the CMHC/CCBHC system, beginning July 1, 2024. Additional providers will include federally qualified health centers, substance use disorder service providers, and child welfare providers. The opened codes include the specialized community-based rehabilitation

services, which are community psychiatric support and treatment, psychosocial rehabilitation, peer support, crisis stabilization, mobile crisis intervention, and supportive housing.

KDADS estimated the fiscal impact of expanding the mental health codes to other providers to be budget neutral because medical necessity will remain the same and the number of eligible members will not increase. The Behavioral Health Services Commissioner noted the CCBHCs will be paid at the PPS rate. Other mental health providers using fee-for-service will be able to bill the mental health codes if they meet the standards and clinical licensure requirements. KDADS is working on the front end with the Kansas Medical Assistance Program and the MCOs to have more insight on how the codes are billed and will audit to determine utilization. Recipients of the mental health services must meet Medicaid medical necessity criteria as determined by a licensed mental health professional or a physician.

Psychiatric Residential Treatment Facilities

At the February 2, 2024, meeting, the KDADS Commissioner of Survey, Certification, and Credentialing stated 156 individuals (73 in foster care) were on the psychiatric residential treatment facilities (PRTFs) waitlist as of January 2, 2024. The number of PRTF licensed beds at the time was 402, of which 128 were not in use, primarily due to staffing issues. The PRTF census at that time was 258, with 78 of these being youth in foster care.

At the June 24, 2024, meeting, a KDADS representative stated 146 individuals (59 in foster care) were on the PRTF waitlist as of June 13, 2024. The number of PRTF licensed beds at the time was 452, of which 197 were not in use, primarily due to staffing issues. The PRTF census at that time was 255, with 82 of these being youth in foster care.

At the August 26-27, 2024, meeting, the KDADS Behavioral Health Services Commissioner noted 120 individuals (48 in foster care) were on the PRTF waitlist as of August 2024. The number of PRTF licensed beds at the time was 452, of which 168 were not in use, primarily due to staffing issues. The PRTF census at that time

was 285, with 83 of these being youth in foster care.

At the October 22-23, 2024, meeting, the KDADS Behavioral Health Services Commissioner stated 109 individuals (43 in foster care) were on the PRTF waitlist as of October 3, 2024. The number of PRTF licensed beds at the time was 452, of which 159 were not in use, primarily due to staffing shortages. The PRTF census at that time was 259, with 97 of these being youth in foster care. The Commissioner stated there is a waitlist for children in foster care. Foster children on the waitlist may be in transition, waiting to find placement, or in a foster home.

The KDADS Behavioral Health Services Commissioner provided specialty PRTF study results at the October 22-23, 2024, meeting. An environmental study was conducted to identify opportunities for KDADS to facilitate provision of appropriate treatments in a safe and sustainable manner for youth. A proviso in the budget was used to fund and conduct the study. The Commissioner reviewed the key steps of the study. Charts were reviewed on the total weekly census and waitlist for youth from May 2019 through May 2024 and the total licensed PRTF beds versus staffed beds. The Commissioner noted that while the number of total licensed beds has increased 39.0 percent since 2019, staffed beds have increased only 19.0 percent. A breakdown of the PRTF waitlist was given, noting 136 youth on the list, 68 of them with specialized needs.

The Commissioner noted that if the PRTFs were fully staffed, capacity for specialized care would be less than the determined need, while capacity for non-specialized care would be more than the determined need. The continuum of care before and after PRTF has points of services that are not fully linked or accessible. The annual salaries of PRTF direct care workers make recruiting staff difficult. A chart was provided reflecting the reimbursement rates for PRTFs treating youths with specialized needs are lower than for non-specialty PRTFs. The increase in reimbursement rates of 45.0 percent since 2019 has not correlated to an increase in staffed beds.

The Commissioner reviewed the percentage of total PRTF waitlist denials by multiple PRTFs has increased over time, which is due to staff being

unable to deal with overly aggressive youths. The Committee was provided with options to consider to address the access gap. The one-time and annual financial impacts were discussed. Implementing all options in one year could require \$12.0 million to \$18.0 million in upfront investment but could potentially avoid \$4.0 million to \$5.0 million in annual costs.

Mental Health Intervention Team Program Overview, Funding, and Billing

At the February 2, 2024, meeting, a representative of the Kansas State Department of Education (KSDE) provided testimony regarding the MHIT program, which focuses on kindergarten through 12th grade students and their families by identifying students with mental health needs, helping families navigate mental health services, and linking them with existing statewide behavioral health resources within the mental health provider network. There is also additional focus on children in foster care.

The KSDE representative described the MHIT program, its history and funding, and success stories. The MHIT program started in the 2018-2019 school year with 9 pilot school districts and increased to 90 school districts in the 2023-2024 school year. As of December 20, 2023, the program served 5,732 students, of which 477 were foster children. A map with the locations of school districts participating in the MHIT program and the 2022-2023 MHIT grant report were provided.

Representatives of the ACMHCKS noted the school-based staff and the CMHC staff work as a team to carry out the program and discussed their roles and responsibilities. The representative noted the MHIT program provided funding for families having difficulties paying for services and reviewed program outcomes. The benefits of the MHIT program were provided and include students missing less school because therapy sessions occur on-site with little disruption to the school day, transportation is provided when necessary, and virtual meetings are available to parents who are unable to meet at the school with the liaison or therapist.

At the August 26-27, 2024, meeting, the KDADS Behavioral Health Services Commissioner provided an update on the MHIT

program, noting oversight of the program had changed July 1, 2024, to KDADS through a 2024 Legislative proviso. The KSDE data portal indicated that nearly 7,000 students were provided with individualized behavioral health services during the 2023-2024 school year. This number included nearly 600 foster children. KSDE continued to maintain the KSDE data portal, to which KDADS had access. Expansion funding of \$4.5 million was provided for FY 2025. The proviso amended the funding practice to provide 65.0 percent of the grant to the school district and 35.0 percent to the mental health providers. Also new for the 2024-2025 school year was the Qualified School Program, which provides for the inclusion of non-public schools that meet the program requirements. Information was provided regarding the purpose of the seven-member MHIT Qualified School Board and the composition of the Board's membership. Program implementation successes were reviewed.

At the October 22-23, 2024, meeting, the Behavioral Health Services Commissioner reviewed the MHIT program, noting more than 90 school districts, with more than 400 buildings, were serving 7,350 students, of which 3,159 were new participants. The Commissioner clarified the MHIT program is for students only, but if additional funding is provided, it could be expanded to include teachers.

State Hospitals

Facilities

At the February 2, 2024, meeting, the Deputy Secretary of Hospitals and Facilities reviewed the location of the adult inpatient psychiatric beds and the number of beds per location.

At the October 22-23, 2024, meeting, the Deputy Secretary provided an update on the regional state psychiatric hospital and provided other state hospital-related information as written-only testimony, on topics including building a facility in Sedgwick County, staff vacancies, bonus payments to assist with staff retention, alternatives to state institutions, mobile services to restore competency, and reimbursements to counties for services provided when in-patient services are not available.

Larned State Hospital Update

At the February 2, 2024, meeting, the Deputy Secretary of Hospitals and Facilities provided an update on the Larned State Hospital (LSH) pilot projects to conduct outpatient mobile competency services in various counties in Kansas. Several counties were working with CMHCs to do competency restorations. KDADS entered a contract with Wheat State Healthcare to coordinate competency services provided by CMHCs to judicial districts. Twenty-three CMHCs have staff trained to conduct competency evaluations, and 18 have staff trained in competency restoration. The Deputy Secretary noted two laws enacted in 2023 direct KDADS to reimburse for costs related to delays in admission to LSH and Osawatimie State Hospital (OSH), 2023 SB 228 and 2023 HB 2184. A chart reflecting the reimbursements to counties for forensic competency wait time payments and the involuntary commitment costs was provided to the Committee.

At the August 26-27, 2024, meeting, the Deputy Director of Hospitals and Facilities provided information regarding mobile competency services provided by LSH staff and Wheat State Healthcare. He reviewed 2023 SB 228 (Forensic Competency Wait Time Payments) and 2023 HB 2184 (Involuntary Commitment Costs) that dealt with reimbursements to counties, health care providers, law enforcement, and other county entities for unpaid costs of holding a person in custody, patient observation, and transportation for individuals waiting for admission to a state hospital or state institutional alternative (SIA) hospital. A chart was provided reflecting the reimbursement amounts paid to the counties through June 2024.

At the October 22-23, 2024, meeting, the Deputy Secretary of Hospitals and Facilities stated 2023 SB 228 allows KDADS to reimburse county law enforcement when they are holding a patient who is waiting for a competency evaluation at LSH and noted \$9.0 million has been paid since the program started last year. The Deputy Director also noted contract labor overages at LSH were close to budget. In 2023, \$43.0 million was spent on contract staffing, and current year projections are a little under budget.

South Central Regional State Psychiatric Hospital

At the February 2, 2024, meeting, the Deputy Secretary of Hospitals and Facilities reviewed the two recommendations made by the Governor's Advisory Panel for the regional state hospital project. The first recommendation included asking the Governor and the Legislature to include funding in the FY 2025 approved budget for KDADS to construct an additional 50 beds at the South Central Regional State Psychiatric Hospital, expanding the number to 100 beds for adults with acute mental illness and criminal defendants requiring competency evaluation or treatment. The second recommendation was to update Executive Order 23-05 to move the final report due date from June 30, 2024, to December 30, 2024, to allow the panel more time to study and consider recommendations. It was noted that the location for the South Central Regional State Psychiatric Hospital will be the northwest corner of MacArthur and Meridian in Wichita.

At the June 24, 2024, meeting, the Deputy Secretary of Hospitals and Facilities provided an update on the regional state hospital project in the Wichita area. His update noted municipal zoning and boundary changes have concluded for the project, and the design work was proceeding. The hospital will have 104 beds instead of 52.

At the August 26-27, 2024, meeting, the Deputy Secretary of Hospitals and Facilities provided an update on the regional state hospital project, noting construction RFPs were scheduled for release on October 24, 2024, with construction to be completed by August 2026.

At the October 22-23, 2024, meeting, the Deputy Secretary of Hospitals and Facilities stated architects were completing development of the construction documents. Construction RFPs were scheduled for release October 24, 2024, with responses due by November 19, 2024. The selection process will occur during December 2024, with construction to begin in February 2025 and the build completed by August 2026. The project is for 104 beds. The land donation agreement for the building site had been executed and the property title had been transferred to Sedgwick County.

Osawatomie Sate Hospital Moratorium

At the February 2, 2024, meeting, the Deputy Secretary of Hospitals and Facilities reviewed the history of the lifting of the moratorium on voluntary admissions at OSH and the status of the remodel of the Biddle Building.

State Institution Alternatives

At the February 2, 2024, meeting, the Deputy Secretary of Hospitals and Facilities reviewed the SIAs utilization and a map of the locations of the Kansas adult inpatient psychiatric beds.

At the August 26-27, 2024, meeting, the Deputy Secretary of Hospitals and Facilities provided a list of the SIAs.

Workforce

At the February 2, 2024, meeting, the Deputy Secretary of Hospitals and Facilities discussed staffing vacancies at various state facilities, as well as agency efforts for recruitment and retention of staff.

At the August 26-27, 2024, meeting, the Deputy Secretary of Hospitals and Facilities provided charts regarding staff vacancies at the state hospitals. The Deputy Secretary noted KDADS is working with Personnel Services to develop work bonuses to improve hiring, recruiting, and retention of critical direct care state hospital employees. The total per-employee bonus cannot exceed \$10,000 during FY 2025. There are sign-on bonuses, referral bonuses, retention bonuses, pick-up shift bonuses, and longevity bonuses. A chart showing the amounts of bonuses paid between July 21 and August 3, 2024, was provided.

Survey, Certification, and Credentialing

Adult Care Home Enforcement Remedy Authority

At the August 26-27, 2024, meeting, the Commissioner of Survey, Certification, and Credentialing presented information on nursing facility enforcement, noting adult care home enforcement remedies include correction orders, civil penalties, bans on admissions, and licensure denial, suspension, and revocation. The maximum fines and civil penalties for the various violations were outlined. Factors considered in setting the

amount of a fine or penalty include the severity of the violation, the good faith effort by the facility to correct the violation, and the history of compliance by the adult care home.

