

MINUTES

SPECIAL COMMITTEE ON MEDICAID REFORM

October 3, 2005
Room 313-S—Statehouse

Members Present

Senator Derek Schmidt, Chairperson
Representative Melvin Neufeld, Vice Chairperson
Senator Jay Emler
Senator Anthony Hensley
Senator Tim Huelskamp
Senator Laura Kelly
Senator Dwayne Umbarger
Representative Bob Bethell
Representative Jerry Henry
Representative Mike Kiegerl
Representative Nancy Kirk
Representative Don Myers

Staff Present

Audrey Dunkel, Kansas Legislative Research Department
Emalene Correll, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Norman Furse, Office of the Revisor of Statutes
Lisa Montgomery, Office of the Revisor of Statutes
Judy Swanson, Committee Secretary

Conferees

Andrew McCann, Vice President, US Government Solutions of Electronic Data Systems
Carol Pangborn, EDS Client Delivery Executive
Pamela Johnson-Betts, Secretary, Kansas Department on Aging
Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging
Linda Berndt, President/Chief Executive Officer, Kansas Health Care Association
Mary Harding, Owner, Applewood Rehabilitation Center
Stephanie Wilson, Executive Director, The Alliance for Kansans with Developmental Disabilities
Margaret Zillinger, Director of Community Supports and Services, Department of Social and Rehabilitation Services
Rick Davidson, Consumer
Sandy Praeger, Commissioner, Kansas Insurance Department
Dr. Robert Harder, Big Tent Coalition
Shannon Jones, Executive Director, Statewide Independent Living Council of Kansas
Rocky Nichols, Executive Director, Disability Rights Center of Kansas

Jennifer Schwartz, Executive Director, Kansas Association Center for Independent Living
Tom Laing, Executive Director, InterHab
Craig Kaberline, Executive Director, Kansas Area Agencies on Aging Association
Tom Scherer, Civil Rights Activist
Kathy Lobb, Legislative Liaison, Self Advocate Coalition of Kansas
Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities
Sharon Joseph, Advocate/Consumer (written only)
Richard Cram, Director of Policy and Research, Kansas Department of Revenue
Jim Weisgerber, Kansas Department of Revenue
Scott Brunner, Division of Health Policy and Finance

The Special Committee on Medicaid Reform was called to order by the Chairperson, Senator Derek Schmidt, on Monday, October 3, 2005, in Room 313-S of the Statehouse, at 9:08 a.m. All Committee members were present.

Audrey Dunkel, Legislative Research Department, presented follow-up information requested at previous Committee meetings. Data comparing states percentage of persons with a disability was provided ([Attachment 1](#)).

Representative Bob Bethell gave the Committee information concerning the role of Kansas Legal Services in assisting persons applying for Social Security disability. He stated that the Department of Social and Rehabilitation Services (SRS) contracted with Kansas Legal Services at a rate of \$825,000 this fiscal year. There was a \$3,600,000 return on the investment. MediKan eligibility standards are less rigorous than Supplemental Security Income (SSI). Representative Bethell said he would make a copy of the information available to Committee members, if they request it. MediKan is the state-funded program that provides limited health care, primarily, for persons awaiting a determination of eligibility for Social Security Disability.

EDS Payment System

Andrew McCann, Vice President, U.S. Government Solutions, Electronic Data Systems (EDS), presented testimony on the Medicaid Management Information System (MMIS) ([Attachment 2](#)). He addressed the \$1 million overpayment to a pharmacy raised at a previous meeting, and said EDS recognizes new program policies and procedures need to be implemented. The balance of the specific claim is approximately 50 percent satisfied. EDS researched the past two years of claims in Kansas, and found one other such instance. It was rectified. The prescribing physicians were not contacted in these two cases.

Carol Pangborn, EDS Client Delivery Executive, who is responsible for Kansas State Medicaid operations, also was present to answer questions. She noted that last year, EDS processed over 20 million claims for the State of Kansas.

Representative Neufeld questioned the default of the EDS software to all "9"s. In response, Mr. Pangborn noted the time frame on overrides is less than a minute. A follow-up letter from the Kansas Medical Assistance Program, dated July 5, 2005, was provided ([Attachment 3](#)). Senator Hensley distributed newspaper articles about the overpayment ([Attachment 4](#)). He said he was concerned by the actions of the provider (pharmacy). He asked that Chairman Schmidt request, on behalf of the Medicaid Reform Committee, the Attorney General to conduct an investigation as to what the provider was responsible for doing. Chairman Schmidt said he did not think it was appropriate at this time to make the request, as there was no evidence that the provider was involved

in any type of fraud. No Committee action was taken. Senator Hensley said he would personally make such a request.

