

MINUTES

JOINT COMMITTEE ON HOME AND COMMUNITY BASED SERVICES OVERSIGHT

October 14, 2009
Room 143-N—Statehouse

Members Present

Senator Carolyn McGinn, Chairperson
Representative Bob Bethell, Vice-chairperson
Senator Laura Kelly
Senator Kelly Kultala
Senator Dwayne Umbarger
Representative Jerry Henry
Representative Peggy Mast

Members Absent

Representative Brenda Landwehr
Representative Melody McCray-Miller

Staff Present

Terri Weber, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Estelle Montgomery, Kansas Legislative Research Department
Doug Taylor, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes
Jan Lunn, Committee Secretary

Conferees

Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services
Ray Dalton, Deputy Secretary, Kansas Department of Social and Rehabilitation Services
Martin Kennedy, Acting Secretary, Kansas Department on Aging
Kathy Lob, Legislative Liaison, Self-Advocate Coalition of Kansas
Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities
Rocky Nichols, Director, Kansas Disability Rights Center
Tom Laing, Executive Director, InterHab

Others Attending

See an attached list.

Morning Session

Chairperson McGinn called the meeting to order at 10:05 a.m. and welcomed those attending. Senators, Representatives, staff, and members of the public introduced themselves.

Terri Weber, Legislative Research Department, described the charge of the Joint Committee on Home and Community Based Services (HCBS) Oversight to include: (a) helping to ensure a comprehensive and coordinated system of providing long-term care services (including home and community-based services) to Kansas residents; (b) overseeing the savings resulting from the transfer of individuals from state or private institutions to home and community-based services; and (c) ensuring that any proceeds resulting from the successful transfer are applied to the system for providing long-term care and home and community based services. Additionally, the Committee is to review and study other components of the state's long-term care system ([Attachment 1](#)). Ms. Weber also reviewed the statutory requirements (KSA 39-7,159; 39-7,160; 39-7,161; and 39-7,162) defining the coordinated system; the Money Follows the Person program (MFP); the agencies responsible for system implementation and their roles; Joint Committee membership, terms of service, and reporting relationships; as well oversight responsibilities related to specific information and data ([Attachment 2](#)). Ms. Weber also distributed the "Report of the Joint Committee on Home and Community Based Services Oversight to the 2009 Kansas Legislature" ([Attachment 3](#)) for review by members.

Amy Deckard, Legislative Research Department, was recognized to present information on the current funding and status of HCBS waivers. Ms. Deckard distributed a spreadsheet entitled "Home and Community Based Services Waivers (HCBS) from all funding sources FY 2000 to FY 2011 Agency Request" ([Attachment 4](#)). Chairperson McGinn questioned whether information contained in this spreadsheet included community developmental disabilities (DD) programs. Ms. Deckard clarified that the spreadsheet excludes community DD funding; Chairperson McGinn asked that total funding for community DD programs, not just waiver funding, be presented at the next meeting. Representative Bethell noted that the Department of Social and Rehabilitation Services (SRS) requested fewer total dollars in FY 2011 than is estimated for FY 2010 while dollars within the DD waiver category increased in FY 2011; he requested clarification and asked whether the American Recovery and Reinvestment Act of 2009 (ARRA) funding impacted the dollars contained in the spreadsheet. Social and Rehabilitation Services Secretary Don Jordan responded that total agency funds requested are the best estimates of the waivers at the current time, and that the FY 2010 and FY 2011 estimates exceeded appropriations. In order to cover the shortfall, available fee funds were shifted within SRS and the state hospitals, freeing up state funding to support projected waiver spending in FY 2010. SRS worked with the Division of the Budget to bring in additional Title XIX funds for projected FY 2011 waiver spending to eliminate any negative impact on beneficiary services. These transferred dollars are referred to as "enhancements" and can be seen in the column entitled "FY 2011 Agency Enhancements." He clarified that much of the difference in requested total dollars comes from the physical disability (PD) waiver policy requiring that for every two individuals coming off the waiver, one individual is added. ARRA funding is provided from October 2009 through December 2010 and thus would impact only half of FY 2011 total agency dollars requested by SRS. Members attending discussed the information provided, and Representative Henry requested that further discussion of requested SRS budgeted "enhancements" occur at the next meeting including additional detail on what is the "enhancement."

Ms. Deckard distributed another spreadsheet, "Home and Community Based Services Waivers (HCBS) from the State General Fund FY 2008 to FY 2011 Agency Request" ([Attachment 5](#)). Ms. Deckard noted the increase in the Federal Medical Assistance Percentage (FMAP) rate for the Kansas Medicaid program was increased in October 2009 due to federal ARRA funds. A chart, "HCBS Waivers FY 2009 Expenditures from All Funding Sources" ([Attachment 6](#)) was reviewed and discussed.