The Commissioner also provided an overview of the three federal categories of remedies for deficiencies that CMS may impose against a certified skilled nursing facility related to potential to cause harm or actual caused harm to residents. A provided chart reflected the mandatory criteria for immediate imposition of federal remedies. Details related to formal notice requirements and civil monetary penalties were provided.

At the October 22-23, 2024, meeting, the Commissioner reviewed the new CMS staffing requirements that became effective June 21, 2024. As of this meeting, CMS had not provided any additional updates to the new minimum staffing requirements nor had the federal agency provided any additional training or changes to the survey process.

Long-term Care Facilities' Operating Status

At the February 2, 2024, meeting, the KDADS Commissioner of Survey, Certification, and Credentialing provided information regarding LTC facilities' change of ownership, closures, and openings in 2023. Charts were provided showing the numbers of adult care home beds closed and opened over the past five years.

Nursing Home Administrator Licensure

At the August 26-27, 2024, meeting, the Commissioner of Survey, Certification, and Credentialing provided information regarding requirements for a licensed nursing home administrator. The Board of Adult Care Home Administrators (BACHA) had discussed in recent meetings the topic of lowering the educational requirement for a nursing home administrator from a bachelor's degree to the level in neighboring states, which is as low as a high school diploma. This was being considered due to a concern with administrator vacancies. BACHA decided to stay with the current requirement. A comparison of the Kansas and Missouri nursing home administrator licensure requirements was provided showing Missouri requires only a high school diploma to sit for the exam (one of six states with that minimum education requirement).

Psychiatric Residential Treatment Facility Inspections

At the February 2, 2024, meeting, the KDADS Commissioner of Survey, Certification, and Credentialing stated KDADS inspects PRTFs annually and conducts on-site visits for annual licensure renewal to ensure providers continue to meet rule and regulation. Unannounced on-site visits are conducted for complaint allegations and adverse incident reports. There were 24 unannounced inspections in 2023.

Rural Emergency Hospital Physical Environment Waiver

At the August 25-26, 2024, meeting, the KDHE Bureau Director of Facilities and Licensing provided further information regarding the Rural Emergency Hospital (REH) issue with Mercy Hospital – Moundridge (Mercy Hospital) and stated the issue lies at the federal level. The facility has provided long-term care through skilled nursing facility beds. The information located through a document search indicated the facility was first licensed in 1975. In 1997, Mercy Hospital terminated its skilled nursing facility licensure and changed to swing bed services only. With a swing bed, the facility can continue to provide the services. However, when a facility changes to an REH, CMS requires the facility to give up its swing beds for a monthly stipend of \$270,000. KDHE has discussed the issue with KDADS and CMS, but because the beds stopped being CMS-certified skilled nursing facility beds in 1997, CMS views them as swing beds that qualify only for the stipend. The Mercy Hospital representative attempted to attain a waiver from CMS but was unsuccessful. The Mercy Hospital representative may be able to file an appeal to CMS. KDHE cannot solve the problem as it does not have authority or jurisdiction to change the beds back to skilled nursing facility beds or to authorize reimbursement. The Bureau Director did not believe any other facilities had the same issue as Mercy Hospital. The Bureau Director stated he believed the issue came down to interpretation by CMS. The skilled nursing services had been provided the entire time. The reimbursement for the skilled nursing level of care provided stopped in December 2023 when Mercy Hospital became an REH. Mercy Hospital receives only a stipend for surrendering its swing beds.

In response to Committee questions at the August 26-27, 2024, meeting, the Deputy Director of Hospitals and Facilities stated KDADS has limited authority to do a waiver. KDADS cannot change or update a license based upon how a facility has been historically utilized. When the administrative regulation changed, some facilities were grandfathered in that would not meet current standards for skilled nursing facilities as a licensed skilled nursing facility because those facilities had historically operated as licensed skilled nursing facilities. Mercy Hospital did not have a skilled nursing facility license at the time of the administrative regulation change, so it could not be grandfathered in. KDADS did an on-site review and put together a list of what would need to be done for Mercy Hospital to meet the current rules and regulations for licensure as a skilled nursing facility.

In response to Committee questions, a Kansas Hospital Association (KHA) representative stated the bill passed during the 2024 Legislative Session (House Sub. for SB 287) addressed REH eligibility and would not necessarily apply to the Mercy Hospital situation. The representative stated a possible solution was to statutorily grant KDADS authority to provide a waiver in these situations as the issue may be a deterrent to future hospitals seeking REH designation. KHA would work to clarify that authority for the agency.

Staff Training and Certification

At the February 2, 2024, meeting, the Commissioner of Survey, Certification, and Credentialing provided a chart reflecting the number of approved certified nurse aide (CNA), certified medication aide (CMA), and home health aide (HHA) courses based on start date and comparing years 2020 through 2023. A chart was provided for the same period for initial CNA, CMA, and HHA certifications.

Supplemental Health Care Services Agencies' Registration and Reporting

At the August 26-27, 2024, meeting, the Commissioner of Survey, Certification, and Credentialing provided an update on the Supplemental Health Care Services proviso. The proviso, added to the KDADS budget for FY 2025 in SB 28, Sec. 83, requires supplemental health care service agencies to register with KDADS, pay

a fee not to exceed \$2,035, and provide quarterly reports detailing the average amount the agencies charge facilities for each employee and what they pay their employees. These are staffing agencies that provide registered nurses to nursing facilities and health care facilities. The first quarterly report would be available in October 2024. The language of the proviso and an implementation timeline were provided to the Committee. To date, of the potential registrants, 91 staffing agencies had registered. There is no penalty to nursing facilities or health care facilities for using supplemental health care service agencies that do not register. The first reporting period will cover July 1, 2024, through September 30, 2024. KDADS will provide a comprehensive report to the 2025 Legislature.

At the October 22-23, 2024, meeting, the Commissioner of Survey, Certification, and Credentialing provided information regarding supplemental health care staffing agencies, noting, as of October 22, 2024, 48 of the 118 staffing agencies in the state were reporting assignments. A chart reflecting the average pay versus the average charge for each staff type was reviewed.

Presentations on KanCare from Individuals, Providers, and Organization Representatives

Written-only testimony was presented at the February 2 and June 24, 2024, Committee meetings by individuals, providers, and representatives of organizations. Written and oral testimony was provided by individuals, providers, and representatives of organizations at the August 26-27 and October 22-23, 2024, Committee meetings.

Some individuals, providers, and organizations gave positive feedback for the following: increasing the reimbursement rate for direct applied behavior analysis (ABA) treatment to \$65 per hour from \$47 per hour; the steady progress the State has made over the past few years in the Medicaid dental program; the funding to fully rebase nursing facility Medicaid rates for the past three fiscal years, which has allowed nursing facilities to remain open to care for Kansas seniors; the Medicaid add-on included in provider rates the past two years has been extremely important for caring for Medicaid recipients in

adult care homes; and the implementation of effective policies for individuals and families affected by autism spectrum disorder.

Concerns and suggested solutions presented by conferees are summarized below.

Concerns

ABA rates. The cost of providing actual care for children with autism spectrum disorder has risen significantly due to inflation, and both state and commercial payers have not kept pace with those rising costs when it comes to reimbursing providers for the care provided. The KanCare reimbursement rate for CPT Code 97155 is \$24.00 per unit (every 15 minutes), and this rate has been in place since April 1, 2019. This rate pertains to board-certified behavior analysts (BCBAs) directly monitoring the delivery of ABA treatment by registered behavior technicians (RBTs).

ABA workforce. There is a need to increase the number of ABA clinics coupled with diagnosticians operating in Kansas, and to address the shortage of BCBAs and RBTs in Kansas.

Adult care sector. Adult care homes are concerned about the continuity of the Medicaid add-on included in provider rates the past two years that has been extremely important for caring for Medicaid recipients in adult care homes.

CHIP. A permanent fix is needed to the ongoing issue with CHIP eligibility in KSA 38-2001, which stipulates that CHIP eligibility is to be up to 250.0 percent of the 2008 FPL. Additionally, due to changes in federal regulations related to eliminating waiting periods and lockout periods, the state will have until June 2025 to address the lockout period issue. The lockout periods eliminated by federal regulations are found in KSA 38-2001(e). The statute states a child is ineligible for CHIP coverage if the child's family has not paid the enrollee's applicable share of the premium due. The statute further states such child will again be eligible for CHIP coverage for the remaining months of the continuous eligibility period if the family pays all of the delinquent premiums owed during the year.

Community Support waiver. The CS waiver should include an employment component. The

CS waiver needs adequate funding but also appropriate definitions of services that provide flexibility so that multiple needs and situations can be met.

Dental coverage in KanCare. Low Medicaid dental rates have prevented dental offices from accepting new Medicaid patients.

Direct support workers. Despite the invaluable services direct support workers provide, they are often undervalued and poorly compensated for their work. It is difficult to attract and retain direct care workers.

Federal nursing homes minimum staffing rule. The federal minimum staffing rule for nursing facilities is an unfunded mandate that could result in nursing facility closures. Twenty-one LeadingAge state affiliates, including the Kansas affiliate, have filed suit in the U.S. District Court's Northern District of Iowa to overturn the CMS Nursing Homes Minimum Staffing Standards mandate.

HCBS rate parity. There is a need to secure rate parity among all HCBS waivers. While additional funding was appropriated by the 2024 Legislature, the current patchwork approach to rate setting resulted in the increases not being applied equitably across waivers. Rate parity is very important across Medicaid waivers for services provided by direct service workers in the self-directed waiver programs. Unequal pay for similar services on separate waivers creates hiring problems and discriminates among persons depending on the waiver services they receive.

Home plus beds. The costs of operations for home plus facilities have increased dramatically in the past five years. An increase from the statutory limit of 12 beds to 16 beds is needed to allow additional income without drastically increasing overhead and would still comply with the State Fire Marshall classification of a small, residential room and board facility.

Hospital long-term care physical environment waiver. Concerns were expressed regarding the number of long-term beds in the state. With the introduction of the new federal REH initiative to which many hospitals are seeking transition, it is now a requirement that no

inpatient beds be available. This represents a significant change from the critical access hospital (CAH) model, which allows for inpatient beds, including those for long-term care units associated with hospitals. The LTC units were not licensed under Kansas adult care home statutes but provided essential LTC services under hospital licensure. With the REH designation requiring no inpatient beds, hospitals transitioning from the CAH to the REH model must either close the inpatient beds or license the building as an adult care home. Hospital LTC units are often housed in older buildings that may not meet current physical environment regulations but could comply with older standards through a waiver process.

KDHE refused to license the skilled nursing unit in a hospital converting to a REH designation (Mercy Hospital), and KDADS denied a physical environment waiver to allow a distinct part of the hospital to be licensed as an existing skilled nursing unit. The waiver was denied due to the technical interpretation by CMS that the facility was previously licensed as a hospital-based skilled nursing facility rather than an adult care home. The facility would have to meet all new facility requirements for an adult care home, as the REH designation is available only to existing hospitals and not new hospitals.

Hospital provider credentialing and billing. Concerns have been expressed by hospitals relating to provider credentialing and the rendering of services without billing complications.

KanCare procurement. Concern was expressed regarding the awarding of a KanCare 3.0 contract to a company associated with a past MCO, Amerigroup, that still owes the State money. Concerns also were expressed regarding the current MCO procurement process.

MCO contract extension. There is a need to extend the length of the MCO contract. By the time the MCO, the care coordinators, and the providers become familiar with a specific patient's needs, it may be time to look for a new MCO if the current one is not renewed.

MCO outstanding claims reconsiderations. Nursing homes and similar providers of LTC services are facing challenges with the outstanding reconsiderations of claims from the MCOs. The

outstanding reconsiderations need to be resolved and payments processed before Aetna's departure. Providers are experiencing multiple reconsiderations lasting multiple months. The systemic delays need to be addressed to ensure the most vulnerable continue to receive important services.

Medicaid application processing. Concern was expressed regarding the number of days it takes to have Medicaid LTC applications approved.

