

## MINUTES

### JOINT COMMITTEE ON HOME AND COMMUNITY BASED SERVICES OVERSIGHT

September 8, 2010  
Room 548-S—Statehouse

#### Members Present

Representative Bob Bethell, Chairperson  
Senator Carolyn McGinn, Vice-chairperson  
Senator Laura Kelly  
Senator Kelly Kultala  
Representative Jerry Henry  
Representative Peggy Mast  
Representative Melody McCray-Miller (appearing by phone)

#### Members Absent

Senator Dwayne Umbarger  
Representative Brenda Landwehr

#### Staff Present

Kathie Sparks, Kansas Legislative Research Department  
Amy Deckard, Kansas Legislative Research Department  
Iraida Orr, Kansas Legislative Research Department  
Doug Taylor, Office of the Revisor of Statutes  
Nobuko Folmsbee, Office of the Revisor of Statutes  
Jackie Lunn, Committee Secretary

#### Conferees

Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services  
Martin Kennedy, Secretary, Kansas Department on Aging  
Scott Brunner, Chief Fiscal Officer, Kansas Health Policy Authority  
Ray Dalton, Deputy Secretary, Kansas Department of Social and Rehabilitation Services  
Bill McDaniel, Program and Policy Commissioner, Kansas Department on Aging  
Connie Hubbell, Governmental Affairs Director, Kansas Association for the Medically Underserved  
Cindy Luxem, President/CEO of the Kansas Health Care Association/Kansas Center for Assisted Living

Loretta Seidl, Director of Oral Health, Kansas Health Care Association  
Tanya Dorf Brunner, Executive Director, Oral Health Kansas  
Sharon Rhys, Executive Director, Kansas Council on Developmental Disabilities  
Sharon Bird, Consumer  
Tom Laing, Executive Director, InterHab

## Morning Session

Chairperson Bethell called the meeting to order at 10:00 a.m. and introduced Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services (SRS), to provide his testimony regarding agency budget plans to address the decrease in federal funds available due to reduced federal medical assistance percentage (FMAP).

Secretary Jordan presented written copy of his testimony ([Attachment 1](#)). Secretary Jordan stated SRS planned to follow the direction of the Division of the Budget regarding the submission of funding for the FMAP shortfall. The federal jobs bill includes less Medicaid funding than anticipated in the approved FY 2011 state budget. The total new federal funding received from the passage of the federal jobs bill is less than the amount assumed in the approved FY 2011 budget by \$40 to \$50 million. The Governor has recommended that the Legislature pass a revised FY 2011 budget which includes the replacement of State General Fund appropriations for education with funds provided through the federal education jobs fund. This would generate State General Fund dollars to fully fund the Medicaid program as originally approved by the Legislature, keeping the state budget in balance. As recommended by Governor Parkinson, SRS will factor the FMAP extension, along with up-to-date program enrollments, into fall caseload estimates for inclusion in a revised FY 2011 budget. Secretary Jordan stated SRS will be requesting an additional \$15 million from the State General Fund. The Secretary addressed the questions of the Committee during his testimony.

Chairperson Bethell introduced Martin Kennedy, Secretary, Kansas Department on Aging (KDOA), to give his testimony regarding the federal Medicaid funds shortfall. Secretary Kennedy presented written testimony ([Attachment 2](#)). The Secretary stated the Kansas Department on Aging would be asking for an additional \$8.5 million from the Legislature for FY 2011 in a supplemental request. A short question and answer session followed his testimony during which Senator Kelly requested that Secretary Kennedy supply the Committee with annual numbers, number of providers and cost savings. The Secretary stated he would provide the requested information.

