MINUTES

ROBERT G. (BOB) BETHELL JOINT COMMITTEE ON HOME AND COMMUNITY BASED SERVICES AND KANCARE OVERSIGHT

November 18, 2014
Room 548–S—Statehouse

Members Present

Representative David Crum, Chairperson
Senator Mary Pilcher-Cook, Vice-chairperson
Senator Jim Denning
Senator Marci Francisco
Senator Laura Kelly
Representative Willie Dove
Representative John Edmonds
Representative Ron Ryckman, Jr.
Representative Jim Ward

Staff Present

Bobbi Mariani, Kansas Legislative Research Department
Iraida Orr, Kansas Legislative Research Department
Erica Haas, Kansas Legislative Research Department
Nobuko Folmsbee, Office of Revisor of Statutes
Katherine Goyette, Office of Revisor of Statutes
Renae Jefferies, Office of Revisor of Statutes
Nancy Fontaine, Committee Assistant

Conferees

Marilyn Kubler, Targeted Case Manager, Jenian, Inc.
Joan Kelley, Vice President, Kansas Neurological Institute Parent Guardian Group
Rosie Cooper, Executive Director, Kansas Association of Centers for Independent Living
Cindy Luxem, President and CEO, Kansas Health Care Association
Tanya Dorf Brunner, Executive Director, Oral Health Kansas
Hilary Gee, Director of Health Policy, Kansas Action for Children
Kyle Kessler, Executive Director, Association of Community Mental Health Centers of Kansas
Amy Campbell, Kansas Mental Health Coalition
Tom Laing, Executive Director, Interhab
Steve Wienecke, Private Citizen
Aimee Metivier, Private Citizen (Oral Only)
Chad Austin, Senior Vice President, Governmental Relations, Kansas Hospital Association (Written Only)
Audrey Dunkel, Director of Financial Advocacy, Kansas Hospital Association (Oral Only)
Krystal Bibbs, Private Citizen (Written Only)

Richard Cagan, Executive Director, National Alliance on Mental Illness Kansas (Written Only)
Christine Doherty, Private Citizen (Written Only)
Jane Kelly, Executive Director, Kansas Home Care Association (Written Only)
Susan Crain Lewis, President and Chief Executive Officer, Mental Health America of the Heartland (Written Only)
Robert Moser, M.D., Secretary of Health and Environment
Susan Mosier, M.D., Acting Secretary, Kansas Department of Health and Environment
Glen Yancey, Chief Information Technology Officer, Kansas Department of Health and Environment
Mike Randol, Director of Finance, Kansas Department of Health and Environment
Kari Bruffett, Secretary for Aging and Disability Services
Kerrie Bacon, KanCare Ombudsman
Craig Van Aalst, Assistant Director of Accident and Health Division, Kansas Insurance Department
Laura Hopkins, Chief Executive Officer, Amerigroup Kansas Plan
Michael McKinney, M.D., Chief Executive Officer and Plan President, Sunflower State Health Plan
Tim Spilker, Health Plan Chief Executive Officer, UnitedHealthcare Community Plan
Dan Bryan, Principal Auditor, Legislative Post Audit

Morning Session

Chairperson Crum called the meeting to order at 9:00 a.m. and provided opening comments.

Robert Moser, M.D., who is departing his position as the Secretary of Health and Environment at the end of November 2014, thanked the Committee for the opportunity to work with Committee members. He also provided an update on the Ebola outbreak and what the Kansas Department of Health and Environment (KDHE) is doing to engage in preparedness. Dr. Moser said there have been only four cases of Ebola in the U.S., and the chances of this becoming an issue were very remote.

Human Services Consensus Caseload Fall Estimates

Bobbi Mariani, Managing Fiscal Analyst, Kansas Legislative Research Department (KLRD), updated the Committee on the Human Services Consensus Caseload Fall Estimates for fiscal years (FY) 2015, 2016, and 2017 (Attachment 1). Ms. Mariani reported the estimate on human services caseload expenditures for FY 2015 was an increase of $106.6 million from all funding sources and $46.2 million from the State General Fund (SGF). She noted the estimate for FY 2016 was an increase of $126.4 million from all funding sources and $76.6 million from the SGF above the FY 2015 revised estimate. Ms. Mariani stated the estimate for FY 2017 was an increase of $31.9 million from all funding sources and $44.5 million from the SGF above the FY 2016 estimate. The combined estimate for FY 2015, FY 2016, and FY 2017 was an all funds increase of $265.9 million and a SGF increase of $167.3 million.