Medicaid expansion. There is a need to expand Medicaid in the state.

Nursing facility reimbursements. In the previous MCO transition, not all Medicaid claims were paid in full by Amerigroup. Providers ask for assurances and procedures to be in place as the State moves into the new MCO contract cycle.

Nursing facility higher level of care. Patients with cognitive impairments are needing a higher care level that cannot be captured through current reporting tools and, therefore, is not being reimbursed. Without a change, providers may not have sufficient resources needed to admit those who need a higher level of care due to cognitive impairments.

Nursing home surveys. Concerns were expressed regarding interactions with surveyors, the number of citations, and the overall survey experience in nursing homes.

Pediatric primary care rates. Children deserve a regular provider and a medical family, and Medicaid coverage works only if sufficient pediatricians are available to serve these children. Increasing Medicaid payments for pediatric primary care services would secure more medical providers for Kansas children.

Senior resource guide. There is a significant need in the older adult community for a physical resource guide that offers guidance and support regarding the services and resources available to aging Kansans.

Specialized medical care waiver services. Improvements to the specialized medical care (SMC) waiver services are needed.

Waitlists and capacity. The HCBS PD and I/DD waiver waitlists need to be eliminated and capacity increased on the Autism waiver.

Recommended Solutions

Conferees offered comments on potential solutions for the topics below.

ABA rates. The KanCare reimbursement rate for CPT Code 97155 should be increased.

Autism Task Team. The Task Team needs to be resurrected to engage new and existing stakeholders to enhance lives and accelerate a spectrum of solutions for the future. The Committee should direct KDADS to reconstitute the Task Team.

CHIP. In lieu of a bill, a proviso should be drafted to deal with the CHIP eligibility issue in statute.

Community Support waiver. An employment component should be included in the CS waiver. Adequate funding and appropriate definitions of services that provide flexibility should be provided. A budget allocation of approximately \$10.0 million should be made to assist in launching the CS waiver.

Dental coverage in Medicaid. The Medicaid dental rates should be increased to the level currently in Missouri. Kansas was one of the first states to implement the Sedation Dental Care code G0330, a hospital facility fee code for sedation dental care. The rate for G0330 should be increased to \$3,087.

Direct care workers. HCBS I/DD waiver rates should be increased by 3.5 percent, and a cost-of-living adjustment should be proactively established.

HCBS rate parity. Rate increases should be applied equitably across all HCBS waivers.

HCBS waitlists and capacity. The HCBS PD and I/DD waitlists should be eliminated, and the

capacity on the Autism waiver should be increased. Several I/DD waitlist modernization strategies, including an I/DD Tier System and an I/DD waiver two-way communication platform were suggested. Consideration should be given to separating the I/DD waitlist and tracking it by when the person will need services.

Home plus beds. Legislation was recommended to increase the maximum number of beds statutorily allowed from 12 to 16 beds.

I/DD Workforce. Suggestions were made related to the disability workforce, including a list based on other state solutions and ideas related to wages and a career ladder.

LTC/Physical environment waiver. KDADS should be encouraged to review its narrow interpretation of physical environment waivers and explicitly allow LTC units of hospitals to qualify for a physical environment waiver and proceed with the licensing process.

MCOs audits. MCOs should be audited annually to ensure that funds have been spent correctly.

MCO contract extension. Contracts for MCOs should be extended to five years.

Medicaid expansion. The State should expand Medicaid.

Medicaid rates for pediatric primary care and maternity-related care. Medicaid payments for pediatric and maternity-related codes should be increased.

Nursing facility rebase. KDADS should make funding for a full rebase for nursing facility Medicaid rates in FY 2026 a priority in the agency's budget request. Funding sufficient to fully rebase provider rates each year should be the standard and the starting point in budget requests to the Legislature.

Nursing facility reimbursements. Assurances and procedures need to be in place as the State moves into the new MCO contract cycle to ensure nursing facilities receive full payment for claims submitted to Aetna.

Senior resource guide. KDADS should work in collaboration with the Area Agencies on Aging (AAA) to gather resource information for the 11 Planning and Service Areas served by AAAs. The Committee should encourage and support KDADS in bringing back the "Explore Your Options" resource guide in both an electronic and hard copy.

SMC waiver services. Three recommendations were proposed: a rate enhancement to \$60 per hour for all eligible waivers that provide SMC T1000 services, an overtime reimbursement at 1.5 times the fee schedule or contract rate, and implementing a Transition from Hospital to Home option. The Transition from Hospital to Home option would provide a one-time \$10,000 payment for any new SMC recipient transitioning from the hospital to the home for the first time who requires 24/7 care. The use of SGF with the federal match to fund the option, instead of ARPA funds, was suggested.

Workforce shortage. A health care workforce roundtable should be established to create a comprehensive workforce bill.

Conferees

Private citizens and representatives of the following organizations and providers testified or provided written-only testimony before the Committee: Ability Point; Adamantly Protecting Kansans from KanCare; A Michael John Distefano Fund; Autism Support Now; Behavioral Health Solutions; Big Lakes Developmental Center, Inc.; COF Training Services; Cottonwood, Inc.; Cottonwood Community Developmental Disability Organization; Developmental Services of Northwest Kansas, Inc.; Disability Rights Center of Kansas; Infant Toddler Services of Johnson County; InterHab; KanCare Advocates Network; Kansas Action for Children; Kansas Adult Care Executives Association; Kansas Advocates for Better Care; Kansas Association of Area Agencies on Aging and Disabilities; Kansas Association of Centers for Assisted Living; Kansas Chapter of the American Academy of Pediatrics; Kansas Council on Developmental Disabilities; Kansas Health Care Association/Kansas Center for Assisted Living; Kansas Home Care and Hospice Association; Kansas Hospital Association; LeadingAge Kansas; Maxim Healthcare Services; MCDS; Mercy Hospital, Inc.; Mosaic; Oral Health Kansas, Inc.; Overland Park Regional Medical

Center; Rainbows United, Inc.; Resource Center for Independent Living, Inc.; Riverside Resources, Inc.; Self Advocate Coalition of Kansas; Sunflower Care Homes; Starkey, Inc.; The Whole Person; and Three Rivers, Inc.

Unresolved Issues Spreadsheet Responses from Agencies and MCOs

Representatives of KDHE, KDADS, the three MCOs, DCF, the Kansas Department of Administration, and the Judicial Branch provided responses to concerns expressed by individuals, stakeholders, and organization representatives at the Committee meetings. A spreadsheet prepared by KLRD staff was used to track issues presented to the Committee and the resolution of those concerns.

The agencies, MCOs, and the Judicial Branch used the spreadsheet to respond to the concerns. Each conferee concern was identified by name, the issue was noted, and the response or resolution from the agency, the MCO, Judicial Branch, or a combination was provided. Issues determined by the Committee to have been addressed were noted as closed. The spreadsheet included carryover issues from calendar year 2023, as well as new items the Committee identified to be added to the spreadsheet.

At the June 24, 2024, meeting, the Committee added a new item for DCF and KDADS relating to a contract issued to implement a closed-loop referral system for persons applying for services, including Medicaid, Supplemental Nutrition Assistance Program, and other services.

KDHE Responses

At each meeting, a KDHE representative reviewed the agency's responses to unresolved Medicaid issues identified by conferees at the previous Committee meetings.

At the February 2, 2024, meeting, the KDHE Medicaid Director and other KDHE representatives addressed the general issues pertaining to KDHE and provided specific updates on the following: services reimbursable by Medicaid or private insurance in the hospital inpatient setting for a patient screened and waiting for a state hospital admission and obstacles to hospitals billing for services provided to such

patients (Item 1); coordination between CMHCs/CCBHCs and hospitals for delivery of services to people waiting for admission to state hospitals or SIAs (Item 2); the breakdown of the stratified data included in each core set (Item 3); the enforcement of Home Health regulations (Item 4); ways to increase the number of child care facilities in the state and the reasons preventing such an increase was expanded to request information about reductions in home providers and rule exceptions made to keep child care providers open (Item 5); the development of processes and procedures to address the performance audit on the TransMed program completed by the Office of the Medicaid Inspector General (Item 6); and the benefit to individuals and the cost of adding case management on the FE and PD waivers (Item 7). By common consensus, the Committee closed items 1, 2, 4, and 7 and kept items 3, 5, and 6 open for further attention.

At the June 24, 2024, meeting, the Medicaid Director addressed the general issues pertaining to KDHE and provided specific updates on the following: the breakdown of the stratified data included in each core set (Item 3); ways to increase the number of child care facilities in the state and the reasons preventing such an increase was expanded to request information about reductions in home providers and rule exceptions made to keep child care providers open (Item 5); and the development of processes and procedures to address the performance audit on the TransMed program completed by the Office of the Medicaid Inspector General (Item 6). Committee members agreed by common consensus to close items 5 and 6 and remove them from the list and to keep item 3 on the list for further attention.

At the August 26-27, 2024, meeting, the Medicaid Director addressed the only remaining item related to KDHE, which was item 3 pertaining to the 2024 Adult Core Set and Child Core Set. The Medicaid Director offered to resubmit the Core Sets to the Committee. The item was not removed.

The Medicaid Director responded to a question regarding a concern expressed by a private citizen in written-only testimony submitted at the June 24, 2024, and August 26-27, 2024, meetings, stating the individual disagrees with the CMS policy pertaining to eligibility. The

individual requested a fair hearing, and the administrative law judge ruled in KDHE's favor indicating the case was processed correctly and the shared cost amount was correct. The Medicaid Director stated the eligibility thresholds can be taxing and put a family in a stressful situation, but the case resolution was correct. If anything changes in the family situation, the individual may submit the information, and KDHE will take another look at the case.

At the October 22-23, 2024, meeting, the KDHE representative addressed the general issues pertaining to KDHE. Specific updates were provided on the following: Item 3 pertaining to the 2024 Adult Core Set and Child Core Set; the relationship between REH, skilled nursing beds, and CMS requirements (Item 8); doula services, reimbursement, expenditures, and safeguards to avoid duplicate claims; the differences between doulas and MCO care coordinators regarding employment (Items 9, 10, and 11), the timeline for implementation of network adequacy for KanCare 3.0 (Item 12); and the Mercer Government Human Services Consulting (Mercer) Contract for KanCare 3.0 (Item 13). The items were not removed.

KDADS Responses

At each meeting, the KDADS Deputy Secretary of Programs reviewed the agency's responses to unresolved Medicaid and HCBS issues identified by conferees at previous Committee meetings.

At the February 2, 2024, meeting, the Deputy Secretary of Programs addressed the general issues pertaining to KDADS. By common consensus, the Committee members agreed to remove the items regarding the coordination between CMHCs/CCBHCs and hospitals for delivery of services to people waiting for admission to state hospitals or SIA (Item 8) and regarding when individuals are removed from the BI waiver because of no additional improvement (Item 11). The remaining items remained open for further attention, and Item 17 regarding support for youth with SED was expanded to add tracking for the number of beds that are not available due to workforce staffing issues.

At the June 24, 2024, meeting, the Deputy Secretary of Programs addressed the general issues pertaining to KDADS. Committee members agreed by common consensus that KDADS Item 1, regarding the Sedgwick County State Hospital update, can be considered closed and removed from the list. Committee members agreed by common consensus to keep the remaining items specific to KDADS open for further attention.

At the August 26-27, 2024, meeting, the Deputy Secretary of Programs addressed Items 2 through 7, 9, 10, and 12 through 16 pertaining to KDADS. Item 10 pertaining to determining the root cause of antipsychotic drug use trends was removed. Committee members agreed by common consensus to keep the remaining KDADS items open for further attention.

At the October 22-23, 2024, meeting, the Deputy Secretary of Programs addressed the general issues pertaining to KDADS. Spreadsheet Item 23 on data regarding the amounts paid and the number of defendants waiting for admission to LSH relating to 2023 SB 228 and HB 2184 was removed. All other KDADS items remained on the list for further attention. Details on responses provided are included in the October 22-23, 2024, Committee minutes.