Chairperson Bethell introduced Scott Brunner, Chief Fiscal Officer, Kansas Health Policy Authority (KHPA), to give his testimony. Mr. Brunner presented a written copy of his testimony ([Attachment 3](#)). He stated the approved FY 2011 budget was based on the state receiving \$131.0 million in additional federal dollars for all Medicaid programs. This amount assumed that the enhanced Medicaid federal medical assistance percentage (FMAP) would be maintained after the original stimulus period ends in December 2010. The stimulus FMAP includes a base rate increase of 6.2 percent and an additional bonus due to Kansas' unemployment rate for a total matching percentage of 69.68 percent. KHPA's share of the additional federal share in the approved budget is \$67,003,927. The extension of enhanced federal match did not provide the amount of additional federal share Kansas will receive to match Medicaid payments compared to the approved FY 2011 budget. For FY 2011, KHPA's Medical assistance budget is \$1,226,228,635, including \$351,204,882 from the State General Fund. This amount is the Spring 2010 consensus caseload

amount adjusted for legislative action. Applying the revised FMAP rate will result in a decreased federal share of \$32.0 million for FY 2011. That amount would have to be replaced by State General Fund dollars or decreased expenditures. Upon the conclusion of Mr. Brunner's testimony, a question and answer session followed regarding the backlog of applications for services. It was noted that KHPA is making changes to speed up the process of applications, making sure no one gets lost in the process. During the discussion, Chairperson Bethell requested KHPA provide the following information as to whether:

- The prepopulating of HealthWave renewal applications is a temporary or permanent change;
- The responsibility of processing one HealthWave application falls on one employee or is divided among a team; and
- A preference is given to applications with emergency situations, and what procedure is used.

Mr. Brunner stated he would provide that information to the Committee.

Chairperson Bethell called on Martin Kennedy, Secretary, Kansas Department on Aging, to provide his testimony regarding the impact of changes in waivers and reductions in Home and Community Based Services (HCBS) on adult abuse, neglect, and exploitation (ANE). Secretary Kennedy presented written copy of his testimony (Attachment 4). He stated the Kansas Department on Aging Licensure and Certification Commission is responsible for the licensing and certification surveys of all adult care homes. In addition to annual surveys, Health Facility Surveyors conduct abbreviated or complaint surveys in response to complaints received through the Complaint Program's hotline. Surveyors investigate all allegations of abuse, neglect, exploitation and/or inadequate care and services. Investigations are conducted to assure compliance with federal nursing home and/or state adult care home regulations, as appropriate, in addition to compliance with KSA 39-1401(a)(1)(3)(b) for residents in KDOA licensed adult care homes. Secretary Kennedy reviewed the Crisis Exception Criteria and in closing, he stated a total of 245 crisis requests were made with only 15 granted for last year. A short question and answer session followed.

Chairperson Bethell introduced Ray Dalton, Deputy Secretary, SRS, to give his testimony. Deputy Secretary Dalton presented written copy of his testimony (Attachment 1-Pages 1 & 2). The Deputy Secretary reviewed the crisis criteria for the Physical Disability (PD) Waiver that were implemented in December 2008, and also the criteria for the exception process used from February 27, 2009 until January 1, 2010. The number of individuals entering PD waiver services due to abuse, neglect, and exploitation (ANE) are as follows: December 2008 through December 2009 was 53, and January 2010 through July 2010 was 62. Next, he discussed the Mental Retardation/Developmental Disability (MR/DD) Waiver and reviewed the crisis situation policy. The number of individuals entering MR/DD waiver services due to ANE were as follows: July 2009 through December 2009 was 4, and January 2010 through June 2010 was 6. A short question and answer session followed. A request was made for information on ANE incidents for individuals on the Frail Elderly (FE) Waiver. Deputy Secretary Dalton stated he would provide that information.

Chairperson Bethell called on Deputy Secretary Ray Dalton once again, this time to give his testimony regarding information from providers of dental services regarding inpatient and outpatient expenditures for services related to dental problems. Secretary Dalton called the Committee's attention to Attachment 1-Page 2. He stated SRS worked with seven Community

Developmental Disabilities Organizations (CDDOs) to gather responses from providers regarding the handling of dental services since waiver coverage was discontinued. The majority of CDDOs responded that either individuals were going without oral health services, working with one of the clinics in their area that offered an income-based fee system, or the case managers were asking the CDDOs to assist through any funding to which they may have access. Some CDDOs stated that private pay was the only option. According to some CDDOs, services were being accessed through the Kansas Neurological Institute (KNI) or the Marian Clinic in Topeka; and other free clinics were assisting as much as possible. A question and answer session followed with the Committee requesting an explanation for the decrease in inpatient and outpatient expenditures for services related to dental or tooth problems from FY 2007 to FY 2010 for varying age groups. Deputy Secretary Dalton was uncertain of the reason for a decrease in such expenditures from FY 2007 to FY 2008 for all age groups, and stated he would request that information from KHPA and provide it to the Committee. There was also a request for information as to the reason the 65 and older age group received less dental care than the other age groups. Deputy Secretary Dalton stated he also would provide that information to the Committee.

