

**Report of the
Subcommittee on Contract Nursing
to the
House Committee on Appropriations**

CHAIRPERSON: Representative Mason

OTHER MEMBERS: Representatives Ballard, Concannon, Helgerson, and Landwehr

STUDY TOPIC

To study the cost and use of contract nursing in the State of Kansas.

April 2024



Subcommittee on Contract Nursing

Conclusions and Recommendations:

The Subcommittee recommends the creation of an interim committee to study contract nursing, the shortage of health care workers in the state, and ways to enhance the workforce pipeline. The Subcommittee recommends the interim committee:

- Take the format of a roundtable discussion and include the same number and makeup of members as the 2021 Special Committee on Kansas Mental Health Modernization and Reform, include non-legislative stakeholders as members, and include subcommittees chaired by non-legislative members that would provide recommendations to the interim committee. Non-legislative members should include stakeholders in education;
- Provide a report to the 2025 Legislature with short-term and long-term goals;
- Make recommendations to the 2025 Legislature to create a health care workforce pipeline;
- Examine the need for non-clinical nursing education faculty to obtain a master's degree. If the interim committee determines reform is needed, it is recommended they assess whether any changes would conflict with program accreditation and if a bill would be required during the next legislative session;
- Review the exemptions for the master's degree requirements of licensed practical nurses and associate degree nurses classroom instructors to determine whether rules should be changed to match the exemptions;
- Review the use of on-site and experience requirements for certified nurse aide (CNA) trainers;
- Consider adding funding to be distributed for allied health professions scholarships, to hire more nursing teachers, and to develop a marketing campaign targeted to attract high school and college students to the nursing profession;
- Review the subject matter in HB 2265, relating to the regulation of supplemental nursing services; and
- Consider contracting with a company to operate the state hospitals.

The Subcommittee makes the following recommendations that are unrelated to the proposed interim committee:

- Direct KDADS or Kansas Legislative Research Department to research how regulation of CNAs is handled in other states;
- Request that KDADS provide the House Committee on Appropriations and the Senate Committee on Ways and Means its long-term goals to recruit and retain workforce at the state hospitals by January 15th, 2025;

- Consider at omnibus the addition of \$1.0 million to the Kansas Nursing Initiative Grant and \$1.0 million to the Kansas Nursing Services Scholarship Program and consider requiring a commitment that the student remain in Kansas after graduation for a number of years to be determined based on the number of years the student receives a scholarship;
- Consider at omnibus creating a carve-out within the Promise Act that would provide an annual stipend to students, similar to the Graduate Medical Education program, except it would not be targeted to rural Kansans, and would be available for students pursuing allied health professions, including nurses, laboratory technicians and assistants, respiratory therapists, occupational therapists, and mental health professionals;
- Consider at omnibus revising the supplemental nursing staff proviso to include supplemental nursing staffing agencies, temporary nursing staff agencies, and technology platforms that connect facilities with temporary nursing staff; and
- Consider at omnibus the addition of \$2.4 million from the State General Fund, to be distributed through Community Behavioral Health as the coordinator of the Kansas Behavioral Health Center of Excellence, to provide \$7,000 base pay increases and \$2,500 retention bonuses to nursing faculty at community and technical colleges for FY 2025.

The Subcommittee also recommends the House Committee on Appropriations review and consider the following items proposed by KDADS:

- Approving HB 2277 or SB 151 to amend KSA 75-37,105, to authorize hiring and recruitment and retention bonuses, and raise the maximum bonus cap from \$3,500 to \$10,000 per fiscal year, among other things;
- A 5.0 percent pay increase for all state employees, setting a market starting rate of \$15 per hour for all state employees, and making the 24/7 Pay Plan permanent;
- Adding \$5.4 million from the State General Fund, to be distributed through Community Behavioral Health as the coordinator of the Kansas Behavioral Health Center of Excellence, for behavioral health workforce programs at Wichita State University and University of Kansas School of Medicine—Wichita for FY 2025;
- Funding state-operated tuition reimbursement or student loan repayment programs; and
- Ensuring state employees can take advantage of flexible scheduling while maintaining benefit eligibility, such as schedule options allowing three 12-hour shifts per week or one weekend per month.

Proposed Legislation: None.

BACKGROUND

The Chairperson of the House Committee on Appropriations appointed the Subcommittee on Contract Nursing to study the use of contract nursing in the state of Kansas. The Subcommittee was appointed following the House Committee on

Appropriations' deletion of all contract nursing expenditures from the FY 2025 budget of Osawatomie State Hospital (OSH) and Larned State Hospital (LSH), with a note that a subcommittee would be convened and the issue would be revisited at omnibus. The Subcommittee

met for three days, April 1–4, 2024, at the Statehouse.