Department for Children and Families Responses

At the February 2, 2024, meeting, the DCF Deputy Secretary presented information on the status of an unresolved issue related to DCF identified at previous Committee meetings regarding investment in foster home recruitment and retention by increasing funding for supplemental training on behavioral health needs and to support SED youth. The Committee agreed by common consensus to keep this item for further attention.

At the June 24, 2024, meeting, the DCF Deputy Secretary provided a written response on unresolved issues related to DCF identified at previous Committee meetings. Committee members agreed by common consensus that Item 2, relating to investing in foster home recruitment and retention by increasing funding for supplemental training on behavioral health needs and to support SED youth, be considered closed

and removed from the DCF list and assigned to KDADS. Committee members agreed by common consensus to keep DCF Item 3, relating to the timeline for training to become a therapeutic foster home, open for further attention.

At the August 26-27, 2024, meeting, the DCF Deputy Secretary presented information on the status of unresolved Items 3 and 4. Item 3, regarding the timeline for training to become a therapeutic foster home, was removed. The Committee members agreed by common consensus to keep DCF Item 4 open for further attention.

At the August 26-27, 2024, meeting, in response to questions posed by the Committee during the DCF response, a representative of Unite Us provided an overview of the closed-loop referral system grant award. Unite Us uses software technology to connect people through referrals to available resources with a goal to get individuals to self-sufficiency. It is a consumption-based contract. As licenses are allocated, Unite Us bills the State. It was noted 606 licenses had been allocated through the grant, including for multiple state agencies. The representative stated a list of the current licensees would be provided. The Unite Us representative responded to numerous questions regarding the closed-loop referral system.

At the October 22-23, 2024, meeting, the DCF Deputy Secretary presented information on the status of unresolved issues related to DCF identified at previous Committee meetings. The Deputy Secretary responded to questions regarding the Unite Us closed-loop referral system; case managers choosing the level of care for individuals on the Technical Assistance waiver; the availability of foster parents to meet foster care needs and the training provided to foster parents; and the exponential growth of unaccompanied minors in Kansas. Committee members agreed by common consensus to keep the DCF items open for further attention.

Judicial Branch Responses

At the February 2, 2024, meeting, the Judicial Branch representative provided an update on the status of an unresolved issue identified at previous Committee meetings regarding the availability of

specialty courts and whether any are used for family treatment. The Committee agreed by common consensus to keep this item for further attention.

At the June 24, 2024, meeting, the Judicial Branch representative presented written testimony regarding the specialty courts' availability and use for family treatment. The Committee agreed by common consensus to keep this item for further attention.

At the August 26-27, 2024, meeting, the Judicial Branch representative presented the status of Item 1, related to the Judicial Branch regarding family treatment courts. Information was provided on the second Mental Health Summit scheduled for August 26-27, 2025, at Fort Hays State University. The Committee agreed by common consensus to keep this item for further attention.

At the October 22-23, 2024, meeting, the Judicial Branch representative provided an update on the status of unresolved issues related to the Judicial Branch. The Committee agreed by common consensus to keep this item for further attention.

Department of Administration Response

At the October 22-23, 2024, meeting, the Department of Administration provided written-only testimony pertaining to how often Mercer had been used as a consultant for the State, any long-term contract Mercer had with the State, and the state agencies that used Mercer as a consultant. The Committee removed the item.

MCO Responses

There were no unresolved issues for the MCOs to address at the February 2, June 24, and August 26-27, 2024, meetings.

Aetna Better Health of Kansas

At the October 22-23, 2024, meeting, the Aetna representative provided information related to supplemental benefits for the Dual Special Needs Plan (D-SNP) population for state FY 2024. The representative noted Spanish language interpretation services had been used 3,419 times via phone engagements and 56 times via office

engagements from January 1 through August 31, 2024.

Sunflower Health Plan

At the October 22-23, 2024, meeting, the Sunflower Health Plan (Sunflower) representatives presented information on the benefits under the Sunflower 2025 D-SNP plans. The representative noted Spanish language interpretation services had been used 3,548 times via phone engagements and 317 times via office engagements for January 1 through August 31, 2024.

UnitedHealthcare Community Plan of Kansas

At the October 22-23, 2024, meeting, the UnitedHealthcare Community Plan of Kansas (UHC) representative provided information on the benefits in UHC's D-SNP plans. The representative responded to Committee questions regarding specific services not included in the UHC D-SNP plans, noting some services will not be offered for plan year 2025. The representative stated many plans across the country had to make changes in their benefit offerings. UHC selected those services that were deemed to be most valuable to its beneficiary population. The representative noted the benefit most valuable to members was the food benefit, followed by the dental benefit. The representative confirmed dental implants were not being offered for plan year 2025.

A second UHC representative provided the usage count for Spanish language interpreter services for calendar year 2023 and calendar year 2024 through June 2024. The representative noted Spanish language interpretation services had been used 356 times via language line utilization and 98 times via on-site translation from January 1 through June 30, 2024. The numbers provided exclude more than 330 calls per month handled by UHC's local Spanish-speaking agents.

MCO Updates

Aetna Better Health of Kansas

At the February 2, 2024, meeting, the Aetna representative provided an update on its programs and services. The Aetna representative summarized the clinical population health programs being provided to Aetna's members. These programs include the Advancing Rural

Communities Program, Maternity Matters Program, Behavioral Health Programs and Outcomes, and Emergency Department Utilization Reduction. Graphs were provided noting improvements in women's health outcomes through better health literacy. A list of performance improvement projects undertaken by Aetna was provided.

An Aetna representative reviewed the 2024 value-added benefits, focusing on the new value-added benefits of healthy food gift cards for members with diabetes or congestive heart failure, the iFoster Program, and the Foster Youth Transition Program. A chart was provided noting Aetna's distribution of funds to assist the community, with a 2023 Community Investment total of \$840,120. A list of the upcoming community events was provided.

At the June 24, 2024, meeting, the Aetna representative provided written-only updates regarding its Maternity Matters program, neonatal intensive care unit admissions, and follow-up care.

At the August 26-27, 2024, meeting, the Aetna representative provided information regarding Aetna's D-SNP, a Medicare Advantage special needs plan combining Medicare and Medicaid benefits that is specifically designed to provide targeted care and limits enrollment to individuals who are eligible for both Medicare and Medicaid. She described a Medicare Savings Program, which is administered by state Medicaid agencies for individuals with limited income and resources, and Medicaid helps to pay for some of the Medicare Part A and/or B premiums, deductibles, co-payments, and coinsurance. A chart was provided that reflected the dual-eligible categories and their prevalence in Kansas. The demographics of Kansans and their chronic conditions were reviewed.

At the October 22-23, 2024, meeting, the Aetna representative provided an update on Aetna's D-SNP plan. A chart reflecting Aetna's D-SNP membership in 2023 and to-date for 2024 was provided. The 2024 D-SNP supplemental benefits were presented to the Committee. An example of a current D-SNP member and a map of the 2024 service area were provided. A review of Aetna's care team, which includes 15,700 providers in its network, was presented. The

representative noted, since 2017, D-SNP membership has significantly increased.

Sunflower Health Plan

At the February 2, 2024, meeting, the Sunflower Health Plan (Sunflower) representative provided an update on its programs and services. The Sunflower representative described the Living Alternatives for Individuals with Developmental Disabilities (LADD) Smart Living model and how the \$390,000 grant provided by Sunflower to LADD would be spent on the two-year program to provide technical assistance to I/DD providers interested in implementing the model. The model is a person-centered experience, individualized for each participant, and incorporates a new staffing model that anticipates support, monitors needs, and drops in virtually for scheduled support.

A Sunflower representative also reviewed the Cervical Cancer Screening Performance Improvement Project, which has the goal of increasing the cervical cancer screening rate to 59.5 percent or higher at the end of the five-year project. This goal represents a 5.0 percent improvement from the baseline. The representative also presented on the Cervical Cancer Prevention Initiative, which includes the Shoes for Shots program that offers new shoes for health plan members who receive their second dose of the human papillomavirus (HPV) vaccine. A “Mission Moment” sharing of a member’s successful experience was provided.

At the June 24, 2024, meeting, the Sunflower representative provided a written-only update on its community engagement, locations of its members and member support staff, member participation in rural health fairs in Holton and Great Bend, and increasing facility accessibility at provider locations.

At the August 26-27, 2024, meeting, a Sunflower representative provided information regarding its D-SNP, the benefit highlights of Sunflower’s product in Kansas, and the advantages of the Medicare Advantage plans. The D-SNP plan includes the same coverage benefits as Medicare plus prescription drug plans, extra benefits such as Healthy Food cards and fitness, supplemental benefits beyond value-added benefits, and improved care coordination. She

noted dual-eligibles enrolled in D-SNP plans have improved access to care. She noted information on health and quality management programs is provided to eligible individuals.

At the October 22-23, 2024, meeting, the Sunflower representative provided an update on the 2025 D-SNP plan. A map of the 2025 service area was provided. There are three eligible categories: Qualified Medicare Beneficiary, Full Benefit Dual Eligible, and Specific Low Income Medicare Beneficiary. The Sunflower 2025 Medicare plan benefits were reviewed. The representative noted Sunflower’s network adequacy must meet CMS requirements. A review of the cost share for Medicare and D-SNP was provided. The representative reviewed how Sunflower aims to integrate and coordinate care between Medicare and Medicaid to improve member and provider experience through care management. The 2025 Special Election Period changes were reviewed.

During the Sunflower presentation, the KDADS Deputy Secretary of Programs responded to questions regarding the efforts by KDADS to incentivize individuals obtaining D-SNP. The Deputy Secretary stated the Senior Health Insurance Counseling for Kansas (SHICK) program at KDADS is a health insurance counseling program that allows dual-eligible members to meet with a counselor to discuss available plans that would be the best fit for their diagnosis, disability, or needs. Regarding who monitors the SHICK program to ensure the counselors are doing what they are supposed to do and are encouraging enrollment in D-SNP for Medicaid clients, the Deputy Secretary stated KDADS monitors the SHICK program on the state level through the Aging Commission and CMS monitors on the federal level but does not visit the sites. The SHICK counselors advise on the available plans, but the decision on which plan to select is up to the individuals seeking the advice.

Sunflower also provided its Health Maintenance Organization and Preferred Provider Organization Provider and Pharmacy directories.

UnitedHealthcare Community Plan of Kansas

At the February 2, 2024, meeting, the UnitedHealthcare Community Plan of Kansas

(UHC) representative provided an update on its programs and services. A tribute to the late Corey Stoltz, Johnson County Mental Health Center, was provided. The Corey M. Stoltz Transportation Program, which began with Ms. Stoltz's idea to employ peers to provide transportation services to individuals on the I/DD waiver or those with behavioral health needs, was named for her. The program found creative solutions to vocational challenges.

A UHC representative discussed quality outcomes and how UHC uses a multi-faceted approach to positively impact the health of its members. The representative provided quality outcomes for various measures in the areas of preventative health and behavioral health, as well as testing for chlamydia in women and lead screening in children.

At the June 24, 2024, meeting, the UHC representative provided a written-only update on diabetes monitoring of people with schizophrenia and diabetes and UHC's other initiatives regarding diabetes.

At the August 26-27, 2024, meeting, the UHC representative provided information regarding UHC's D-SNP. Individuals are eligible for dual plans if they are dually eligible for Medicare and Medicaid. In this arrangement, Medicare is the primary payer and Medicaid can cover the rest of the costs depending on Medicaid eligibility. The three D-SNP product types were described: Coordination Only Dual SNP, Highly Integrated Dual SNP, and Fully Integrated Dual SNP. The D-SNP population consists of low-income older adults and individuals younger than 65 with one or more disabilities. While D-SNPs are like Medicare Advantage plans in coverage, they are adapted for people who meet income and special needs qualifications. The value to D-SNP to Medicaid was reviewed. Additional D-SNP benefits were listed. A coverage map of Kansas was provided.

At the October 22-23, 2024, meeting, the UHC representative provided an update on the UHC D-SNP. UHC is in 69 counties in the state. The representative described D-SNP as a special type of Medicare Advantage plan for people who are dually eligible, meaning they qualify for Medicare and Medicaid. The plans are adapted for people who meet income and special needs

qualifications. All plans include prescription drug coverage and supplemental benefits. A review of the 2025 D-SNP benefits was presented. UHC utilizes a UCard that acts as a member ID and a benefits card. UHC provided additional information regarding D-SNPs and a chart reflecting the D-SNP provider types by county in its service area.