Chairperson Bethell introduced Bill McDaniel, Program and Policy Commissioner, Kansas Department on Aging, to give his testimony regarding the impact of removal of dental care from waiver services. Mr. McDaniel presented written copy of his testimony (Attachment 5). He reviewed the impact of reducing oral health services for individuals on the Home and Community Based Services Frail Elderly (HCBS FE) Waiver. The total expenditure for July 2008 through June 2009 was \$919,494.0; for July 2009 through December 2009, \$501,324.0; and for January 2010 through June 2010, \$53,358.0. A short question and answer session followed.

Chairperson Bethell introduced Connie Hubbell, Governmental Affairs Director, Kansas Association for the Medically Underserved (KAMU), to provide her testimony regarding the removal of dental care from waiver services. Ms. Hubbell presented written copy of her testimony (Attachment 6). She stated that KAMU represents 39 safety net clinics in the state, including 17 that provide dental care. In 2009, there were 382,287 total medical visits and 99,945 total dental visits to safety net clinics in Kansas. In closing, she stated it is difficult to identify the exact costs for medical care and hospitalizations in Kansas due to lack of access to dental care as the healthcare industry does not have specific codes to allow for collection of that information. KAMU is aware, through experiences and outcomes, that Kansans are shouldering substantial financial costs, economic costs, and human costs because of the lack of access to dental care. In Kansas, that is especially the case for those in rural areas, the elderly, and those insured through Medicaid, or not at all. A short question and answer session followed. The Committee requested data comparing the number of dentists per county in Kansas to the national numbers, and also as compared to other states. Ms. Hubbell indicated she would provide the information requested.

Chairperson Bethell introduced Tanya Dorf Brunner, Executive Director, Oral Health Kansas, to give her testimony regarding the impact of the removal of dental care from waiver services. Ms. Brunner presented written copy of her testimony (Attachment 7). She stated that in January 2010, the dental services for people on the PD, DD, and Traumatic Brain Injury (TBI) waivers were eliminated, and dental services for people on the FE waiver will be accessed only through a rare crisis exception. Eight people have received services through the FE waiver crisis exception to date. Oral Health Kansas has been working with at least one of the Area Agencies on Aging and many CDDOs to stress preventive oral health care. Research shows that people who receive routine dental services tend to be able to manage oral health problems that could lead to more serious and costly health problems, including pneumonia, strokes, and heart conditions. In closing, she stated that when waiver dental services were in effect, the cost to provide them was extremely low. Nearly five thousand Kansans per year benefitted from an investment of approximately \$600,000 in State General Funds (SGF). She stated that even without a

comprehensive study, the return on investment of this \$600,000 was high. Dental services help people keep their mouths healthy, avoid or manage some chronic health conditions, and gain confidence. Ms. Brunner was asked to provide copies of the 2009 California HealthCare Foundation study and the state of Michigan study referred to in her testimony.

Chairperson Bethell introduced Cindy Luxem, President/CEO of the Kansas Health Care Association/Kansas Center for Assisted Living, to give her testimony. Ms. Luxem stated dental services are vital and necessary, not only for good oral health, but also for good medical condition. She also mentioned that the Kansas Healthcare Association had received a \$50,000 grant. She then introduced Loretta Seidl, Director of Oral Health, Kansas Health Care Association, to provide her testimony. Ms. Seidl presented written copy of her testimony (Attachment 8). She cited three different cases in which oral issues had caused bad health problems. A short question and answer session followed. Questions were posed as to the extended care permit for dental hygienists with regard to whether the permit expanded the scope of practice for hygienists or expanded the sites of practice.

Chairperson Bethell stated the Committee would adjourn for lunch and reconvene the meeting at 1:30 p.m.