COMMITTEE ACTIVITIES

The Subcommittee’s four meetings focused on the usage of contract nursing at the state hospitals, nursing facilities, and general hospitals; liability of facilities and staffing agencies for actions of contract staff; the difference in pay and benefits between state employees and contract staff; and the development of a workforce pipeline to address challenges in the recruitment and retention of health care staff.

April 1 Meeting

At the April 1 meeting, the Subcommittee received background information from state agencies, organizations, and stakeholders on the past and present use of contract nursing staff.

Contract Staffing Agencies

The Chief Executive Officer (CEO) of Worldwide Travel Staffing (Worldwide) provided an overview of the company’s role in providing staff to facilities in Kansas. The CEO noted that Worldwide provides the majority of the contract staff working in the state hospitals. In response to Subcommittee questions, the CEO noted that staffing rates differ across the country, Worldwide offers benefits in addition to the hourly rate, Worldwide carries liability insurance, and Worldwide primarily recruits outside of Kansas due to a lack of available labor within the state.

State Hospitals

The Deputy Secretary for Hospitals and Facilities of the Kansas Department for Aging and Disability Services (KDADS), which oversees the state institutions for mental health and the state institutions for intellectual disabilities, provided an overview of the past and present usage of contract staff in the state hospitals. He noted that at the state institutions for mental health (LSH and OSH) as of March 13, 2024, the vacancy rate for state employees was 37.8 percent at OSH and 45.2 percent at LSH.

In FY 2024, OSH estimates expenditures will total \$19.0 million, compared with \$133,187 in FY 2019, while LSH estimates expenditures will total \$40.5 million, compared with \$5.9 million in FY 2019.

With respect to the state institutions for intellectual disabilities — Kansas Neurological Institute (KNI) and Parsons State Hospital (PSH) — the Deputy Secretary noted that, as of March 13, 2024, the vacancy rate for state employees was 26.8 percent at KNI and 25.1 percent at PSH. However, he noted that only KNI utilized contract staff during FY 2024, at a total cost of \$2.6 million.

The Deputy Secretary noted that the state hospitals contract with staffing agencies to provide registered nurses (RN), licensed practical nurses (LPN), certified medication aides (CMA), and certified nurse aides (CNA).

The Deputy Secretary shared information on behalf of the Department of Administration, noting that there are 52 nursing contracts, including 42 active contracts, that are multi-award requests for proposals. The information shared by the Department of Administration outlined several provisions in the contracts, including a prohibition on the agency or staffing company recruiting clinical or medical staff, and clarifying that the contract agency and its contract staff are considered independent contractors of the state.

Veterans Homes

The Executive Director of the Kansas Commission of Veterans Affairs Office (KCVAO), which oversees the Kansas Veterans Home (KVH) and Kansas Soldiers Home (KSH), noted that, as of February 29, 2024, the vacancy rate for state employees was 20.0 percent at KVH and 11.0 percent at KSH. In FY 2024, KVH estimates expenditures will total \$1.03 million, compared with \$1.02 million in FY 2021, while KSH estimates expenditures will total \$1.2 million, compared with \$1.4 million in FY 2021. The Executive Director also noted that state employees and contract staff both have the same assigned duties and expectations.

Nursing Facilities and Adult Care Homes

The President and CEO of LeadingAge Kansas shared data from nursing facility cost reports demonstrating that contract staff expenditures had increased from \$29.3 million in 2019 to \$132.8 million in 2023.

The President and CEO of Kansas Health Care Association and Kansas Center for Assisted Living (KHCA/KCAL) shared data from the Bureau of Labor Statistics, noting a loss of 131,900 nursing workers since February 2020. Additionally, the representative shared data demonstrating an 8.3 percent decrease in employment in nursing homes nationwide since February 2020 when compared with other health sectors, which had increased between 4.2 and 10.2 percent during the same time period. The representative also noted a lack of person-centered care due to a lack of long-term permanent staff.

The CEO of The Cedars Retirement Community explained that the facility trains teachers and offers paid internships, but noted a lack of interest from students. Additionally, the representative shared The Cedars' strategy has been to focus on providing premium patient care, which has led them to decrease the number of individuals served.

General Hospitals

The Director of Workforce and Health Care Policy of the Kansas Hospital Association (KHA) provided testimony on the impact of contract nursing expenditures on general hospitals throughout the state. The representative shared data from 50 Kansas hospitals that showed contract nursing expenditures had increased from \$73 million in 2019 to \$250 million in 2022.