Healthy Blue Kansas

At the October 22-23, 2024, meeting, a representative of Healthy Blue Kansas provided an update of the company's 2025 D-SNP benefits and services. Healthy Blue's D-SNP is designed to provide comprehensive care coordination through integrated health risk assessments, individualized care plans, interdisciplinary teams, and LTC single point of contact. A review of the enrollment process was provided. A map was provided noting D-SNP service areas for plan years 2025 and 2026. Member coverage and benefits were reviewed. It was noted Healthy Blue Kansas will remain focused on expanding its network with a special emphasis on ensuring it is maximizing overlap between Medicare and Medicaid provider networks to ensure it can provide service to dual-eligibles most effectively.

Other Presentations

Overview of the State of Mental Health in America Report

At the August 26-27, 2024, meeting, the KDADS Deputy Secretary of Programs provided information regarding Mental Health America (MHA) rankings. MHA is a national nonprofit dedicated to mental health advocacy that conducts annual state rankings. COVID-19 had a serious impact on the ability to collect national surveillance data in 2020. As a result, SAMHSA determined that 2021 would represent a trend break from previous years, meaning that the results of the National Survey on Drug Use and Health (NSDUH) moving forward will not be comparable to data collected before 2021. NSDUH data from 2021-2022 were used to calculate 11 of the 15 indicators used to rank states in the 2024 State of Mental Health in America report. The purpose of gathering the information was explained. The Kansas mental health ranking is 22nd overall among states, an improvement from 47th in previous rankings and highest in

SAMHSA Region 7, which also includes Iowa, Nebraska, and Missouri. Kansas is also ranked higher than the neighboring states of Colorado and Oklahoma. Kansas is currently ranked 24th overall in adult rankings and 16th overall in youth rankings. Additional key national findings were presented.

Areas in which Kansas performed below the national average were the prevalence of uninsured adults with any mental illness (ranked 42nd) and youth with untreated major depressive episode (ranked 44th).

National rates of any mental illness among adults were higher in completely rural counties: 25.7 percent versus 22.1 percent in urban counties.

Kansas is among nine of the ten states that have not expanded Medicaid and that ranked low among all states for the percent of adults with any mental illness without insurance coverage, with a ranking of 42nd. The statewide CCBHC safety net helps cover uninsured individuals in the coverage gap, but the impact of that program is not reflected in the uninsured indicator. The Deputy Secretary reviewed the strengths and challenges in Kansas regarding mental health. Recommendations were provided based on the MHA report. Potential strategies for enhancing mental health outcomes in Kansas were provided. The Deputy Secretary stated one of the greatest behavioral health challenges in Kansas is how to improve mental health outcomes in rural and frontier counties.

A copy of the MHA 2024 report was provided to the Committee.

Unite Us Presentation

At the October 22-23, 2024, meeting, a representative of Unite Us provided testimony regarding its closed-loop referral technology for social care networking. The representative stated the network provides the digital infrastructure for bi-directional referrals to help address Kansans' needs. The program is in its first year of a three-year grant. More than 800 licensed users have been onboarded through the grant, which exceeds the goal set by KDADS. The platform is available to any state agency or community program to utilize the infrastructure to support connections to health and social care, and joining the system is

voluntary. An example of how the system works was provided, as well as success stories from other states. A referral cannot be shared without the individual's documented consent. All social care information is protected under the same strict security standards required for protecting health information. The representative stated Unite Us is bridging the gaps between health care, social care, and government.

Update on Kansas Behavioral Health Center of Excellence

At the October 22-23, 2024, meeting, representatives of the ACMHCKS provided information on the Kansas Behavioral Health Center of Excellence (KBHCoE). KBHCoE is focused on addressing the workforce shortage through education and training opportunities, as well as linking academic programs with community-based providers to increase the workforce to meet the needs of the community. A Center of Excellence is a place of high achievement in a specific area providing leadership, best practices, research, and training through a team of subject matter experts with a shared mission. A list of characteristics of a successful Center of Excellence was provided. KBHCoE is a partnership of behavioral health providers and educators with a current focus on south-central Kansas. A list of committed organizations was provided. Each organization appoints a representative to serve on the governing board. An advisory council developed a 2024 policy agenda. The organization has filed the formal Articles of Incorporation, has been assigned a tax identification number, and was applying for nonprofit status. It was noted the hope is that becoming a nonprofit will allow the KBHCoE some funding flexibility to receive contributions or to allow for clawbacks from students who do not complete the terms of their agreements. The 2024 Legislature approved \$5.7 million SGF for programs related to behavioral health. KBHCoE plans to build on the programs. It is the intent to leverage state funding to draw down additional federal match for the Medicaid Graduate Medical Education program to fund and expand medical and health care training programs. Information was presented regarding current and future initiatives.

In response to questions from the Committee regarding tracking, the representative stated the

number of graduates who received funding will be tracked. The hope is that receiving training and the opportunity to work with the community provider system will incentivize the graduates to stay in Kansas.

CONCLUSIONS AND RECOMMENDATIONS

After discussion at its meeting on October 22-23, 2024, Committee members agreed on the following conclusions and recommendations to the 2025 Legislature:

- KDHE implement the graduate medical education program in place for the KBHCoE , with an 18-month timeline for implementation;
- A Committee bill be drafted using the 2024 omnibus budget proviso language regarding funding for the MHIT program and keeping the program with KDADS;
- Legislation be drafted for the support of the KBHCoE;
- A budget proviso be drafted to address the three pending issues pertaining to CHIP: CHIP eligibility in current law that is tied to 250.0 percent of the 2008 FPL, and federal regulatory changes regarding waitlists and lockout periods;
- Legislation be drafted to change the home plus definition in KSA 39-923 to increase the maximum number of beds from 12 to 16 for both stand-alone home plus facilities and adult care home wings that convert to a separate but contiguous home plus facility;
- The social services budget committees review providing grant funding for local communities to apply for a grant to make digitally available a local resource guide based upon the out-of-print “Explore Your Options” Resource Guide;
- Legislation requiring the Department of Administration to adopt a written policy governing the negotiated procurement of MCOs to provide Medicaid services pursuant to a contract with the Kansas Program of Medical Assistance. The policy shall include prohibition on the destruction of records that complies with the Kansas Open Records Act, adoption of a tie-break procedure if part of the evaluation process used to make award recommendations involves scoring, and a requirement to be transparent with the Legislature to the full extent permitted by law. The adopted policies shall be made available to the public and potential bidders;
- A budget proviso be drafted providing for additional substance use disorder (SUD) state funding through a grant fund to supplement federal funding for those SUD providers that have expended their allocated funds;
- Adoption of conferee rules for the Committee;
- PACE Medicaid rates continue to be rebased annually through a budget proviso; and
- The 2025 Legislature seek legislation to allow a rural emergency hospital to be granted a waiver from the physical environment requirement of a new facility for skilled nursing beds that need to be included for hospitals to be able to transition to a rural emergency hospital, without having to meet the requirements for a new facility.

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

ANNUAL REPORT FOR THE 2025 LEGISLATIVE SESSION

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight (Committee) is charged by statute to submit an annual written report on the statewide system for long-term care services to the President of the Senate and the Speaker of the House of Representatives at the start of each regular legislative session. The authorizing statute (KSA 2024 Supp. 39-7,159) creating a comprehensive and coordinated statewide system for long-term care services became effective July 1, 2008.

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

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

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

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

The following summarizes the number of individuals transferred from intellectual/developmental disability (I/DD) institutional settings into HCBS during state fiscal year (FY) 2024, together with the number of individuals added to HCBS due to crisis or other eligible program movement during FY 2024. The following abbreviations are used in the table:

- ICF/IDD — Intermediate Care Facility for Individuals with Developmental Disabilities
- FY — State Fiscal Year

I/DD INSTITUTIONAL SETTINGS AND WAIVER SERVICES*	
Private ICFs/IDD: Average Monthly Caseload FY 2024	38
State I/DD Hospitals: Average Monthly Caseload FY 2024	256
I/DD Waiver Community Services: Average Monthly Caseload FY 2024	8,963
*Monthly averages are based upon program eligibility.	
Sources: FY 2024—Medicaid eligibility data as of October 2024. The data include people coded as eligible for services or temporarily eligible.	

The following summarizes the average monthly caseload. These additional abbreviations are used in the table:

- FE — Frail Elderly
- PD — Physical Disability
- BI — Brain Injury

FE / PD / BI INSTITUTIONAL SETTINGS AND WAIVER SERVICES*	
Nursing Facilities: Average Monthly Caseload FY 2024	9,173
Head Injury Rehabilitation Facility: Average Monthly Caseload FY 2024	50
FE Waiver: Average Monthly Caseload FY 2024	7,179
PD Waiver: Average Monthly Caseload FY 2024	6,044
BI Waiver: Average Monthly Caseload FY 2024	987
*Monthly averages are based upon program eligibility.	
Sources: FY 2024—Medicaid eligibility data as of October 2024. The data include people coded as eligible for services or temporarily eligible.	

AVERAGE DAILY CENSUS IN STATE INSTITUTIONS AND LONG-TERM CARE FACILITIES

KANSAS NEUROLOGICAL INSTITUTE: AVERAGE DAILY CENSUS

FY 2017 – 142
FY 2018 – 140
FY 2019 – 138
FY 2020 – 132
FY 2021 – 126
FY 2022 – 126
FY 2023 – 126
FY 2024 – 120

PARSONS STATE HOSPITAL AND TRAINING CENTER: AVERAGE DAILY CENSUS

FY 2017 – 159
FY 2018 – 160
FY 2019 – 162
FY 2020 – 157
FY 2021 – 151
FY 2022 – 149
FY 2023 – 147
FY 2024 – 146

PRIVATE ICFS/MR (MENTAL RETARDATION): MONTHLY AVERAGE*

FY 2017 – 133
FY 2018 – 137
FY 2019 – 119
FY 2020 – 110
FY 2021 – 103
FY 2022 – 44
FY 2023 – 39
FY 2024 – 38

NURSING FACILITIES: MONTHLY AVERAGE*

FY 2017 – 10,047

FY 2018 – 10,049

FY 2019 – 10,226

FY 2020 – 10,500

FY 2021 – 9,571

FY 2022 – 9,049

FY 2023 – 9,027

FY 2024 – 9,173

*Monthly averages are based upon Medicaid eligibility data.

Savings Resulting from the Transfer of Individuals to HCBS

In most, but not all, cases, services provided in the community do cost less than those provided in an institutional setting, such as an ICF/IDD or a nursing facility. However, “savings” are realized only if a bed is closed behind the person transferring to HCBS. Due to demand, beds are typically refilled by individuals requiring the level of care provided by the facilities; therefore, the beds are not closed.

As certified by the Secretary for Aging and Disability Services, despite individuals moving into community settings, which does have the effect of cost avoidance, the savings resulting from moving the individuals to HCBS during the preceding 12 months, as of September 30, 2024, was \$0.

Balance in the KDADS Home and Community Based Services Savings Fund

The balance in the Kansas Department for Aging and Disability Services Home and Community Based Services Savings Fund as of September 30, 2024, was \$0.

Report of the Health Care Stabilization Fund Oversight Committee to the 2025 Kansas Legislature

CHAIRPERSON: Marvin Kleeb

LEGISLATIVE MEMBERS: Senators Chase Blasi and Cindy Holscher; and Representatives Will Carpenter and Henry Helgersen

NON-LEGISLATIVE MEMBERS: Craig Concannon, M.D.; Darrell Conrade; Dennis George; Douglas Gleason, M.D.; James Rider, D.O.; and Jerry Slaughter

CHARGE

Review the Status of the Health Care Stabilization Fund

This Committee annually reviews the operation of the Health Care Stabilization Fund, reports, and makes recommendations regarding the financial status of the Fund.