In discussing the FY 2015 revised estimate for all human services caseloads, Ms. Mariani indicated the estimate was an all funds increase of $106.6 million and an SGF increase of $46.2 million above the budget approved by the 2014 Legislature. She noted the estimate for Temporary Assistance to Needy Families (TANF) was a decrease of $200,000 from all funding

sources and $3,437,508 from the SGF expenditures from the amount approved by the 2014 Legislature. She indicated the All Funds decrease was due to a series of policy changes that began in fall 2011, and resulted in a declining TANF population, and the SGF reductions were the result of meeting the federal maintenance of effort requirements through other allowable expenditures, mainly the refundable portion of the Earned Income Tax Credit.

Ms. Mariani explained the estimate for contracted foster care services was anticipated to decrease by $300,000 from all funding sources, and increase by $10.2 million from the SGF. She noted there was an ongoing conversation with the federal Administration for Children and Families regarding expenditures from the Title IV-E foster care funding source. The final decisions on the issue were not anticipated in calendar year 2014, and the estimate for FY 2014 included the addition of $13.1 million, all from SGF, to provide adequate cash flow to the program.

In addition, Ms. Mariani reported the FY 2015 estimate for KanCare Medical is $2.7 billion from all funding sources, including $1.0 billion from the SGF, reflecting an increase of $108.4 million from all funding sources and $39.0 million from the SGF above the amount approved by the 2014 Legislature. She noted the increase in KanCare Medical was largely attributable to a slight growth in the population served and the costs associated with the Affordable Care Act (ACA) Insurers Fee included in the capitated rate payment (except for long term care services and supports which are excluded from the federal requirements). The Kansas Department for Aging and Disability Services' (KDADS) KanCare estimate included an addition for payments to the managed care organizations (MCOs) for mental health assessments for both the current year and prior years, which had not been previously included in the capitation payments. She stated the estimate included funding from the Problem Gambling and Addictions Grant Fund.

A Committee member asked for clarification on FY 2017 estimates, with a rise of $21.0 million between 2016 and 2017, and the difference between the All Funds and SGF. Ms. Mariani responded the report showed a change from the FY 2016 estimate, which could be the result of Federal Medical Assistance Percentage (FMAP) changes in 2016.

A Committee member asked for a memorandum explaining how TANF had decreased while the number of poor children had increased and the policy changes made in this area. The member also asked for clarification on the formula for FMAP. Ms. Mariani responded the complicated formula was developed and used by the federal government, and it not only looked at Kansas numbers but how Kansas compared to other states. The Committee member asked who was a creditable source for an explanation of this formula. Ms. Mariani said the formula came from the Centers for Medicare and Medicaid Services (CMS), and additional information may be obtained from CMS.

A Committee member asked for clarification on the major areas driving changes in FY 2016. Ms. Mariani responded the major areas were the FMAP, the insurer's fee, and also the extra week of payments in FY 2016. The member expressed concern the ACA tax had been moved around, making this the first year the State would have to pay it. The member said it seemed there was no end to how much the tax could increase and noted the federal government continued to expect the states to be responsible for more of the fees.

The Committee member who previously requested the memorandum on TANF funding and policy changes asked the document include the cost of health care.

A Committee member asked for clarification on the information on page three, paragraph three of Attachment 1 regarding federal Title IV-E funding. Ms. Mariani replied the IV-E funding was decreasing in FY 2016 because, in FY 2015, the federal government withheld a portion of the funds normally provided to the state and, for purposes of the report, an assumption was made the issue would be resolved by FY 2016.

A Committee member asked if the U.S. Department of Labor (DOL) ruling was factored into any of the estimates. Ms. Mariani replied the ruling was not factored into the estimates.

Presentations on KanCare from Individuals, Providers, and Organizations

Marilyn Kubler, Targeted Case Manager, Jenian, Inc., testifies she supported those on the Intellectual/Developmental Disability (I/DD) waiver and wanted the Committee to consider how disruptive KanCare had been for those on the waiver. In particular, she was concerned about Health Homes and the letters regarding Health Homes sent to persons who can not read or write, limiting their ability to opt out. She also said her organization wanted to become a Health Homes partner, but the cost of the required electronic health records software made it impractical (Attachment 2).