### **Afternoon Session**

Chairperson Bethell called the afternoon session to order at 1:30 p.m. and called on Ray Dalton, Deputy Secretary, Kansas Department of Social and Rehabilitation Services (SRS), to present an update on Pay-As-You-Go and Sliding Scale Programs for HCBS. Deputy Secretary Dalton referred the Committee to Attachment 1-Pages 3, 4 and 5. He gave a brief history of the sliding scale program. In 2002, the Kansas Legislature passed a proviso authorizing the SRS Secretary to collect fees from parents to pay for a portion of services provided to their children. Affected by this proviso are parents of children whose eligibility for the Home and Community Based Service waiver was determined without considering parental resources or income. A sliding fee scale was developed by SRS in conjunction with a working group that included representatives of stakeholder agencies and family members. Parents pay a set fee each month based on their family size and income, although families with incomes below 200 percent of the federal poverty level do not pay. He noted that, during the time a child is receiving HCBS services, if a parent or parents fail to pay, SRS will not deny services to the child.

Chairperson Bethell introduced Bill McDaniel, Program and Policy Commissioner, Kansas Department on Aging, to give an update on the Senior Care Act sliding scale. Mr. McDaniel presented written testimony (Attachment 9). He stated the Senior Care Act (SCA) is a program of in-home services for residents of Kansas, 60 years of age or older, who have functional limitations which restrict their ability to carry out activities of daily living and impede their ability to live independently. The Secretary of Aging is required to develop a sliding fee scale which must be published annually in the *Kansas Register*. Each customer's fee is based on the customer's income and assets. All customer fees and donations reduce the cost of services paid by the Department on Aging under the Kansas Senior Care Act. The income level on the sliding fee scale is based on the federal poverty level. The more income and liquid assets a senior has, the larger the percentage they must pay for the services. A question and answer session followed. A request was made to SRS to provide information on the Autism Waiver with regard to: the number of persons on the waiver who are or should be paying at some level; the number of persons not paying; and the effectiveness of collections and enforcement.

Chairperson Bethell called the Committee's attention to the written testimony of Michael Hammond, Executive Director, Association of Community Mental Health Centers of Kansas, Inc. (Attachment 10).

Chairperson Bethell called on Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services (SRS), to present his testimony regarding an update on voluntary admissions to state mental health hospitals, along with data on mental health facilities in the state. Secretary Jordan referred the Committee to the chart in Attachment 1-Page 8, stating the number of patients in state mental hospitals has been increasing for the past several years. In May of this year, the decision was made to delay admissions to the state hospitals in order to address the problem of overcrowding. Secretary Jordan submitted a written copy of *PSH/KNI Executive Order Advisory Group-Report to SRS Secretary, Don Jordan, June 2010* (Attachment 11). Secretary Jordan gave a brief review of this report. A question and answer session followed. A request was made for the average daily census, highs and lows, and number of days over for beds in mental health facilities. Secretary Jordan stated he would provide the information.

Chairperson Bethell introduced Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities, to give her testimony regarding the outcomes of the Winfield State Hospital closure. Ms. Rhys presented written copy of her testimony (Attachment 12) and also a booklet entitled *The Right Thing To Do*. (A copy can be found in the Kansas Legislative Research Department.) She opened by stating that a developmental disability is one or more impairments that begin before the age of 22, and alter or substantially hinder a person's ability to do at least three major life functions which would include: learning; taking care of one's self; walking; talking. She stated the Council on Developmental Disabilities visited with each person living at Winfield to measure dozens of aspects of quality of life and characteristics of service provision for each person.

The Kansas experience of the closure of Winfield has been far more successful than the consulting team predicted. Based on their data, it has been determined that the persons moved from Winfield into the community are better off, and their quality of life has vastly improved. In closing, she stated that persons with development disabilities are healthier, and their quality of life is better when they live in the community. Closing both state hospitals and using all savings for community developmental disabilities services would permit service to many individuals who are desperately waiting for services, some as many as 3 to 5 years. A question and answer session followed. Senator Kelly requested data on the cost of acute medical care services for those on HCBS waivers. Ms. Rhys stated she would attempt to obtain that information for the Committee.