The Chief Nursing Officer of Hutchinson Regional Medical Center stated that the Medical Center eliminated beds to reduce its need for and spending on contract staff. The representative noted this strategy resulted in a decrease in contract nursing expenditures from \$30 million in FY 2023 to \$3 million–\$4 million in FY 2024.

Written Testimony

In addition to the oral testimony summarized above, the Subcommittee received written testimony from Hamilton-Ryker, TalentGro, Southwest Medical Center, KFMC Health Improvement Partners, Labette Health, Nicol Home, Colonial Village Senior Living Community, Paramount Community Living and Rehab, Attica Long Term Care, Zack Group Healthcare Staffing, Central Nurses Staffing Agency, Wichita Presbyterian Manor, KARE, Stormont Vail Health, McPherson Hospital, and Trinity United.

April 2 Meeting

At the April 2 meeting, the Subcommittee received information from state agencies, stakeholders, and organizations concerning liability for contract staff, as well as the difference in pay and benefits between contract staff and employees.

Liability

The First Assistant Revisor of Statutes (Revisor) provided an overview of the Kansas Tort Claims Act, which assigns liability to the State or state agencies for actions of its employees. The Revisor noted that, because contract nurses are independent contractors and not state employees, the State is not liable for their actions and liability is assigned to the contract staff agency or the contract staff.

The Deputy Secretary of Hospital and Facilities, KDADS, summarized the testimony he provided at the April 1 meeting, noting that the state contracts created by the Department of Administration require contract staff agencies to have liability insurance covering \$1.0 million per occurrence and \$3.0 million in the aggregate.

The Executive Director of KCVAO noted that, while the State is not liable for legal actions, the facilities are responsible for violations by the contract staff and could be fined by the federal Centers for Medicare and Medicare Services.

The President and CEO of LeadingAge Kansas noted that the association has been

advocating for a state requirement that contract staff agencies carry liability insurance. The representative noted that some contracts require insurance while others do not, and further noted that nursing facilities may not be able to verify the validity of a certificate of insurance.

Representatives of Zack Group noted that the organization carries professional liability insurance in the amount of \$1.0 million and provides a certificate of insurance to facilities. The representatives noted that nursing staff may carry liability insurance themselves but it is not required.

The Chief Executive Officer of KARE noted it is not a staffing agency, but instead a labor platform that connects contract staff with facilities based on rates set by the facility. The representative noted that KARE carries general liability, malpractice, professional liability, workers' compensation, cybercrime, employee practices, and liability insurance. The representative noted that the insurance covers third-party claims and KARE provides insurance for its contract staff that is repaid to KARE each shift.

The President and Chief Executive Officer of KHCA/KCAL requested the Subcommittee recommend adopting language that would require contract staff agencies to register in the state. The representative further noted that the ultimate responsibility for the actions of the staff lies with the facility.

Differences in Pay and Benefits Between Contract Staff and Employees

The Deputy Secretary of Hospitals and Facilities, KDADS, shared the current hourly rates for RNs, LPNs, licensed mental health technicians (LMHTs), and mental health developmental disability technicians at the state hospitals. The Deputy Secretary also noted that the staff receives an hourly differential as part of the 24/7 Pay Plan, which ranges from an additional \$4.00 to \$8.50 per hour. The Deputy Secretary compared this with the rates paid to the contract staff agencies; however, the Deputy Secretary noted that the rates paid to the contract staff agencies do not reflect the actual hourly rate paid to the contract staff because

the contract staff have expenses and profit factored in to the rate. The Deputy Secretary noted that, in some cases, the state hospitals pay \$15 to \$20 less per hour.

The Superintendent of OSH shared that, based on conversations with contract staff, they would be open to becoming state employees at a base pay rate of approximately \$55 per hour, compared with the current hourly pay rate of \$31.98 for an RN at the state hospitals. The Superintendent also shared that the agency can "buy out" the remaining time on a contract staff member's contract if they wish to become a state employee. The Superintendent noted that rates are set by the Department of Administration. The Superintendent noted that they have had success in recruiting nurses who travel from nearby, not necessarily from out of state.

The Deputy Secretary of KDADS noted that the agency has been in discussions with the City of Larned to address a lack of available housing.

The Executive Director of KCVAO stated that the agency offers differentials for second and third shifts, and noted that hourly rates do not include the associated cost of benefits.

The President and CEO of LeadingAge Kansas shared that the average rate paid by nursing facilities increased from \$39.51 in 2018 to \$59.87 in 2022; however, the representative noted that this is an average and includes all nursing staff. The representative also noted that rates paid to staffing agencies shift based on the time of year and other factors, including holidays and whether there is a COVID-positive resident.