Joan Kelley, Vice President, Kansas Neurological Institute Parent Guardian Group, stated there was a compelling need for both community-based programs and centralized care, so states needed to operate a range of services to meet the diverse requirements of individuals with disabilities and their families (Attachment 3).

Rosie Cooper, Executive Director, Kansas Association of Centers for Independent Living (KACIL), testified the DOL ruling required either cuts to services or additional funding. She stated the areas of greatest concern were sleep cycle support and overtime and travel time for hours worked over 40 (Attachment 4).

Cindy Luxem, President and Chief Executive Officer, Kansas Health Care Association, addressed the use of anti-psychotic drugs raised at a previous Committee meeting to ensure the members understood the issues with these drugs related to dementia and not mental health issues. She stated the way dementia was dealt with needed to change because making changes was a long process, and it had not been changed for some time. She added KanCare providers still were having major payment issues (Attachment 5).

Tanya Dorf Brunner, Executive Director, Oral Health Kansas (OHK), testified the KanCare Medicaid dental benefit was added for preventive care and was a great benefit to those on KanCare. She said, while this was a good start, adults needed more assistance with further dental care, such as fillings. She also provided information on a new Oral Health Initiative, designed to increase the number of children who receive preventive dental care. Ms. Dorf Brunner's testimony included further recommendations (Attachment 6).

Hilary Gee, Director of Health Policy, Kansas Action for Children (KAC), stated KAC received KanCare data regarding children's health and, although the data was limited, the trend for the support of children was decreasing. She indicated it appeared policy changes were affecting enrollment in KanCare negatively, and she requested enrollment data be published monthly to enable closer tracking of trends (Attachment 7).

Kyle Kessler, Executive Director, Association of Community Mental Health Centers of Kansas, addressed the issue of anti-psychotic drug use and wanted to ensure these drugs continued to be available for use in treating those with mental illness. He included recommendations in his testimony (Attachment 8).

Amy Campbell, representing the Kansas Mental Health Coalition (KMHC), testified KMHC had a policy on the use of psychotropic drugs and supported exempting mental health drugs from the restricted access list (Attachment 9).

Tom Laing, Executive Director, InterHab, recommended the Committee consider increasing reimbursement rates for the Home and Community Based Services (HCBS) professional staff that provided services and support to those with disabilities (Attachment 10).

Aimee Metivier, private citizen, provided oral testimony regarding her grandson with attention deficit hyperactivity disorder (ADHD) and autism who received KanCare services through UnitedHealthcare. She noted having had great experiences with the services provided for her grandson's mental health issues. She felt the support he received was keeping him out of the justice system or a long-term mental health facility.

Steve Wienecke, private citizen and parent of a child receiving HCBS I/DD waiver services, stated he recently had seen a piling on of regulations, some conflicting, regarding how he was to navigate the system and care for his child. He felt there was a potential conflict of interest, as the organization charged with saving money currently also determined the level of care provided. Mr. Wienecke said there used to be a disinterested third party who determined the level of care needed, and he recommended a third-party evaluation or oversight entity be reinstated (Attachment 11).

The following individuals submitted written testimony:

- Chad Austin, Senior Vice President, Governmental Relations, Kansas Hospital Association (Attachment 12);
- Krystal Bibbs, Private Citizen (Attachment 13);
- Richard Cagan, Executive Director, National Alliance on Mental Illness Kansas (Attachment 14);
- Jane Kelly, Executive Director, Kansas Home Care Association (Attachment 15);
- Susan Crain Lewis, President and Chief Executive Officer, Mental Health America of the Heartland (Attachment 16); and
- Christine Doherty, Private Citizen (Attachment 17).

A Committee member asked Ms. Gee whether KAC received the information the organization requested. Ms. Gee responded KAC appreciated efforts by the KDHE to provide the information requested. However, KDHE was unable to provide the information in the specific way KAC had requested, but KDHE hoped to do so in the future.

A Committee member asked Mr. Wienecke about the potential conflict of interest issue. Mr. Wienecke stated there was a paradox in that, if he did not declare himself a guardian, he could not make decisions for his son but, if he declared himself a guardian, he disqualified himself from the ability to determine the level of care his son would receive.

A Committee member asked Mr. Wienecke about different types of guardianships, and whether he could determine the level of care his son would receive if he had a power of attorney. Mr. Wienecke replied he could not impact the amount of care but could only make recommendations to someone monetarily motivated to reduce care. The Committee member asked him to provide more information on the process previously in place. Mr. Wienecke responded there were independent case managers, and they moderated between the state and the consumer.