Estelle Montgomery, Legislative Research Department, distributed a handout, "10 Year State Hospital Average Daily Census" ([Attachment 7](#)), and discussed variances in the trend for the period. State Mental Hospitals include Osawatomie State Hospital, Rainbow Mental Health Facility, and Larned State Hospital. Developmental Disabilities Hospitals include the Kansas Neurological Institute and Parsons State Hospital and Training Center. Ms. Montgomery also discussed ([Attachment 8](#)) the Governor's Facilities Closure and Realignment Commission and its charge to evaluate the closure and realignment of state facilities and alternative uses of such facilities. Ms. Montgomery noted the interest of KVC Behavioral HealthCare (KVC) in the Rainbow Mental Health Facility building and the impact of possible closure of Parsons or KNI. Also discussed were potential challenges and concerns related to hospital closure and the complexity experienced with the closure of Winfield State Hospital in 1998. Representative Bethell inquired about the stability of sexual predators in phase 6 of treatment at Larned State Hospital. Ms. Montgomery indicated that this population fluctuates, and she deferred to Secretary Jordan for additional clarification. Secretary Jordan responded that fluidity relative to this population is predictable. Senator Kelly asked about the definition of "phase 7" in the sexual predator treatment program, how many individuals are in this phase and where they are located. In addition, Senator Kelly inquired about the differences in cost effectiveness for each phase of transition within the program. Secretary Jordan reported that phase 7 is defined as conditional release to the community and currently, there are two individuals in that particular phase. Secretary Jordan will provide the location of those two individuals at the next meeting as well as cost per phase information. Senator Kultala asked whether Rainbow Mental Health Facility is at capacity. Ms. Montgomery clarified that Rainbow currently is at seven percent above capacity. Senator Kultala requested information regarding KVC's role at the Rainbow facility. Ms. Montgomery indicated that when Rainbow Mental Health Facility ceased performing children and adolescent admissions, KVC assumed responsibility for that function. Senator Kultala followed with a question related to whether a contract for these services was released for bid. Secretary Jordan reported that a request for providing these admitting services was released in 2007, however, KVC was the only organization expressing interest which resulted in a sole source contract. Since that time, other agencies have expressed interest in providing similar services, and a Request for Proposal (RFP) was released for Larned State Hospital Children's Care Program. Secretary Jordan indicated there is a process in place for obtaining a sole source contract when there is no competitive market for required services.

Reed Holwegner, Legislative Research Department, presented information related to an advance notice of proposed amendments to Section 1915 (c) of the Federal Social Security Act which would impact certain Medicaid requirements for HCBS Waivers. Mr. Holwegner indicated the purpose of the amendment is to remove a current regulatory barrier which would allow states to design waivers based on needs rather than on diagnosis or condition, and to define better the terms "home" and "community" ([Attachment 9](#)). Members attending discussed the ramifications of the proposed amendments.

Chairperson McGinn recognized Secretary Don Jordan, SRS, to present HCBS waiver information ([Attachment 10](#)). Secretary Jordan defined Medicaid waivers as federally approved requests to waive certain specified Medicaid rules. For example, Medicaid rules allow states to draw down federal Medicaid funds for severely disabled persons (eligible for institutional placement) who live in the community and who are served by community supports and services (not covered under the regular Medicaid program). These HCBS waivers are required to be less than or equal to the

cost of serving people in comparable institutions. Secretary Jordan discussed the differences among the:

- Developmental Disability Waiver (MR/DD);
- Physical Disability Waiver (PD);
- Traumatic Brain Injury Waiver (TBI);
- Technology Assisted Waiver (TA);
- Serious Emotional Disturbance Waiver (SED);
- Autism Waiver; and
- Money Follows the Person Grant (MFP).

Secretary Jordan commented on collaboration with the Kansas Department on Aging to identify individuals for potential transition from an institutional environment into the community, to develop benchmarks, and to implement strategies to effectively operate the HCBS Waiver program.

Considerable discussion was heard related to the number of individuals on waiting lists; the number who advance to a waiver that are deemed to be in “crisis” and the impact of crisis funding on various waivers. Discussion followed on cost differences between tiers of service for those on waivers; the possibility of a sliding fee scale for the Autism Waiver; the number of individuals waiting for Autism Waiver services and whether they would “age out” before receiving services; audits of PD Waiver and the results of such audits; and reporting processes for SRS audit information and consequences for facilities noncompliant with rules and regulations. Parental fees for various waiver services; the movement within DD hospitals; and the question of whether youth eligible for SED services remain in their own home or a foster home rather than being admitted to a state psychiatric facility also were discussed.