Senator Umbarger asked for a recap of the communications between EDS customer service and the pharmacy provider. In response, Ms. Pangborn noted EDS contacted the provider and asked him to return the money. The provider said he would return the money. After review, the provider will remit a refund check. The EDS collection letter was not clear in the opinion of several Committee members, and it was suggested that EDS reformat the letter it uses in such situations. The Board of Pharmacy was not contacted in regards to the pharmacy not following protocol. Vice Chairperson Neufeld said the Board of Pharmacy definitely should become involved. Senator Huelskamp requested the number of providers who are in offset situations currently. The EDS representative said the number was miniscule. Senator Huelskamp requested a specific review from EDS.

Representative Henry requested more information concerning the override button, how much it is used, what happens when they find someone who fraudulently uses the override button, and what are the penalties. Staff will work with EDS on getting follow up information.

Long-Term Care

Pamela Johnson-Betts, Secretary, Kansas Department on Aging (KDOA), presented information on the Medicaid long-term care programs administered by the Department (Attachment 5). She noted that Kansas ranks 25th in the distribution of Medicaid elderly enrollment, and 12th in the distribution of Medicaid payments. Within 20 years, one in five persons in Kansas will be over age 65. Recognizing long-term care as a cost driver in the Kansas Medicaid program creates numerous challenges, such as dispelling the myth that Medicare covers long-term care services.

The Secretary discussed the waiver programs. Kansas has six approved waivers. KDOA's data show the Home- and Community-Based Services/Frail Elderly (HSBS/FE) waiver program for seniors to be a cost-effective alternative to nursing facility care. Discussion was held. The Secretary will research why Kansas is paying so much more per recipient than other states and provide an answer to the Committee. The average paid per month is \$810, but monthly payments per recipient range from \$300 to \$5,000. The "wait list" was begun in 2002. Approximately 27 percent of recipients were removed for various reasons, *i.e.* family members helping, or they chose not to participate.

Senator Huelskamp asked why there is no "woodwork" shown in the study, but one-fourth are removed. The Secretary will provide an answer at the next meeting. In response to Representative Bethell, Ms. Johnson-Betts said the initiation of PACE in Shawnee County is on target for the next six to 12 months, July 2006 to January 2007. There is the possibility of July 2006 being a workable date. However, the application has not yet been submitted.

The Secretary will check on the marital status of recipients. She also will get the average nursing home cost in comparison to other states. The average of nursing home care is more than the average of what Medicaid pays because of the spend-down of Social Security and personal assets required by clients.

In response to Senator Kelly, the Secretary will provide examples of costs she feels can be better controlled.

Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging (Attachment 6), stated that when considering Medicaid reform, is it important to maintain and improve

quality, access, and choice. She asked the Committee not to discard what is working, and to base changes on evidence.

Linda Berndt, President and Chief Executive Officer for the Kansas Health Care Association, updated the Committee on nursing homes that have been damaged by the bad weather last weekend. Across Kansas, the long-term care profession cares for approximately 20,000 residents (Attachment 7). Medicaid, as it is today, is not working; it is not sustainable, and it jeopardizes the state's economic well-being. She noted that Kansas is awaiting an approval for a hospital tax.

Mary Harding, Owner and Director of Nursing, Applewood Rehabilitation Center, Chanute, told the Committee her facility provides time for stabilization of clients after they are released from a state hospital. Applewood's inclusive rate per day is \$71.29, and the average length of stay per patient is approximately nine months. Ninety-eight percent of the patients are Medicaid eligible. None is MediKan eligible.

Stephanie Wilson, Community Living Opportunities, Inc., testified regarding current issues affecting persons served by Intermediate Care Facilities for the Mentally Retarded (ICFs/MRs) (Attachment 8). Community Living Opportunities currently has 11 facilities, serving a total of 60 persons. Although funding for private ICFs/MRs does cover more health and medical-related services, the reimbursement for such facilities has tightened. Last year, the Medicaid state plan revision increased the Level of Care score criteria for categorizing facilities, as well as the reimbursement caps that apply to each, changed the reimbursement for each facility, and increased the statewide criteria for receiving inflation adjustments. During Committee discussion, Ms. Wilson said there are approximately 400 people currently in state institutions who would qualify for one of their institutions. They use the BASIS testing as a uniform assessment tool.

Representative Kirk said that the Home Plus option should be looked at, as it is a good and viable option.