Chairperson Bethell introduced Sharon Bird, a private citizen, whose son has developmental disabilities and was a former patient at the Winfield State Hospital. Ms. Bird presented written copy of her testimony (Attachment 13). She stated she was instrumental in helping to set up Creative Community Living in Cowley and Butler Counties due to the closing of Winfield. Ms. Bird stated that closing Winfield was very good for her son. He has a much better quality of life now and is happier than he has ever been, residing in Creative Community Living.

Chairperson Bethell called on Martin Kennedy, Secretary, Department on Aging, to provide his testimony regarding the Quality Care Improvement Panel Implementations (Attachment 14), Nursing Facility Incentive Factor for FY 2011 (Attachment 15), and Data on Non-Medical Nursing Facilities in Kansas (Attachment 16). Secretary Kennedy opened by stating **Senate Sub. For Senate Sub. For Sub. For HB 2320** passed by the 2010 Kansas Legislature, directs the KDOA to establish a Quality Care Improvement Panel. Among its charge, the panel is to administer and direct the expenditure of funds collected from nursing facilities through the quality care assessment. At this time the panel is being appointed, and he hoped to have the first meeting with the panel in October. The panel will not be compensated or receive expenses, and is directed to report to the

Kansas Legislature and the Health Policy Oversight Committee annually, on or before January 10. Secretary Kennedy addressed questions during his testimony. The Committee requested he send them a copy of the report that would be presented to the Kansas Legislature and the Health Policy Oversight Committee in January. Secretary Kennedy stated he would comply with that request.

Secretary Kennedy spoke on the Nursing Facility Incentive Factor for FY 2011. He stated the Nursing Facility Incentive Factor is a per diem amount determined by six per diem add-ons providers can earn for various outcomes measures. Providers that maintain a case mix adjusted staffing ratio at or above the 75<sup>th</sup> percentile will earn \$2.50 per diem add-on. Providers that fall below the 75<sup>th</sup> percentile staffing ratio, but improve the staffing ratio by 10 percent or more will earn a \$0.25 per diem add-on. Providers that achieve a turnover rate at or at or below the 75<sup>th</sup> percentile will earn a \$2.50 add-on. Providers that have a turnover rate greater than the 75<sup>th</sup> percentile, but that reduce their turnover rate by 10 percent or more will receive a per diem add-on of \$0.25. Providers that have completed the full Kansas Culture Change Instrument Survey will receive a \$0.38 per diem add-on. Providers that have a Medicaid occupancy percentage of 60 percent or more will receive a \$1.13 per diem add-on. Secretary Kennedy addressed the questions of the Committee.

Vice-chairperson McGinn introduced Tom Laing, Executive Director, InterHab, to give his testimony on the potential for provider assessment for HCBS waivers. Mr. Laing presented written copy of his testimony on the impact of removal of dental care from HCBS ([Attachment 17](#)) and provider assessments for HCBS services ([Attachment 18](#)). Mr. Laing stated nearly all persons with developmental disabilities receive comprehensive developmental disabilities services via the Home and Community Based Services waiver provided by Medicaid. Nearly every dollar assessed against providers will produce a benefit to persons served by those same providers. Talks have continued over the past year between CMS and representatives of the national developmental disabilities services advocacy groups working to advocate for CMS to move forward on plans to allow a HCBS DD provider assessment. When provider assessments were authorized, states were attempting to make Medicaid a more affordable and flexible funding source. InterHab has been contacting providers that belong to other associations, as well as those not aligned with a professional association. To date there has been broad receptivity to this initiative. The details will be shaped by such collaboration, and by any additional information from CMS developments. InterHab expects it will be providing the Legislature with drafts of consensus supported legislation for its consideration in the coming months. A question and answer session followed.

Chairperson Bethell called the Committee's attention to the minutes of the previous meeting. *Representative Mast made a motion to approve the minutes for August 16, 2010. Representative Henry seconded. Motion carried.*

Chairperson Bethell adjourned the meeting at 3:35 p.m. with the next meeting scheduled for November 8, 2010 at 10:00 a.m. in room 548-S.

Prepared by Jackie Lunn  
Edited by Iraida Orr

Approved by Committee on:

November 8, 2010  
(Date)