A Committee member had a question regarding written testimony provided by Mr. Austin. Mr. Austin was not available but Audrey Dunkel, Director of Financial Advocacy, Kansas Hospital Association (KHA), responded on his behalf. The Committee member asked if he understood the testimony correctly that, while payments were improving, there still were issues with delays. Ms. Dunkel responded that was correct, and KHA was working to determine why there was still a problem.

A Committee member asked Ms. Dunkel if the Technical Advisory Group (TAG) still was meeting. Ms. Dunkel responded TAG still was meeting and had made progress on the list of issues they previously had developed.

A Committee member asked Ms. Cooper, KACIL, for clarification on the third recommendation from her written testimony. Ms. Cooper responded currently, when someone turns 65 years of age, he or she must move from the Physical Disability (PD) waiver to the Frail Elderly (FE) waiver and has no choice. However, she stated, the problem was the direct service workers then would receive a reduction in pay because reimbursements under the FE waiver were lower than under the PD waiver. She said she would like to see the savings from moving individuals off the PD waiver used for the PD waiver.

A Committee member asked Ms. Dorf Brunner, OHK, what dental procedures were available to adults under the current MCO dental benefits plan. Ms. Dorf Brunner replied adults could have screenings, x-rays, and cleanings. The Committee member asked if extractions could be performed. Ms. Dorf Brunner replied extractions were included under the regular medical side of the plan. The Committee member stated it seemed the range of services was screenings and cleanings and then extractions, with nothing in between. Ms. Dorf Brunner said that was correct.

KanCare Update

Susan Mosier, M.D., Acting Secretary, KDHE, reviewed the KDHE KanCare Executive Summary (Attachment 18).

Dr. Mosier continued the KDHE briefing by updating Committee members on the vacant KanCare Inspector General position. She stated the person selected for the position had not accepted the offer, so the search for a KanCare Inspector General continued (Attachment 19).

Dr. Mosier provided an update on the current status of Health Homes. She stated, as of September 30, 2014, 25,630 persons were enrolled, and there had been over 98 public outreach events providing information about Health Homes. Dr. Mosier also responded to issues raised regarding psychotropic drugs. Her testimony included recommendations for consideration that would allow the use of psychotropic drugs without prior authorization for those with severe mental illness, but said the psychotropic drugs should not be used for chemical restraint.

A Committee member observed, based on the statistics in the KDHE Executive Summary, KanCare enrollment seemed to be leveling off.

A Committee member asked Dr. Mosier to clarify the formula for FMAP. Dr. Mosier replied the reduction in the state's unemployment rate was one of the largest changes impacting the FMAP.

A Committee member asked Dr. Mosier to address the concerns of the conferee who addressed Health Homes and the failure of some persons to receive the opt-out letters. Becky Ross, KDHE Medicaid Initiatives Coordinator and lead for the Health Homes project, responded CMS required letters be sent to the actual beneficiaries, unless someone was listed as a responsible person in the Medicaid case file. She added there might be some lag time depending on when during the month a recipient opted out.

A Committee member asked about safeguards in place for an individual who did not have the ability to make a decision on Health Homes. Ms. Ross replied, if the individual was receiving services from a community service provider, KDHE would look to the community service provider to help, but the letter would be sent to the individual. She stated KHDE would encourage families and guardians to be on file as a responsible person with KDHE so they would receive copies of letters as well.

The Committee member also asked if funds were available to help those implementing electronic health records systems. Ms. Ross said there were some federal funds, but the funds were limited to traditional healthcare providers. However, she noted KDHE contracted with a company to provide technical assistance to those wanting to become Health Home partners.

A Committee member asked how recipients made sure the correct persons were designated as responsible persons in the system. Ms. Ross indicated, when someone was designated a responsible person in the Department for Children and Families' system, there was a process in place to forward that information to KDHE.

Glen Yancey, Chief Information Technology Officer, KDHE, added the responsible party was a CMS designated role in the Medicaid eligibility process, and just because a court awarded guardianship to someone did not mean the application credentials automatically were updated to reflect the individual as a responsible party.

A Committee member asked who made the decision to make Health Homes an opt-out versus opt-in program. Dr. Mosier replied the Health Homes Steering Committee made that decision.

A Committee member expressed concern Health Homes were supposed to be all about collaboration, but it did not seem this was happening in practice, and it appeared the state was putting up barriers to make persons fall through the cracks.