January 2024

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Health Care Stabilization Fund Oversight Committee

ANNUAL REPORT

Conclusions and Recommendations

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

The Committee considered information presented by the HCSF Board of Governors' representatives, including its statutorily required report, the Board's actuary, and health care provider and insurance company representatives and other interested parties. The Committee acknowledges its role to provide oversight and monitoring of the HCSF, including legislative actions and other contemporary issues affecting the soundness of the HCSF, and makes the following recommendations and comments:

- **Appreciation for Rita Noll, Chief Counsel and Deputy Director, HCSF, upon her retirement.** The Committee expresses its appreciation to Rita Noll for her 34 years of exemplary service to the HCSF and to the people of Kansas during her 40 years of service to the State of Kansas. Ms. Noll first served as Attorney for the HCSF at the Kansas Insurance Department from 1990 until the HCSF's separation from the Kansas Insurance Department in 1995. She continued her service to the HCSF in her role as Chief Counsel and Deputy Director until her retirement on June 7, 2024.
- **Fund revenue.** The Committee recognizes both the statutory requirements of the Health Care Provider Insurance Availability Act (HCPIAA) governing the investment and reinvestment of HCSF moneys in accordance with Pooled Money Investment Board (PMIB) investment policies and the ongoing climate affecting the investment yield of the Fund. The Committee recommends the Legislature give consideration to allowing the HCSF to invest pursuant to KSA 40-2a01 *et seq.*
- **Advanced practice registered nurses as defined health care providers.** The Committee recommends legislation be introduced to add advanced practice registered nurses (APRNs) as defined health care providers for the HCSF and to provide protection to APRNs under the HCSF. (Some APRNs, such as registered nurse anesthetists and certified nurse midwives, have sought and been made part of this definition previously.) The Committee recognizes law enacted in 2022 (Senate Sub. for HB 2279) allowed an APRN to prescribe drugs without a written protocol as authorized by a responsible physician and required an APRN to maintain medical malpractice insurance. [*Note: This requirement is part of the Kansas Nurse Practice Act, as amended, which does not specify the level of coverage that must be maintained.*]

- **Fund to be held in trust.** The Committee recommends the following language to the Legislative Coordinating Council, Legislature, and the Governor regarding the HCSF:
 - The Health Care Stabilization Fund Oversight Committee continues to be concerned about and is opposed to any transfer of money from the HCSF to the State General Fund (SGF). The HCSF provides Kansas doctors, hospitals, and the defined health care providers with individual professional liability coverage. The HCSF is funded by payments made by or on behalf of each individual health care provider. Those payments made to the HCSF by health care providers are not a fee. The State shares no responsibility for the liabilities of the HCSF (excepting University of Kansas faculty and resident self-insurance programs reimbursement). Furthermore, as set forth in the HCPIAA, the HCSF is required to be “held in trust in the state treasury and accounted for separately from other state funds”; and
 - Further, this Committee believes the following to be true: all surcharge payments, reimbursements, and other receipts made payable to the HCSF shall be credited to the HCSF. At the end of any fiscal year, all unexpended and unencumbered moneys in such HCSF shall remain therein and not be credited to or transferred to the SGF or to any other fund.

Proposed Legislation: None.

BACKGROUND

The Health Care Stabilization Fund Oversight Committee (Committee) was created by the 1989 Legislature and is described in KSA 40-3403b. The 11-member Committee consists of 4 legislators, 4 health care providers, 1 insurance industry representative, 1 person from the general public with no affiliation with health care providers or the insurance industry, and the Chairperson of the Health Care Stabilization Fund (HCSF or Fund) Board of Governors or another member of the Board designated by the Chairperson.

The law charges the Committee to report its activities to the Legislative Coordinating Council and to make recommendations to the Legislature regarding the HCSF.

The Committee met November 21, 2024, in the Statehouse.

COMMITTEE ACTIVITIES

Report of Willis Towers Watson

Fund Position and Forecasts

The Willis Towers Watson actuarial report is based on the actuarial review of Fund experience as of December 31, 2023, and serves as an addendum to the report provided to the HCSF Board of Governors on July 18, 2024. The actuary addressed forecasts of the HCSF’s financial position at June 30, 2024, and June 30, 2025, along with the company’s 2023 estimate for June 2024. In the 2023 review, the estimate of HCSF-held assets as of June 30, 2024, was \$276.93 million, with liabilities of \$249.40 million, and with \$27.53 million in unassigned reserves.

The actuary presented the following estimates for the company’s 2024 study:

- June 30, 2024: \$271.77 million in assets; \$246.62 million in liabilities; and \$25.15 million in unassigned reserves.
- June 30, 2025: \$259.03 million in assets; \$235.63 million in liabilities; and \$23.41 million in unassigned reserves.

The actuary reviewed two material decreases in Fund revenue resulting from legislative changes. In 2014, a legislative change brought many new classes of providers into the Fund. In 2021, a legislative change that became effective in 2022 reduced the HCSF's coverage by changing the amount the primary carriers cover from \$200,000 to \$500,000, before the HCSF is responsible. Based on this analysis, the company determined the HCSF needed to raise its surcharge rates by 9.7 percent in calendar year (CY) 2025 in order to maintain its unassigned reserves at the expected year-end CY 2024 level (approximately \$25 million).

Rate Level (Surcharge) Indications

The actuary also reviewed the HCSF's (premium surcharge) rate level indications for CY 2025, noting the indications assume a break-even target between revenues and expenses. He detailed various CY 2025 items, including payments, with settlement and defense costs of \$35.41 million; change in liabilities (due to referenced change in HCSF law) of \$9.13 million (negative); administrative expenses of \$2.52 million; and transfers of \$300,000 (assumes \$100,000 to the Health Care Provider Availability Plan [Availability Plan] and \$200,000 to the Kansas Department of Health and Environment.) The actuary indicated the net operating cost for the HCSF in CY 2025 is an estimated \$29.11 million. He further noted the HCSF has two sources of revenue: its investment income (assumed to be \$6.72 million based on 2.60 percent yield) and surcharge payments from providers (\$22.38 million needed to break even). With the projected surcharge revenue (\$20.41 million), this translates to a positive rate level indication for CY 2025 (9.7 percent).

Historical review and comment. The actuary addressed surcharge revenue and claims costs from 1999 through projected 2025 (based on estimates as of December 31, 2023). The actuary highlighted the significant decrease in revenue from 2021 to 2022, which reflects the change in 2021 to the Health Care Provider Insurance Availability Act (HCPIAA) reducing coverage requirements on the HCSF. In CY 2021, the HCSF was responsible for paying amounts for the layer of claims from \$200,000 per claim for most providers up to \$1.0 million per claim and \$800,000 worth of coverage. Beginning in CY

2022, the coverage option changed to \$500,000 of coverage, with the primary market responsible for \$0 to \$500,000, and the HCSF picking up from \$500,000 to \$1.0 million. The actuary noted the Fund will continue to see reductions over the next immediate years as the inventory of claims under the prior coverage limits wear off and the HCSF, under the limits as amended in 2021, will be responsible for paying only the excess of \$500,000, instead of the excess of \$200,000.

Investment Yield

The actuary reviewed the HCSF's investment income over the previous 11 fiscal years, noting the highest level of yield during this time was in 2014 and, in the past 3 years, that yield has been less than 2.5 percent. He indicated the assumed yield rate for next year will be 2.60 percent, a reduction from the assumed future yield rate of 2.7 percent from the 2023 study. [Note: Testimony also indicated a 10-basis-point change in the assumed rate would cause a 1.4 percent change in the CY 2025 surcharge rate indication.]

Indications by Provider Class; Loss Experience

The actuary provided an overview of rate indications by provider class, defining classes 1-30 and providing the number of providers and the CY 2024 rate for each class. The actuary noted, based on the company's analysis of experience by provider class, differences continue to be seen in relative loss experience among the classes. Classes with decreases greater than 15.0 percent or increases greater than 10.0 percent (meaning a rate decrease or increase is indicated by relative loss experience for the class) include:

- Decreases greater than 15.0 percent [greatest to least decrease]: Class 2 (physicians, no surgery); Class 24 (nursing facilities); Class 13 (registered nurse anesthetists); Class 6 (surgery specialty, includes emergency room [ER] [no major] and ear, nose, throat [ENT]); Class 7 (anesthesiology); Class 16 (professional corporations, partnerships); Class 18 (mental health centers); and Class 1 (physicians, no surgery, includes dermatology, pathology, and psychiatry); and

- Increases greater than 10.0 percent [least to greatest increase]: Class 11 (surgery specialty-neurosurgery); Class 15 (Availability Plan insureds); Class 5 (surgery specialty, includes urology, colon/rectal, general practitioner with major); Class 3 (physicians, minor surgery); and Class 17 (medical care facilities).

Class 17 comment. The actuary highlighted a concern with rate indications for Class 17; analysis suggests rates need to increase 46 percent in order for that revenue to cover the claims costs for hospitals. Looking to the analysis by relative loss experience, Class 17 providers paid 14.0 percent of the total surcharge for the period of 2016-2022 but represented 24.0 percent of the reported losses during that time.

CY 2025 surcharge rates. The actuary also provided a history of surcharge rate changes since 2012, noting the reduction in CY 2022, which corresponds to the 2021 amendments (providers receiving less coverage from the HCSF). In addition, there were no changes in the CY 2023 surcharge rates. For CY 2024, the Board of Governors increased rates for 5 classes, decreased rates for 6 classes, and made no rate changes for 13 classes, with an overall impact of these selected changes of a 0.0 percent change in rate level. Addressing the CY 2025 surcharge rates, the actuary noted the company provided several options to the Board of Governors to consider in establishing HCSF rates. It was noted that all of these options included an increase to Class 17. Given the current rate level indications, the company did not believe that no rate change, or an overall 0 percent change, was reasonable for CY 2025. The Board decided on the following rate changes for CY 2025:

- Rate increases on 15 classes, ranging from a positive 2.0 percent (Classes 1, 4, 12, and 23) to a positive 10.0 percent (Class 17);
- Rate decreases of 2.5 percent for classes 2 and 24; and
- No change in rates for seven classes.

[*Note:* The estimated net overall impact of these selected changes is a rate level increase of 3.5 percent.]

Discussion

CY 2022 observations. The actuary characterized the CY 2023 experience for the HCSF as worse than had been predicted for the Fund. He pointed to positive and negative indications for the year: payment activity was high; loss performance on active providers was worse than expected, particularly on defense costs; loss performance on inactive providers was closer to the level than expected; investment results were worse than anticipated; and surcharge revenue was close to the level predicted. The actuary concluded, given these indications, the HCSF's net financial position at June 30, 2024, is \$2.4 million lower than the level previously forecasted in the company's 2023 study. The actuary noted four areas of concern going into CY 2025: the overall rate inadequacy is "creeping up"; the rate inadequacy for the hospitals remains very high (how much the hospitals are paying relative to the claims costs those facilities are experiencing); investment returns continue to be lackluster; and payments from the Fund to the Availability Plan have occurred for seven consecutive years and are consuming a larger portion of Fund revenue.

Stabilization mechanisms in other states. The actuary provided an update to his comments last year to the Committee on the state of New Mexico's program to address health care provider liability and patient compensation. He provided updated numbers of the New Mexico fund, reporting the assets at year-end 2023 were \$219.0 million, but liabilities were \$293.0 million. New Mexico's fund had a deficit at year-end 2023 of about \$74.0 million versus the HCSF's surplus of \$25.0 million. The actuary reported, of the \$219 million in assets, \$33.0 million was funds appropriated by the New Mexico Legislature from state general fund (SGF) taxpayer moneys to help address the shortfall in the Patient's Compensation Fund. The actuary indicated in CY 2024, another \$36.0 million is being appropriated by the New Mexico Legislature from its SGF. He noted that over those two years, the New Mexico fund had to be bailed out by the taxpayers of New Mexico by nearly \$70.0 million, and the fund is still deficient.

The actuary indicated the New Mexico fund was in the hole by about \$74.0 million as of year-end 2023 and by year-end 2024, the fund deficit will continue despite it receiving \$70.0 million of taxpayer money. He added, to provide for context with other states around the country, about eight states have funds like Kansas'. Not all of those funds operate exactly the same, but overall, despite his concerns about the HSCF compared with where it was a few years ago, the HCSF is still financially healthy and much healthier than similar funds in some other states.