Senator Kultala asked Secretary Jordan whether CMS rules specify services provided through HCBS waivers are at average rates less than or equal to national institutions or Kansas institutions. Secretary Jordan clarified average rates are determined by comparable Kansas institutions. Senator Kultala asked for what length of time is the MFP demonstration grant. Secretary Jordan responded the grant is for a time period of five years, and Kansas is in the second year of implementation. Senator Umbarger inquired whether individuals on the PD Waiver waiting list are increasing or decreasing at the current time. Secretary Jordan replied that the waiting list is increasing. Following discussion on Secretary Jordan’s testimony, Committee members asked questions or requested additional information (listed below) from SRS that require follow-up at the next meeting.

- Describe how “crisis” is defined? What consequences would occur if funding is insufficient to meet demand for crisis services, *e.g.*, would an individual go back to a state institution? Is there a possibility there could be a shortfall in funding for crisis services? Provide a historical presentation of crisis services, *i.e.*, numbers and dollars.
- Define tier funding and movement between the tiers. In addition, provide the average cost for each tier and the range for each tier.
- Recently, SRS audited local Centers for Independent Living (CILs) providing PD Waiver services. Provide a report on SRS findings and actions taken relative to such findings.
- Provide a detailed report on the Autism Waiver on an annual basis (*i.e.*, growth rate, youth ineligible for services due to aging out).

- Provide specific information on parental fees for waiver services. For example, on which waivers do parents contribute a fee, what is the fee structure for each waiver, why the Autism waiver excludes a parental fee and will SRS implement a fee. If a parental fee is implemented, what state statutes, regulatory rules, and policy changes are required, and provide a status report on the federal (CMS) review of the Kansas parental fee policy.

Chairperson McGinn recessed the meeting at 12:05 p.m. and announced the meeting would reconvene promptly at 1:20 p.m.

Afternoon Session

Chairperson McGinn reconvened the meeting at 1:23 p.m. and introduced Martin Kennedy, Acting Secretary, Kansas Department on Aging (KDOA), to present his report on the State's Frail Elderly (FE) waiver program.

Mr. Kennedy defined the HCBS FE Waiver program as serving seniors age 65 and older; the client must be functionally eligible for the level of care delivered by a nursing facility and must meet Medicaid financial eligibility requirements. He described the program's point of entry, services offered, and long-term care expenditures (Attachment 11). Statistical information regarding case load, Medicaid monthly expenditures, and long-term care expenditures was discussed. Mr. Kennedy reported that at the current time there is no waiting list for the FE Waiver but expenditure monitoring continues. He described two FY 2011 budgeted HCBS FE enhancements for maintenance of effort in anticipation of an increased caseload and the use of telehealth services to assist in monitoring chronic illness. Mr. Kennedy provided information on the pilot telehealth project in southeast Kansas (Windsor Place) which monitors chronic illness for a small population of Kansas seniors, and the findings being collated, analyzed, and reported by the University of Kansas (KU).

Considerable discussion was heard regarding telehealth, technology opportunities, and the cost savings and cost avoidance of keeping Kansas seniors out of nursing facilities.

Senator Kelly questioned whether information is available to show the effectiveness of the pilot project, how participants are selected for the program, and how results are validated. Bill McDaniel, KDOA, was present and clarified that the study being conducted is not a controlled study and includes a small population for whom inpatient hospital admissions are being tracked and compared to a pre-study hospital admission baseline.

Senator Kelly expressed concern that studies such as the one described tout dollar savings without valid results documenting the reality of any cost savings or avoidance. Mr. McDaniel responded that KU should have the findings report within the next two to three months; it will be forwarded to Committee members.

Chairperson McGinn asked how Windsor Place and KU were selected to participate in the study. Mr. Kennedy responded that Windsor Place has had an active interest in this project for several years, and KU has invested heavily in a telehealth system within its information technology and medical school departments. Representative Mast requested that Mr. Kennedy encourage KU to apply for any available grant funding in order to advance technology integration into the health sciences.

Chairperson McGinn recognized Ray Dalton, SRS, Deputy Secretary, who distributed information summarizing long-term care by DD institutional settings, DD waiver services, FE/PD/TBI institutional settings, and FE/PD/TBI community services (Attachment 12). Information included numbers of individuals being served, average cost per person, and estimated costs (all funds compared to state general funds). Under the DD institutional setting, it was noted there were 21 new admissions in public intermediate care facilities with mental retardation (Public ICFs/MR).

Representative Bethell asked the reason for those admissions and where the 21 clients were placed. In addition, he asked if those individuals were on waiver services before admission. Mr. Dalton clarified that the difficulty in finding providers, behavioral challenges, and medical issues are reasons for admissions. Secretary Jordan responded that of the 21 admissions, 17 went to Parsons State Hospital and four were admitted to KNI. Mr. Dalton will report at the next meeting whether the 21 clients were on waivers prior to admission.