The Committee member asked Dr. Mosier who made the decision to disconnect the application process between Medicaid and TANF. Dr. Mosier replied she understood the decision was made about ten years ago. The member expressed concern there used to be presumptive eligibility, and a computer system was not needed to determine eligibility. Dr. Mosier replied, when the Kansas Eligibility Enforcement System (KEES) system was fully implemented, the application process would be smoother.

A Committee member agreed with the intent of Health Homes but was concerned the state was limiting some from joining the Health Homes team due to the cost of software required to comply with CMS reporting requirements.

A Committee member asked if there was a time line for opting out of Health Homes. Dr. Mosier replied individuals could opt out at any time. The member asked what happened to the payment of services from the time a person opted out and the time it actually took effect. Ms. Ross said basic services would continue.

Mr. Yancey provided an update on the KEES program. He addressed concerns previously expressed about the perception the state was creating barriers. He indicated the application process was largely controlled by CMS, requiring changes to be coordinated with that agency. Mr. Yancey stated, while the state was working hard to make the process seamless, it was a complicated system and CMS rules complicated it further. Mr. Yancey also stated presumptive eligibility still existed, and the state actually was trying to extend it to a larger number of hospitals. Mr. Yancey continued with his briefing on the KEES program and said KDHE was currently in Phase 3 Build 3 in system testing. He noted KDHE was also in the final stages of identifying and prioritizing change requests received from the KDHE program staff (Attachment 20).

Mike Randol, Director of Finance, KDHE, discussed cost and enrollment comparisons of KanCare and Medicaid pre-KanCare (Attachment 21). Mr. Randol also provided updated information on the improvement in financial positions for the three KanCare MCOs.

Kari Bruffett, Secretary for Aging and Disability Services, provided an update on the transition of I/DD Long Term Services and Supports into KanCare. Secretary Bruffett also updated Committee members on the current efforts to reduce the PD and I/DD waiting lists. She addressed the new DOL HCBS settings rule and said the DOL agreed to delay enforcement of the rule until June 30, 2015. She stated KDADS continued to have discussions with the DOL on the applicability of this rule to the state's system, but no DOL determination had been made (Attachment 22).

Secretary Bruffett also addressed dementia care and anti-psychotic drugs. She indicated the nursing facility surveyors looked at the use of anti-psychotics on dementia patients as part of facility reviews.

A Committee member asked Secretary Bruffett to address issues raised regarding possible conflicts of interest. Secretary Bruffett provided members with a work flow diagram for I/DD services showing how managed care coordinators interacted with targeted case managers in developing a care plan. She stated this work flow process was reviewed in great detail with CMS. Secretary Bruffett noted the side-by-side work of the managed care coordinator and the targeted case manager was designed, in part, to mitigate concerns regarding conflict of interest (Attachment 23).

A Committee member asked Secretary Bruffett to respond to the issue raised about the requirement to move individuals from the PD waiver to the FE waiver at age 65. Secretary Bruffett replied this was proposed in the PD waiver renewal, which still was out for public comment. She added the proposal grandfathers those above 65 years of age currently on the PD waiver, so it would apply only to those who turn 65 years of age in the future.

Chairperson Crum recessed the meeting at 12:13 p.m. and reconvened the meeting at 12:30 p.m.

Afternoon Session

KanCare Ombudsman Update

Kerrie Bacon, KanCare Ombudsman, updated members on third quarter statistics regarding the number of contacts with persons, outreach efforts, and the reasons for the contacts. She indicated the KanCare Ombudsman's Office received 526 contacts during the third quarter of calendar year 2014, with 256 of the contacts related to an MCO issue (Attachment 24).

A Committee member asked Ms. Bacon if issues in the "resolved" category in her testimony included issues referred elsewhere and whether there was follow-up if a member was referred. Ms. Bacon replied the statistics included referrals, and she or her staff attempted to follow up with persons referred to see if issues were resolved.

A Committee member asked Ms. Bacon if, of the 42 I/DD issues, it was possible there could be a number of persons with the same issue. Ms. Bacon responded issues had been across the board, and she had not seen a specific trend. The Committee member then asked if Ms. Bacon communicated with KDADS if she saw trends, and she replied she did so.

Home and Community Based Services Update

Secretary Bruffett updated Committee members regarding the average daily census for state institutions and long-term care facilities, savings on transfers to Home and Community Based Services (HCBS) waivers, HCBS savings fund balance, and renewal applications for I/DD, FE, and Traumatic Brain Injury waivers (Attachment 25).