The Committee recessed from noon to 1:40 p.m.

Afternoon Session

Margaret Zillinger, Director of Community Supports and Services with SRS, gave an extensive review of Home- and Community-Based Services Waivers, ICFs/MRs, and Nursing Facilities for Mental Health (Attachment 9). The Centers for Medicare and Medicaid Services allow the states to cover certain institutional services through the state's approved Medicaid plan. Consumers eligible for HCBS waiver programs are Medicaid-eligible and, therefore, receive both HCBS and state plan services. Kansas has developed six HCBS waivers to meet specific needs of:

- Frail elderly over age 65;
- Adults and children with developmental disabilities;
- Children with a serious emotional disturbance;
- Children who require technology in order to sustain life;
- Individuals over age 16 through 65 who are traumatically brain-injured; and
- Individuals over age 16, but under age 65 who are physically disabled.

In FY 2005, the average cost per individual with physical disabilities for waiver services was \$1,312 per month. The average cost per individual with a traumatic brain injury for waiver services was \$3,127. The average monthly cost for waiver services for children who are dependent on technology for life support was \$390. The average monthly cost for waiver services for persons with developmental disabilities was \$2,978.

For an individual to receive waiver services, he or she must be Medicaid-eligible, as well as meet the functional-eligibility for institutional placement. Individuals receiving services through an HCBS waiver must meet what is called a spend-down if they have an income above the financial eligibility limit.

Ms. Zillinger answered questions from the Committee. The quickest way to get services to people is to find capacity. Providers and attendants are difficult to find. Representative Bethell said the Committee needs to know all the dollars, not just the waiver dollars, that go into a patient's care, so that good decisions can be made. Research staff will work with him on gathering the total and correct information. The rationale for excluding family income only for children for eligibility determination is to prevent bankrupting an entire family, causing the family to all need government services. The family fee program charges families on a sliding scale if they are above the 200 percent level. SRS is collecting some funds now from families.

Rick Davidson shared with the Committee how services are making it possible for him to live in his home after suffering a motorcycle accident that left him a ventilator-dependent quadriplegic ([Attachment 10](#)). He entered the PD Waiver program immediately and did not have to go on a waiting list, as some have had to do. He urged the Committee to consider changes in the Medicaid system, but to make sure they are positive changes.

Sandy Praeger, Commissioner of Insurance, discussed long-term care insurance ([Attachment 11](#)). Kansas requires any policy sold to a Kansan to cover care provided by a care-giver licensed as a long-term care facility or service. Kansans who purchase long-term care policies may qualify for a tax credit. Four states have a public-private partnership program, wherein a consumer may purchase a long-term care policy for a limited benefit period. Unfortunately, Congress has placed a restriction on the expansion of this program. Partnership programs would encourage more people to buy long-term care insurance. Public education is needed to let people know that Medicare will not pay for long-term care. A 60-year old can buy long-term care insurance for approximately \$1,000 annually. *The Kansas Long-Term Care Insurance booklet* is part of Commissioner Praeger's testimony.

Dr. Robert Harder, Big Tent Coalition, provided background facts and figures about Medicaid in Kansas ([Attachment 12](#)). In FY 1975, Medicaid expenditures on physician services were \$14.5 million, and in FY 2005, they were \$94.8 million. In FY 1975, expenditures for prescription drugs were \$9.1 million, and in FY 2005, they were \$314.3 million. Dr. Harder suggested making it possible for persons with disabilities and the elderly to make maximum use of programs such as Working Healthy and Money Follows the Person. Committee discussion followed.

Shannon Jones, Executive Director, Statewide Independent Living Council of Kansas, made four recommendations to the Committee ([Attachment 13](#)):

- Give more visibility to choice and independence by coordinating all the Home- and Community-Based services in one office;
- Amend the Medicaid State Plan to include Home- and Community-Based services in the caseload estimating process;
- Continue with successful cost-savings programs, such as "Money Follows the Persons" and "Working Healthy"; and
- Reassign the duties of client assessment, referral, and evaluation to the Office of Integrated Community Services.

Rocky Nichols, Executive Director, Disability Rights Center of Kansas, testified his organization believes any discussion on the future of Kansas Medicaid has to include the future of large-bed ICF/MRs ([Attachment 14](#)). He wanted to dispel several myths regarding Developmental Disability (DD) Institutions and large-bed ICF/MRs. DD Institutions are not an entitlement under Medicaid. Persons served in Parsons State Hospital, Kansas Neurological Institute, and large-bed ICF/MRs are not vastly different than Kansans being served by the DD waiver; they do not have far greater disabilities, and they could survive in the community.