Committee discussion. Committee members, the actuary, and Board of Governors' representatives discussed topics including the Board's investment policy (outlined in KSA 40-3406), the management of the investment process by the Pooled Money Investment Board, average duration of the investments and the longer-term liabilities of the Fund, and the relationship of investment income to overall Fund assets (*i.e.*, increased investment income reduces the needed income from health care provider surcharge revenues).

On the topic of rate level indications (surcharge), the actuary addressed costs and losses affecting hospitals and health care systems nationwide, Further discussion focused on the experiences of Class 17 participants and the Board action to address provider rate class relative experience. The rate discussion also included the applicability and present rate set for the Missouri Modification Factor. [Note: All Kansas resident health care providers who are also licensed to practice in Missouri must pay an additional 30.0 percent surcharge.]

Comments

In addition to the report from the Board of Governors' actuary, the Committee received information from Committee staff detailing resource materials provided for consideration, including the report of the Kansas Legislative Research Department (KLRD) regarding the approved budgets for the HCSF Board of Governors for FY 2024 and FY 2025, language from the KLRD 2025 Appropriations Report, a proviso enacted in 2023 that deals with the maternity center being viewed as a health care provider for purposes of the HCSF, and a

comprehensive reference copy of the statutes that comprise the HCPIAA.

Committee staff also provided an update on relevant health care professional or facility legislation that was considered or passed during the 2024 Session. An Assistant Revisor of Statutes with the Office of Revisor of Statutes reviewed 2024 HB 2478 regarding maternity centers and abortion providers, which was recommended by the House Committee on Insurance but did not pass the House. She noted the language specific to maternity care centers was incorporated into proviso language in 2024 HB 2551 (section 19), which would deem a maternity center a "healthcare provider" for the purposes of the HCPIAA if that provider is accredited by a recognized national organization or falls within the definition of KSA 65-503. The proviso is in effect for FY 2025.

The Assistant Revisor highlighted three additional relevant bills:

- HB 2547 (emergency medication kits in schools), which became law;
- House Sub. for SB 287 (prohibits health care providers at a school facility from providing most health care to minors without receiving consent from such minor's parent, and the No Patient Left Alone Act, which prohibits patient care facilities providing end-of-life care to patients from denying such patients in-person visitation from any person designated by the patient), which became law; and
- House Sub. for SB 233 (Forbidding Abusive Child Transitions Act [FACT Act]); would have prohibited health care providers from providing gender identity care to children whose gender identity is inconsistent with their sex at birth). The bill passed both chambers but was vetoed by the governor. The motion to override the veto failed by two votes. The bill would have made several changes, including allowing civil causes of action against health care providers who provide gender identity care to children and prohibiting professional liability insurance

from covering those damages. The Assistant Revisor of Statutes indicated this may return as a bill during the 2025 Legislative Session.

Legal Counsel's Update

The Legal Counsel for the Board of Governors addressed the FY 2024 medical professional liability experience based on all claims resolved in FY 2024, including judgments and settlements. He characterized FY 2024 as a “busy year, but maybe not as busy as FY 2023.”

Jury Verdicts and Settlements

Using HCSF data, the Legal Counsel stated 16 medical malpractice cases, involving a total of 20 Kansas health care providers, were tried to juries during FY 2024. The trials were held in the following jurisdictions: Johnson County (3); Sedgwick County (2); Butler County (1); Coffey County (1); Cowley County (1); Franklin County (1); Leavenworth County (1); Shawnee County (1); Wyandotte County (1); Jackson County, Missouri (3); and Clay County, Missouri (1). Fifteen of these cases resulted in defense verdicts, and one case ended in a hung jury. There were no cases where the jury found for the plaintiff.

The Legal Counsel highlighted the claims settled by the HCSF, noting in FY 2024, 82 claims in 66 cases were settled involving HCSF moneys. He reported the settlement amounts incurred by the HCSF for FY 2024 totaled \$30,740,000. This amount does not include settlement contributions by primary or excess insurance carriers. The settlement amounts are payments made, or to be made, by the HCSF in excess of primary coverage or on behalf of inactive health care providers.

The Legal Counsel reported, for the 82 claims, primary insurance carriers tendered their policy limits to the HCSF in 73 claims and the HCSF provided primary coverage for inactive health care providers in 9 claims. He reported that for the claims involving HCSF moneys, the HCSF incurred \$30,740,000 in settlement amounts; in addition, the primary insurance carriers contributed \$24,638,167 and the excess insurance carriers contributed \$7,625,000, for a total settlement amount of \$63,003,167. The Legal Counsel also reported, in addition to the 82

settlements, 6 claims were settled by an excess insurance carrier when both the primary and HCSF coverage were exhausted.

The Legal Counsel reported that, in addition to the settlements involving HCSF contributions, the HCSF was notified primary insurance carriers settled an additional 154 claims in 81 cases. [*Note:* These are claims settled within the primary coverage limits and do not require excess coverage.] The total amount of these settlements was \$9,523,167. The Legal Counsel also provided historical information on new cases by fiscal year, noting 285 new cases during FY 2024. There were 307 new cases in FY 2023.

Self-insurance Programs

The Legal Counsel also addressed the self-insurance programs and reimbursement for the University of Kansas (KU) Foundations and Faculty program and residents that provide basic liability coverage. (As directed by statute, the HCSF administers these programs and handles the claims for first-dollar coverage.) He reported the FY 2024 KU Foundations and Faculty program incurred \$2,656,480 in attorney fees expenses and settlements; \$500,000 came from the Private Practice Reserve Fund and \$2,156,480 came from the SGF. The Legal Counsel noted the largest reason for the decrease from FY 2023 program costs was settlement amounts. He reported on the increase in claims, noting due to an increase in the number of pending claims, an uptick in claims was predicted and expected. However, there was a decrease in the number of settlements from 13 in FY 2023 to 6 in 2024. He further explained there was an uptick in the amount of attorney's fees and expenses, with some bigger cases being worked and still going through the appeals process that would cost more to defend.

In regard to the self-insurance programs for the KU/Wichita Center for Graduate Medical Education (WCGME) residents programs, including the Smoky Hill residents in Salina, the total amount for FY 2024 was \$248,084. The Legal Counsel commented that the program costs for the residents' self-insurance program decreased in FY 2024, with no settlements, no large cases involving residents, and the number of pending claims being about the same as FY 2023. He predicted a possible slight increase in settlements for FY 2025 based on some cases that involve

residents, but he did not believe settlements would reach the FY 2023 level. [*Note: All expenses—settlement amounts and attorney fees and expenses—are reimbursed from the SGF.*]

The Legal Counsel provided a list of historical expenditures by fiscal year for the KU Foundations and Faculty program and the residents in training since the inception of the two self-insurance programs. He reported the ten-year average for the KU Foundations and Faculty program cost is just over \$2.6 million a year. He noted the FY 2024 expenditures were lower than those for FY 2023 but were above the average, mostly due to fees and expenses. He indicated this made sense with the increase in faculty each year. The residents-in-training program expenditures for FY 2024 were about the same as the ten-year average, about \$1.0 million. The Legal Counsel noted the increase in faculty meeting the criteria for participation in the self-insurance program (557 in FY 2013, 1,089 in FY 2024). He advised the Committee that the Private Practice Reserve Fund reimbursement amount (which reimburses the first \$500,000 of this program's expenses) has not changed since 1989, in contrast to the substantial growth of full-time faculty (277 in FY 1990) and the primary insurance coverage limit change in CY 2022 from \$200,000 to \$500,000 for new claims.

The Legal Counsel also provided information about moneys paid by the HCSF as an excess carrier. He noted there were no settlements that involved residents in training in FY 2024. There were 6 settlements involving full-time faculty members in FY 2024, with a total amount of \$1,595,000 from the HCSF excess coverage. He stated the excess coverage amount is not reimbursed but is paid by the HCSF as part of the health care provider's excess coverage.

Discussion

The Committee and Legal Counsel discussed the HCSF's role in the litigation process as outlined below.

Role of HCSF in Litigation Process

The Legal Counsel further discussed the HCSF's involvement in cases filed. He explained that, in general, the primary carrier is responsible for the \$500,000 primary coverage at the inception

of the claim. The primary carrier is responsible for hiring defense counsel, working with the health care provider, and managing all aspects of the claim. The HCSF keeps apprised of everything because if, at any point, the primary carrier decides the case is going to be outside of its value and wants to tender it to the HCSF, the HCSF is ready to talk to defense counsel and make decisions regarding the need to hire certain experts, whether the HCSF approves of the experts, case strategy in general, and ultimately whether the HCSF wants to settle the claim, take it to trial, or tender onto the excess carrier above the HCSF level. He indicated the HCSF has experienced attorneys throughout the state who work with newer attorneys to develop experience and expertise to defend the cases and take them to trial or settle, as needed.

Appreciation for Retired HCSF Chief Counsel

A Committee member requested the Committee's appreciation for Rita Noll, who provided exemplary service as Chief Counsel for the HCSF for 34 years prior to her retirement in June 2024, be recorded. Ms. Noll was commended for the contributions she made not only to the HCSF and the health care provider community, but also the State of Kansas more broadly.

Medical Malpractice Insurance Marketplace; Availability Plan Update

The President and Chief Executive Officer, Kansas Medical Mutual Insurance Company (KAMMCO), reviewed the current status of the medical malpractice marketplace in Kansas and the Availability Plan.

Health Care Provider Insurance Availability Plan; Market Conditions

The KAMMCO conferee addressed several aspects of the Availability Plan and its current participants, noting as of October 1, 2024, 410 providers were in the Plan. He noted in 2020 there were 277 defined health care providers, and the all-time high was in 2004 with 661 providers. The conferee stated having more providers insured by the Availability Plan that cannot purchase coverage in the regular market is likely to produce more claims and losses. He discussed the nature of the claims in the past couple of years that has created the losses. He indicated the Availability

Plan has not paid all of the claims yet but assumes they will be paid. The conferee explained the Availability Plan puts up reserves, just like the HCSE, based on estimated amounts to be paid on filed claims over the course of the next few years. He noted a significant number of new claims over the last year or so, which have doubled the number of claims in the Availability Plan, have come from adult care facilities.

The conferee also noted legislation was enacted over the past few sessions that provided some immunity for health care providers as a result of the COVID-19 pandemic. The conferee indicated KAMMCO is not seeing many COVID-19 claims; instead, it is seeing the impact and effect on health care of some trends there were already underway. The conferee noted these were not new issues, but they were exacerbated and accelerated as a result of the pandemic.

Adult care homes. The KAMMCO conferee indicated, of the 410 health care providers in the Availability Plan, 59 are long-term care facilities, with the vast majority being skilled nursing facilities. He noted the 59 adult long-term care facilities represent about 28.0 percent of the long-term skilled nursing facilities in Kansas. The KAMMCO conferee indicated the COVID-19 pandemic had a significant impact on hospitals and especially on adult care facilities. He explained the adult care facilities were already under pressure with low reimbursement, a growing population, and workforce issues. He noted many of the long-term care facilities in Kansas have more beds licensed than they can staff. Recent plan participation data shows:

- Plan Year 2019: 8 insured facilities;
- 2020: 20 insured facilities;
- 2021: 49 insured facilities;
- 2022: 58 insured facilities;
- 2023: 54 insured facilities; and
- 2024: 59 insured facilities.

The KAMMCO conferee noted the Availability Plan has experienced a significant increase in adult care facility claims in the past few years. For example, in CYs 2018 and 2019, the Plan had one reported adult care facility claim each year. The number of reported Availability Plan adult care facility claims increased to 11 in

CY 2020 (Plan year 2020-21) and has since nearly doubled again, with 19 of the total 24 Availability Plan claims reported in calendar year 2023 involving adult care facilities. This increase in claims has resulted in financial losses to the Availability Plan, which are funded by the Fund and all health care providers in the state.

Claims Environment; Firming Conditions

The KAMMCO conferee addressed the current environment for the insurance industry, noting underwriting losses since 2014 after more than a decade of profitable underwriting results. He noted various factors contributing to the underwriting losses experienced by the insurance industry include, but are not limited to, increasing claim severity; an increase in the frequency of “mega verdicts” (verdicts exceeding \$10.0 million); erosion of tort reform; tightening terms and increasing rates for reinsurance programs; and inadequacy of primary insurer rates due to a consolidating health care market creating greater competition for the remaining business opportunities.