Secretary Bruffett discussed Osawatomie State Hospital, which had a review by CMS surveyors. The surveyors identified deficiencies and were requiring the hospital to correct them. She stated the hospital would be resurveyed by December 8, 2014. Secretary Bruffett noted Osawatomie also has had an issue with being over census as compared to the license level. She stated one of the challenges was, over the past few years, some community hospitals in Kansas and in the surrounding region that had adult psychiatric beds either were closing whole units or reducing the number of beds. Secretary Bruffett noted this increased the pressure on the state hospitals. She addressed steps being taken to deal with the census issue.

Secretary Bruffett addressed concerns raised by conferees regarding potential conflicts of interest. Her recommendations for dealing with this issue were included in her testimony and were based on elements from the current model used in Oregon.

A Committee member asked Secretary Bruffett to further discuss the Osawatomie State Hospital census issue. Secretary Bruffett clarified, even though Osawatomie was over census, the hospital was staffing to the number of patients, not the capacity. The Committee member expressed concern Medicare payments to Osawatomie could be terminated based on the deficiencies. Secretary Bruffett agreed there was concern about the deficiencies, and stated she would provide a report on the plan of action to deal with deficiencies, a breakdown of the number of patients who were involuntarily committed, and how many were substance abusers.

A Committee member asked for further information on possible solutions for the conflict of interest issue. Secretary Bruffett discussed the different types of responsible parties, such as guardians and persons of interest. She indicated they were looking at setting up a system with a third party with guardian-like responsibilities who could sign off on the plan of care. She noted this model already existed in other states and would allow guardians to provide services.

A Committee member asked who, under the proposed solution, would be the third party who would have guardian-like responsibilities. Gina Meier-Hummel, Commissioner of Community Services and Programs, KDADS, responded the third party might be a family member other than the care taker, but the details of how the process would work had not been finalized. The Committee member expressed concern the state might be adding a layer of cost by involving an extra person.

Health Insurance Marketplace Update

Craig Van Aalst, Assistant Director of Accident and Health Division, Kansas Insurance Department, provided updated statistics for enrollment in the Health Insurance Marketplace, including key dates regarding the current open enrollment period (Attachment 26).

A Committee member referred to Mr. Van Aalst's testimony, where the premium rates ranged from -0.27 percent to 14.9 percent, and asked about the average rate. Mr. Van Aalst said it was difficult to provide an average because the numbers he had provided were by carrier.

KanCare Managed Care Organizations Presentations

Laura Hopkins, Chief Executive Officer, Amerigroup Kansas Plan, provided Committee members with an update, including Amerigroup achievements for the year, such as assisting 119 persons move from institutional care back into communities and another 68 persons transition to employment. She also provided information on Amerigroup's current Health Home statistics and its Foundation Grants (Attachment 27).

A Committee member asked Ms. Hopkins if she was beginning to see benefits of care coordination in terms of chronic disease management, now that the state was a couple of years into the program. Ms. Hopkins indicated she was seeing overall reductions in emergency care, which meant members were seeing their primary care providers instead of relying on emergency care. She noted she also had seen a decrease in in-patient admissions for chronic care situations.

A Committee member asked Ms. Hopkins where skilled care was included in the statistics in her written testimony. Ms. Hopkins said skilled nursing fell in the nursing facility category on page three of her testimony. The Committee member further asked if she had an average number of days persons stayed in skilled care. Ms. Hopkins said Amerigroup did not have that information.

A Committee member asked Ms. Hopkins if the MCOs have a conflict of interest. Ms. Hopkins indicated there were a lot of checks and balances in the system, and persons could appeal decisions, go to the KanCare Ombudsman, or request a state fair hearing. She added each MCO also had internal processes that look for large variances in support, and service coordinators did not benefit directly from services they approved or denied.

A Committee member asked Ms. Hopkins if ultimately it was the MCO who determined whether a claim was paid. Ms. Hopkins responded the MCO determined who was paid, but there was no benefit to the MCOs to deny services or claims.

Michael McKinney, M.D., Chief Executive Officer and Plan President, Sunflower State Health Plan, updated members on Sunflower's current Health Homes statistics. He pointed out Sunflower was focusing on flu vaccinations for members. He also indicated all the MCOs were working together on efforts to reduce diabetes (through weight loss, healthy eating, and other strategies). Dr. McKinney stated he felt strongly persons needed to go to the doctor more often, not less, in order to maintain their long-term health (Attachment 28).