Jennifer Schwartz, Executive Director, Kansas Association of Centers for Independent Living, testified concerning HCBS Waivers and payroll agent services that Centers for Independent Living currently provide ([Attachment 15](#)). She indicated it is important that the infrastructure and all the necessary system components are there to support individuals in the community as the state continues to move toward a "Community First Model."

Tom Laing, Executive Director, InterHab, testified state leadership is needed to make employment of persons with developmental disabilities a major priority ([Attachment 16](#)). Family-guided services continue to present a mixed set of opportunities for the state. Stewardship must be a shared initiative of state and community leaders. When asked how much is too much, Mr. Laing said InterHab would just like "enough," which would include decent wages for care staff and being rid of waiting lists.

Craig Kaberline, Executive Director of the Kansas Area Agencies on Aging Association, presented suggestions the Association believes would improve Medicaid without harming seniors:

- Case management – hospital pilot project;
- Shared risk;
- Support family care-givers;
- Self-directed care payroll agent rate; and
- Preventative health for seniors ([Attachment 17](#)).

Tom Scherer, civil rights activist, said he is seeking a better national health care policy ([Attachment 18](#)). He feels problems were initiated at the federal level and the more appropriate solution should start at the federal level.

Kathy Lobb, Legislative Liaison, Self-Advocate Coalition of Kansas, said she was concerned that people continue to get the services they need ([Attachment 19](#)). She said her biggest concern is there are still many Kansans with developmental disabilities waiting for services.

Jane Rhys, Ph.D, Executive Director, Kansas Council on Developmental Disabilities, testified that the Council receives no state funds ([Attachment 20](#)). Her organization is in the process of developing a five-year state plan, due to the federal Department of Health and Human services next August. Her organization would like to see dental care for adults (over 21) included. She offered to work with the Committee in reforming the system so funds can be used in the most effective, efficient manner possible.

Sharon Joseph, Advocate/Consumer, submitted written-only testimony advocating Medicaid waivers ([Attachment 21](#)).

Long-Term Care Insurance

Emalene Correll, Kansas Legislative Research Department, reviewed what other states are doing in regard to tax credits, deductions, and exclusions ([Attachment 22](#)). New York's tax credit is unique because the tax credit can be carried forward. None of the states has a refundable tax credit or deduction. There is no correlation between states with deductions or credits, or both, and long-term care insurance market penetration. She discussed long-term care insurance, noting it has changed dramatically since the early policies were offered. Premiums depend on various factors. Employer-sponsored plans have increased from only two in 1987 to 5,675 in 2002. The State of Kansas makes long-term care group insurance available to employees who are covered by the state employee health benefit plan and relatives of active plan participants.

Richard Cram, Director of Policy and Research, Kansas Department of Revenue, introduced Jim Weisgerber, Kansas Department of Revenue, who testified in regard to taxation of long-term care insurance premiums ([Attachment 23](#)). The fiscal note on tax deductions is between \$1.4 million and \$2.8 million. On a 25 percent tax credit, the fiscal note would be \$9 million.

Other

Committee discussion and direction followed. Staff is keeping a list of suggested changes. The Committee wanted to know if it is to the state's advantage to have persons on Medicaid.

Representative Neufeld reviewed Kansas Legal Services information ([Attachment 24](#)). Kansas Legal Services is less expensive than using contingency services. For \$800,000 spent, the state received a 700 percent return on that money.

Senator Hensley provided Committee members with a letter he wrote to Mr. Beasley requesting an investigation of the \$1.0 million payment to De Fever Osborne Drugs ([Attachment 25](#)).

Scott Brunner, Division of Health Policy and Finance, gave a follow up report on information requested at the September 26 Committee meeting ([Attachment 26](#)). He reviewed the criteria for people to become eligible as qualified aliens and documentation requested of such persons. On a child-only case with parents that are not legal residents, the family income is evaluated to determine eligibility for the children. He will report on pharmacy claims without provider identifiers at the November 2 meeting.

Audrey Dunkel said the November 2 meeting will be held in Room 123-S, and among agenda items will be the regular medical program, the EDS and pharmacy programs, and Medicaid. Senator Schmidt said his hope is to narrow the focus of the Committee at the remaining meetings.

The meeting adjourned at 5:10 p.m.

Prepared by Judy Swanson
Edited by Audrey Dunkel and Emalene Correll

Approved by Committee on:

November 2, 2005
(date)