The representatives of Zack Group noted that contract staff rates vary. For example, staff traveling 60 to 100 miles or more qualify for non-taxable money for housing, so they receive a lower rate to account for the tax savings. The representatives also noted the Zack Group pays contract staff 70.0 percent of the billed rate, and provide benefits, which account for 18.8 percent of the billed rate. Benefits include full health benefits, a 401k with employer match, and short- and long-term disability. The remaining 11.2 percent is the agency's gross profit, part of which is used to pay for other agency expenses not

related to the individual, such as professional liability insurance.

The President and CEO of KHCA/KCAL noted that increasing hourly rates for facility employees could result in contract staff agencies increasing their rates even more to remain competitive. Additionally, the representative noted that contract staff enjoy a flexible schedule.

The Director of Workforce and Health Care Policy, KHA, noted that, according to the 2022 Department of Administration contracts, the average rate paid to a contract staff agency for an RN was \$94 per hour, while the average hourly rate in Kansas is \$34 per hour. The representative noted that many contract staff are recent graduates and may not have training. The representative also noted efforts of the KHA and other stakeholders to address other factors that would influence workers to move to Kansas, such as housing.

April 3 Meeting

At the April 3 meeting, the Subcommittee received information from state agencies, stakeholders, and organizations concerning the health care workforce and training programs in Kansas.

Kansas Department for Aging and Disability Services

The Deputy Secretary of KDADS presented information about the state benefit package and KDADS' efforts to recruit and retain staff, and noted that the state hospitals host practicum students. The Deputy Secretary also informed the Subcommittee of the work being conducted by the South Central Regional Psychiatric Hospital Advisory Panel. This panel, which is tasked with making recommendations related to the new state psychiatric hospital to be constructed in Sedgwick County, has authorized a subcommittee to study ways to recruit and retain a workforce to support the state hospital.

Kansas Board of Regents

The President and CEO of the Kansas Board of Regents noted some of the long-term issues for higher education in Kansas, including uncertainty

about long-term enrollment figures, a lack of college readiness, and the impact of COVID-19 on nursing careers. The representative noted decreasing enrollment in nursing programs overall, even prior to COVID-19; however, he noted that enrollment in community college nursing programs has increased slightly since 2022. The representative also noted that in 2023, only 28 percent of high school graduates met ACT benchmarks in math and only 30 percent met the benchmarks in science.

The representative presented data on the first-time pass rates for the National Council Licensure Examination (NCLEX) for registered nurses, and expressed concern that nine community colleges have pass rates lower than both the state and national average. The representative indicated this may be due to a shortage of resources at those schools and suggested possible solutions, including sharing resources and faculty between community colleges. The representative also recommended a number of approaches, including increasing nursing program capacity, recruitment and retention programs, and investing in continuing education.

The Executive Director of the Kansas Association of Community College Trustees noted that community and technical colleges are collaborating, including sharing staff across schools. The representative noted that community colleges provide about 80 percent of the nursing workforce in the state. The representative made a number of recommendations, including encouraging existing workers to pursue higher credentials, to expand the Promise Act to out-of-state students, to offer LMHT certificates at community colleges, to develop a mid-level mental health certification, to consider making mental health-related courses eligible for SB 155 funding, to increase salaries to recruit and retain health care workers, and to ensure that any new scholarship funding requires students to live and work in Kansas.

The President and CEO of the Kansas Technical Colleges Presidents' Council shared that 75 to 80 percent of graduates of technical colleges remain in the state. The representative suggested increasing pay and review requirements for instructors, as well as increasing utilization of simulation labs.

The Executive Director of the Board of Nursing provided the licensure requirements for LPNs, RNs, and ARPNs. The representative shared the efforts undertaken by the Board of Nursing to increase the nursing workforce, including approving exceptions to nursing programs to increase the number of approved students they admit, allowing the use of preceptors in LPN programs when the faculty numbers are low, revising undergraduate education requirements, supporting nursing apprenticeship models to be utilized in Kansas, sharing information about nursing scholarships, educating stakeholders about multi-state licensure, gathering information on educational institutions interested in providing LMHT education as an entry point to a nursing career, and approving curriculum changes to allow more hybrid coursework. The representative also noted efforts at the national level, including a revision of the NCLEX that promotes critical thinking and has resulted in pass rates increasing for programs in Kansas.

The Executive Director of the Association of Community Mental Health Centers of Kansas provided information regarding the Kansas Behavioral Health Center of Excellence. The representative's written testimony recommended the addition of \$5.4 million for FY 2025 to develop workforce programs at University of Kansas Medical School at Wichita and Wichita State University. Additionally, the representative provided testimony recommending \$2.4 million for FY 2025 to increase salaries by approximately \$7,000 with a \$2,500 recruitment or retention bonus for approximately 256 nursing education positions at community and technical colleges.