Tim Spilker, Health Plan Chief Executive Officer, UnitedHealthcare Community Plan, provided an update to members, including key outcomes UnitedHealthcare was experiencing in pre-term birth rates, in-patient psychiatric care, and claims payment. Mr. Spilker also provided information on the status of Health Homes and Value-Added Services, as well as its efforts to expand the Tele-Health Program (Attachment 29).

A Committee member asked Mr. Spilker whether expensive drugs, like those used to treat Hepatitis C, were going to result in a bill before the Legislature. Mr. Spilker said the drugs were effective but very expensive, and UnitedHealthcare was seeing a trend of increased utilization for some of those medications. He noted UnitedHealthcare had been working with the state to ensure there was a review process to ensure correct utilization and prior authorization protocols.

A Committee member asked Mr. Spilker if UnitedHealthcare was working with the federal government to negotiate pharmaceutical prices. Mr. Spilker said it had not done so but would like to work with the state to address that matter.

Legislative Post Audit Report on Community Developmental Disability Organizations (CDDOs)

Dan Bryan, Principal Auditor, Legislative Post Audit, provided Committee members with a briefing on the audit titled *CDDOs: Reviewing Issues Related to Community Services Provided for Individuals with Developmental Disabilities (R-14-006)* (Attachment 30). Mr. Bryan also provided a supplemental report of the CDDOs' responses to the Draft Report (Attachment 31). Mr. Bryan noted the audit looked at two questions, the first being: Do the CDDOs have a substantial conflict of interest and how could those conflicts be resolved? He stated the report found there was an inherent conflict of interest built into the system, but the audit did not find any evidence CDDOs took any advantage of the conflict. Mr. Bryan indicted KanCare added oversight but did not eliminate the inherent conflict of interest.

The second question the auditors addressed was: How can the community services system be changed to maximize the amount of funding available to provide services for individuals with developmental disabilities? Mr. Bryan stated the auditors found steps could be taken to make the system more efficient.

Chairperson Crum recessed the meeting at 2:37 p.m. and reconvened the meeting at 2:56 p.m.

Committee Report Discussion

Chairperson Crum laid out the rules for discussion.

Representative Ward proposed including a recommendation to establish a special joint investigative committee with subpoena power that would be appointed in January 2015 to investigate two sets of problems. The first problem being pay-to-play allegations, which was being investigated by the Federal Bureau of Investigation (FBI), in the letting of contracts for the MCOs, and the second being a Sunflower employee breach of contract allegation.

Committee members discussed the proposal, with questions regarding how costs relating to the committee would be handled and who would appoint members being asked and answered.

A Committee member observed it would be a difficult vote but, if there were issues, the Legislature had a responsibility to investigate.

A Committee member stated, since the FBI was looking into the allegations, the Legislature should wait until the FBI completed its investigation. The Committee member stated he felt there was not enough information at this time to include the recommendation.

A Committee member said it was the responsibility of the Committee to provide oversight, and stated the recommendation could be included in the report but it did not mean the investigation had to occur.

A Committee member said the Committee was in place to advocate for the users and the member felt the FBI would do its job.

A Committee member noted the FBI would be investigating whether a crime was committed, and the proposed committee would determine whether ethics rules were violated, or whether there were holes in the ethics rules that needed to be addressed.

Representative Ward closed and moved his proposal. *The proposal failed*.

Representative Ward proposed including a recommendation to request more days for the Committee next year because there were serious issues being glossed over due to time restrictions.

There was discussion about the existing statutes regarding the number of days the Committee was to meet, including the fact Chairperson Crum had requested an additional day for this meeting, but the Legislative Coordinating Council (LCC) had not approved the request.

A Committee member observed the Committee was authorized to meet up to six days, but only four of those days were used this year and felt, if the Committee did not use all six days next year, then it would be a disservice to the persons the Committee was trying to protect. A Committee member agreed there was much to do, and the fact a second day was not granted for the November 2014 meeting was frustrating.

A Committee member asked if LCC approval was required to have met for a second day at this November meeting. Nobuko Folmsbee, Office of Revisor of Statutes, responded the Committee needed to receive LCC approval if the members wanted to be paid for any additional days.