Kathy Lobb, Legislative Liaison, Self Advocate Coalition of Kansas, was introduced by Chairperson McGinn. Ms. Lobb shared her experience as a young individual schooled in an institution, and she described her successful transition from the institutional environment into the community. Ms. Lobb advocated for the closure of state hospitals to provide opportunities to serve individuals on HCBS waivers within the community (Attachment 13).

Jane Rhys, Ph.D., Executive Director, Kansas Council on Developmental Disabilities, was recognized to present recommendations for cost-neutral funding of DD waivers in Kansas (Attachment 14). Dr. Rhys provided an overview of her agency's structure and mission. Discussion was heard regarding the lack of resources required to serve Kansans eligible for DD waiver services. The proposal supported by the Council is to close one or both remaining state hospitals for individuals with developmental disabilities and to serve those under- and unserved Kansans on the DD waiver waiting list with the funds appropriated for these institutional facilities. Dr. Rhys was involved with the closing of Winfield State Hospital in 1998, and she discussed that experience with Committee members. She described the processes and methods used in the hospital closure, and provided documentation of improved outcomes for residents and documentation of reduced public costs resulting from the closure. In addition to the testimony provided, a Final Report of the Hospital Closure Project 1998 submitted by Dr. James Conroy was provided to Committee members (Attachment 15).

Representative Bethell noted that some Closure Commission members are concerned about the disposition of a group of individuals at Parsons Mental Health Facility who have committed sexual crimes and have not been adjudicated. Representative Bethell asked whether, in other states, individuals who could be classified as sexual predators but never adjudicated have been placed in group homes. Dr. Rhys will make an inquiry and report back to the Committee at the next meeting. Senator Kelly inquired whether there was a DD waiting list at the time Winfield was closed and whether historical information existed relating to waiting list decreases. Dr. Rhys will follow up at the next meeting.

Chairperson McGinn called on Rocky Nichols, Director, Kansas Disability Rights Center of Kansas. Mr. Nichols spoke in favor of closing "expensive, out-of-date, large-bed DD institutions (KNI and Parsons) and serve the needs of people with DD in community-based settings" (Attachment 16). Mr. Nichols responded to Senator Kelly's question regarding persons on waiting lists during the period of time Winfield was closed. He referred to a graphic illustration entitled, "Number of Persons Waiting," contained in his testimony that provides a historical trend analysis for adults and families on waiting lists from FY 1994 through FY 2004. As shown, the lowest point for persons waiting was 1997 and 1998 which was during the period of the Winfield closure. Mr. Nichols testified that of the five states surrounding Kansas, Oklahoma spends approximately 50 percent more per person per year on individuals under HCBS DD waivers.

Senator Kelly requested that Mr. Nichols report back at the next meeting regarding information comparing HCBS DD Waiver spending and services provided by Kansas and Oklahoma. Mr. Nichols reported there are 12 states who have closed public and private institutions with beneficial outcomes and positive results from redirecting funding to services covered under HCBS DD waivers.

Senator Kultala inquired which 12 states have closed public and private DD institutions, whether there was existing data to substantiate waiting lists decreases, what cost savings resulted from institution closure (especially to the State), and whether savings were redirected to existing HCBS programs. Mr. Nichols will provide that information at the next meeting.

Chairperson McGinn called on Tom Laing, Executive Director, InterHab, who asked Committee members to examine the system of services for persons with developmental disabilities as one system within which community and institutional programs are offered (Attachment 17). The one system can then be evaluated to ensure efficient and effective operations in serving the most people possible. He encouraged Committee members to study the range of costs per tier of service for both DD institutions and those being served under HCBS waivers.

Chairperson McGinn asked Terri Weber to review the recommendations submitted by the Joint Committee on Home and Community Based Services Oversight to the 2009 Kansas Legislature (see Attachment 3 noted previously). Ms. Weber also reviewed the list of follow up items for discussion at the meeting scheduled for November 19 and 20. Chairperson McGinn asked Committee members to contact Terri Weber if there are other questions that inadvertently may have been excluded from her verbal review.

During the afternoon session of the meeting, Ms. Montgomery and Ms. Deckard distributed two additional resources: "Home and Community Based Services Waiting List" (Attachment 18) and "Department of Social and Rehabilitation Services FY 2010 Items Covered Internally" (Attachment 19). These spreadsheets were used as an adjunct to other statistical information provided by staff and conferees.

Chairperson McGinn adjourned the meeting at 4:08 p.m.

Prepared by Jan Lunn
Edited by Terri Weber

Approved by Committee on:

November 20, 2009
(Date)