Speaking to Kansas-specific challenges, the KAMMCO conferee noted the continued uncertainty surrounding the cap on non-economic damages resulting from the Kansas Supreme Court opinion in *Hilburn v. Enerpipe Ltd.* (2019), and whether *Miller v. Johnson* remains the precedent for maintaining the cap in medical professional liability cases. He indicated the biggest problem is not necessarily what the non-economic damage amount might be, but that the health care costs and attorneys’ fees are increasing. The conferee discussed how the amount paid out in terms of settlements or judgments is a direct result of acceleration in the cost of health care, jury attitudes, and mega verdicts. He stated Kansas has avoided but is not immune to mega verdicts. He indicated this creates significant uncertainty for insurance companies.

The KAMMCO conferee stated many headwinds affect the medical professional liability insurance environment in Kansas and nationwide. He noted the many challenges in the health care environment, along with macro-economic conditions of inflation and rising interest rates, are resulting in rate increases being felt by Kansas health care providers across all lines of insurance. He indicated, with rising costs and lower

reimbursements, health care providers across the country are under significant stress, especially considering their experiences during the COVID-19 pandemic. The conferee noted conditions including workforce issues, provider burnout, and financial viability appear likely to create additional risks and liabilities, which will be felt by the medical professional liability insurance industry and the HCSF into the future.

Addition of Advanced Practice Registered Nurses to HCSF

The KAMMCO conferee next addressed the topic of advanced practice registered nurses (APRNs). He explained when the Legislature broadened the scope of practice of APRNs in 2022, a requirement that APRNs maintain malpractice insurance was added, but APRNs were not placed into the HCSF as defined health care providers and do not qualify for the liability coverage provided by the HCSF available to other advanced practice professionals. He further noted neither APRNs nor their employers enjoy the same legal protections limiting vicarious liability claims. He noted APRNs do not have the tail coverage provided by the HCSF. He explained the industry issues policies that cover APRNs for care provided at the place where the policy is issued. An APRN who goes somewhere else as a contract person or who moonlights is not covered by the employer's policy or coverage; the APRN must purchase another policy.

The KAMMCO conferee stated the results of a KAMMCO ten-year study on claims against APRNs prior to the 2022 legislation found very few claims against APRNs. He reported that today, the frequency of claims filed against APRNs per population of those providers is about the same as for physicians. He noted the severity of those claims (the amount professional liability insurance carriers must pay in judgments or settlements) is about the same as for physicians. The conferee indicated those findings are also echoed in a national study by the Medical Professional Liability Association, so the increase in APRN claims is not unique to Kansas. The conferee indicated, in KAMMCO's view, it is a policy question the Legislature needs to address. If trends continue, situations will occur involving significant claims that may not be adequately insured and will not have the same benefits and protections for patients or providers offered by the

HCSF to defined health care providers. He also noted, if an APRN cannot purchase professional liability coverage in the private market for whatever reason, the Availability Plan is not available to them. He indicated the solution would be for APRNs to become defined health care providers in the HCSF. The conferee indicated the KAMMCO Board believes this issue should be addressed.

HCSF Investment Options

The KAMMCO conferee spoke to the questions about the investment situation at the HCSF. He noted the HCSF does not have the benefits of an insurance company when making investments because of the structure within which it must invest. Insurance companies are regulated by Chapter 40, Article 2A (KSA 40-2a01 *et seq.*), with KSA 40-2b01 *et seq.* applying to life and annuity companies. He explained the statutes lay out the restrictions on investments. He noted KAMMCO can invest in common stocks, preferred stocks, exchange-traded funds, government bonds, corporate bonds, mortgage-backed securities, and a wide variety of things. The conferee indicated KAMMCO has learned over time that diversification is good; diversification lowers risk and provides the ability to move from one asset class to another asset class without necessarily suffering the consequences the HCSF Executive Director identified.

The conferee explained if the HCSF invests only in bonds, it would realize a loss if it had to sell them to invest differently. He explained what KAMMCO has done over the past several years indicated it has the management tools needed to manage through the changing times. The HCSF does not have that flexibility because its statutory authority is much narrower. He provided the example of KAMMCO, as an insurance company, being able to belong to the Federal Home Loan Bank and borrow money from the Federal Home Loan Bank at about 20 basis points. That allows KAMMCO to borrow money at the Federal Home Loan Bank and invest the funds at higher yields or help deal with issues related to liquidity.

The KAMMCO conferee indicated expanding the investment authority of the HCSF to be that of an insurance company by enacting a law that allows the HCSF to invest pursuant to KSA 40-2a01 *et seq.* would provide the tools and the

mechanisms with which to better manage investments.

Discussion

The Committee members and KAMMCO conferee discussed the HCSF investment limitations as follows:

- A Committee member mentioned that topic was discussed at the 2023 Committee meeting and, at the time, the Committee was unsure whether it should move forward with that recommendation. The Committee member indicated that it would require legislative action to make the change. The Committee member expressed belief it was time to address the issue as APRNs are now prescribing with unlimited restrictions, which creates risk not only for APRNs but for the patients to whom they provide care; and
- Committee members discussed the past reluctance of long-term care facilities to join the HCSF, but which may now be the biggest advocates for joining the HCSF. The KAMMCO conferee stated he believed the APRNs' reluctance to participate in the HCSF is due to a lack of understanding of the Fund and the coverage and liability protection benefits provided.

Comments from Health Care Providers and Other Interested Parties

Kansas Medical Society and Kansas Hospital Association. The KAMMCO Vice President and General Counsel provided comment on behalf of the Executive Director of the Kansas Medical Society (KMS) in conjunction with the Kansas Hospital Association (KHA) on both the continuation of the Committee's oversight and the report provided by the Board of Governors' actuary, stating the HCSF has done exactly what was intended for more than four decades: ensuring providers had reasonable access to adequate liability coverage so patients had access to care and providing patients access to a right to recovery in the event of an adverse outcome. The conferee stated KMS and KHA believe the Committee plays a vital role in protecting the public by

ensuring that the Fund remains solvent and independent and encouraged the continued oversight and reporting to the Legislature. The conferee indicated KMS and KHA do not believe an additional outside actuarial analysis is necessary.

Kansas Academy of Physician Associates.

The Executive Director of the Kansas Academy of Physician Associates provided written comment in support of the HCSF and the responsiveness and dedication of the HCSF staff.

Kansas Trial Lawyers Association.

The Executive Director of the Kansas Trial Lawyers Association provided written comment reiterating Association concern expressed at the 2023 Committee meeting related to the excess coverage options available under the HCSF and requesting the Committee recommend the 2025 Legislature amend statutes to clarify the Board's authority regarding the excess coverage options.

Board of Governors' Statutory Report

The Executive Director of the HCSF Board provided a brief history of the HCPIAA, noting that when this law was enacted in 1976, it had three main functions: a requirement that all health care providers, as defined in KSA 40-3401, maintain professional liability insurance coverage; creation of a joint underwriting association, the Availability Plan, to provide professional liability coverage for those health care providers who cannot purchase coverage in the commercial insurance market; and creation of the HCSF to provide excess coverage above the primary coverage purchased by the health care providers and to serve as reinsurer of the Availability Plan.

The Executive Director provided the Board of Governors' statutory report [as required by KSA 40-3403(b)(1)(C)] issued on October 1, 2024. The FY 2024 report indicated:

- Net premium surcharge revenue amounted to \$20,215,254. The highest surcharge rate for a health care professional was \$10,006 for coverage of \$500,000 per claim/ \$1.5 million annual aggregate limit. Application of the 30.0 percent Missouri modification factor for a Kansas resident neurosurgeon licensed to practice in

Missouri would result in a total premium surcharge of \$13,008 for this health care practitioner; the lowest surcharge rate for a health care provider was \$200 (primarily used by a non-resident provider providing minimum health care services in Kansas);

- The average HCSF compensation per settlement (66 cases involving 82 claims were settled in FY 2024) was \$374,878; these settlements resulted in a total HCSF obligation of \$36,740,000 (These amounts are in addition to compensation paid by primary insurance carriers.); and
- The balance sheet, as of June 30, 2024, indicated total assets of \$276,898,210 and total liabilities of \$271,180,336.

Health Care Provider Insurance Availability Plan

The Executive Director's presentation also included an update on the Availability Plan. He reported 410 plan participants as of October 28, 2024. The Executive Director noted the Plan's purpose and reported that individual providers pay about 33.0 percent more in premiums for basic coverage than if insured by a commercial insurance company and also must pay a higher HCSF surcharge. He also discussed the HCSF's role as the reinsurer to the Plan, noting in years (including FY 2024) when the Plan's losses exceed income, the HCSF is required by law to transfer the net loss to the Availability Plan. For FY 2024, the HCSF will transfer \$3,871,247.

HCSF Investments

The Executive Director discussed the HCSF investments, noting the Board has met twice with the Executive Director and Chief Investment Officer of the Pooled Money Investment Board (PMIB), and all parties are aware of the low investment income. He explained part of the reason the investment income is lower than preferred is because 85.0 percent of investments are in bonds and securities that have not matured; they are in a long-term, laddered approach of 10 and 11 years. As those long-term investments mature, the money is going into overnight investments, which have paid well. He explained that is also the pool of money used to pay settlements, which creates the problem. The

Executive Director indicated the Board talked about increasing the current cap on overnight investments set at 15.0 percent of the HCSF assets. He noted, at this time, the overnight investments are less than 7.0 percent. Since the overnight investments are unlikely to reach the 15.0 percent cap in the near future, the Board did not need to increase the cap. The Executive Director indicated cashing out and selling stocks and bonds and trying to reinvest would not be prudent, as the losses would be excessive. He assured the Committee that the Executive Director of the PMIB has been directed by the Board to look for any opportunities to increase the yield on investment income.

Discussion

Committee members expressed concern over the low rate of return on investment income. A Committee member stated a structured amount should be available every year to pay claims, but the majority of the funds should be in longer-term investments to protect the HCSF over possible future lawsuits. The Committee member indicated if investments are not more aggressive, health care providers end up paying higher rates. The Committee member stated he believed the Committee should encourage the Board to look at a stronger, aggressive investment strategy. The Committee member indicated the Committee or the Board needs to have a more in-depth conversation about any statutory restrictions on investments and, if so, whether those restrictions should be changed.

Another member expressed surprise that a group of laddered investments that renewed or came available for renewal over the past two years were not picked up given the 3.0 to 7.0 percent bond reach. The Committee member asked about the laddering as new batches roll over and the amount of those returns, which the member stated should have been higher.

The Executive Director explained, as that money has matured, much of it has had to be used for cases and settlements. He indicated there is about \$17.0 million in repurchase agreements at close to 5.0 percent, but as money rolls out of the lower rate, much must be spent. He noted less money is being invested overall. He indicated the Board will continue to discuss with the PMIB

whether the laddering needs to be shorter. He stated there is no available option at this time, but the cases and settlements should normalize and, in turn, the investments would also normalize.

A Committee member requested a profit and loss statement showing the amount of money taken in, the amount going to the PMIB, and the distribution of the pooled money investments, particularly the rate of return and the dates the investments will be redeemed. The Committee member explained he wanted to see the current cash flow and the cash flow for the next several years.

CONCLUSIONS AND RECOMMENDATIONS

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

The Committee considered information presented by the Board of Governors' representatives, including its required statutory report; the Board's actuary; and health care provider and insurance company representatives and other interested parties.

The Committee acknowledges its role to provide oversight and monitoring of the HCSF, including legislative actions and other contemporary issues affecting the soundness of the HCSF, and agreed on recommendations and comments on the following topics:

- Expressing appreciation for the years of service by Rita Noll, HCSF Chief Counsel and Deputy Director, upon her retirement;
- Considering allowing the HCSF investment options available to insurance companies under KSA 40-2a01 *et seq.*;
- Recommending legislation be introduced to add APRNs as defined health care providers for purposes of the HCSF; and
- Affirming that the Fund is to be held in trust.