A Committee member suggested including in the report that, when the Legislature was not in session, the Committee needed two days for each of those two non-session quarterly meetings and felt, if it were a unanimous vote, it might mean more to the LCC.

Representative Pilcher-Cook moved to amend the original proposal to state the Committee would meet twice during the legislative session, per existing statute, and twice when the Legislature was out of session in different quarters, and those non-session meetings would be for two days each. There were no objections from other Committee members, thus the motion carried.

Chairman Crum distributed a proposed recommendation to be included in the Committee Report regarding the Legislative Post Audit Report on CDDOs reviewed earlier in today's meeting (Attachment 32). The proposed recommendation would be for separate hearings to be scheduled during the 2015 Legislative Session before each the House Committee on Social Services Budget and the Senate Committee on Ways and Means to address the March 2014 Legislative Post Audit Report, with specific attention to reducing the number of CDDOs and redirecting the savings to the DD waiting list, removing the remaining CDDOs' ability to provide services so as to prevent any conflict of interest, and redirecting some or all of the $5.0 million in CDDO state aid to provide Medicaid-eligible services and draw down additional federal funds.

A Committee member indicated support for the idea of a joint committee to discuss the report, but felt setting up the answer ahead of time might not be the way to go. The Committee member wanted to leave the recommendation more global and not so directive.

Chairman Crum indicated a willingness to amend the proposal to address concerns expressed by members regarding the directive nature of the proposal. There were no further objections, so the amended recommendation, with the directives eliminated, will be included in the Committee Report as follows: The proposed recommendation would be for separate hearings to be scheduled during the 2015 Legislative Session before each the House Committee on Social Services Budget and the Senate Committee on Ways and Means' Social Services Subcommittee to address the recommendations of the March 2014 Legislative Post Audit Report regarding CDDOs.

Senator Francisco proposed including a recommendation to hold a meeting of the Joint Committee on Information Technology (JCIT) to review software issues regarding data accuracy and reporting on the waiting lists.

During the Committee discussion, the Committee noted concerns with the ability to provide accurate data and reporting on waiting lists and felt it was important to investigate the issue. A suggestion was made the JCIT ask for comments from state agencies regarding providing information for reporting.

There were no objections from Committee members, so the proposed recommendation will be included in the Committee Report.

Chairman Crum distributed a proposed recommendation regarding psychotropic drugs for consideration to be included in the Committee Report (Attachment 33). The proposed recommendation would be to schedule separate hearings during the 2015 Legislative Session before each the House Committee on Health and Human Services and the Senate Committee

on Public Health and Welfare to consider repealing KSA 2013 Supp. 39-7,121b for the purpose of allowing Kansas Medicaid to manage anti-psychotic medications like other drug classes.

A Committee member asked if persistent mental illness was defined in law and if there was a cut-off. Kyle Kessler, Association of Community Mental Health Centers of Kansas, responded the law currently refers to bipolar disorder and schizophrenia, but he was not familiar with any language in statute regarding cut-offs.

There were no objections to the proposed recommendation, so the first paragraph of the proposed recommendation will be included in the Committee Report.

Approval of Previous Minutes

Representative Dove moved, Senator Pilcher-Cook seconded, to approve the minutes from the August 12, 2014, Committee meeting. The motion carried.

The next meeting of the Committee will be January 16, 2015. Chairperson Crum adjourned the meeting at 3:46 p.m.

Information provided by conferees in response to Committee member requests at the August 12, 2014, meeting include the following:

- MCO Claims Denial Information provided by KDADS (Attachment 34);
- *Inside Health Policy* website article regarding payment of first premiums on the federal health insurance marketplace provided by the Kansas Insurance Department (Attachment 35);
- Spreadsheet from Mitzi McFatrich, Executive Director, Kansas Advocates for Better Care, with a breakdown of the use of antipsychotic drugs in Kansas (Attachment 36);
- Federal Funds Information for States Issue Brief regarding Final FY 2016 FMAPs provided by Bobbi Mariani, Kansas Legislative Research Department (Attachment 37);
- DOL letter dated October 20, 2014, addressed to Chairman Crum regarding the Home Care Final Rule (Attachment 38); and

Mike Randol, KDHE, provided information regarding the loss for the three MCOs for the first two quarters of calendar year 2014 in response to a Committee member request made during the November 18, 2014, meeting (Attachment 39).

Prepared by Nancy Fontaine
Edited by Iraida Orr

Approved by the Committee on:

January 12, 2015
(Date)