The Director of Workforce and Policy, KHA, referenced its annual workforce report that was distributed to the members of the Subcommittee and noted a number of its efforts to increase the health care workforce. The representative provided several recommendations for the Legislature to consider, including:

- Continuing to expand and invest in apprenticeships;
- Implementing health care staffing agency transparency and accountability requirements;

- Reforming the Kansas Nursing Initiative Grant program by removing the one-to-one match requirement, expanding the usability of grant funds, and allowing a portion of the funds to be allocated to multiyear commitments;
- Increasing investments in the Kansas Nursing Initiative Grant program to support tutoring and NCLEX preparation, simulation lab and classroom development, and updating equipment;
- Increasing funding to support recruitment and retention of nursing instructors;
- Expanding the Kansas Nursing Service Scholarship program to include master's degree students;
- Creating an allied health professions scholarship program like the Kansas Nursing Service Scholarship Program;
- Increasing funding of new Graduate Medical Education residency program slots;
- Expanding the Rural Hospital Innovation Grant program; and
- Reauthorizing and expanding the Rural Opportunity Zone program.

The Director of Government Affairs, LeadingAge Kansas, noted a number of the workforce development projects LeadingAge Kansas has with stakeholders, including developing apprenticeship programs, developing an "Aging Services Professional" badge credential, and researching nurse availability. The representative recommended the Legislature include staffing agency proviso language in the 2024 mega appropriations bill to require registration of staffing agencies, convene a health care workforce roundtable with stakeholders during the 2024 Interim, and support passage of contents in SB 277 and HB 2265 during the 2025 Legislative Session to codify the proviso language in the 2024 mega appropriations bill.

The Director of the Kansas Nursing Workforce Center informed the Subcommittee of a forthcoming State of Nursing in Kansas report and recommended the creation of a statewide strategic plan to increase the nursing workforce.

April 4 Meeting

At the April 4 meeting, the Subcommittee discussed the information that had been presented and made a number of recommendations.

Conclusions and Recommendations

The Subcommittee recommended the creation of an interim committee to study contract nursing, the shortage of health care workers in the state, and ways to enhance the workforce pipeline. The Subcommittee recommended the interim committee:

- Take the format of a roundtable discussion and include the same number and makeup of members as the 2021 Special Committee on Kansas Mental Health Modernization and Reform, include non-legislative stakeholders as members, and include subcommittees chaired by non-legislative members that would provide recommendations to the interim committee. Non-legislative members should include stakeholders in education;
- Provide a report to the 2025 Legislature with short-term and long-term goals;
- Make recommendations to the 2025 Legislature to create a health care workforce pipeline;
- Examine the need for non-clinical nursing education faculty to obtain a master's degree. If the interim committee determines reform is needed, it is recommended they assess whether any changes would conflict with program accreditation and if a bill would be required during the next legislative session;
- Review the exemptions for the master's degree requirements of licensed practical nurses and associate degree nurses classroom instructors to determine whether rules should be changed to match the exemptions;
- Review the use of on-site and experience requirements for CNA trainers;
- Consider adding funding to be distributed for allied health professions scholarships, to hire more nursing teachers, and to develop a marketing campaign targeted to attract high school and college students to the nursing profession;
- Review the subject matter in HB 2265, relating to the regulation of supplemental nursing services; and
- Consider contracting with a company to operate the state hospitals.

The Subcommittee made the following recommendations that were unrelated to the proposed interim committee:

- Direct KDADS or Kansas Legislative Research Department to research how regulation of CNAs is handled in other states;
- Request that KDADS provide the House Committee on Appropriations and the Senate Committee on Ways and Means its long-term goals to recruit and retain workforce at the state hospitals by January 15th, 2025;
- Consider at omnibus the addition of \$1.0 million to the Kansas Nursing Initiative Grant and \$1.0 million to the Kansas Nursing Services Scholarship Program and consider requiring a commitment that the student remain in Kansas after graduation for a number of years to be determined based on the number of years the student receives a scholarship;

- Consider at omnibus creating a carve-out within the Promise Act that would provide an annual stipend to students, similar to the Graduate Medical Education program, except it would not be targeted to rural Kansans, and would be available for students pursuing allied health professions, including nurses, laboratory technicians and assistants, respiratory therapists, occupational therapists, and mental health professionals;
- Consider at omnibus revising the supplemental nursing staff proviso to include supplemental nursing staffing agencies, temporary nursing staff agencies, and technology platforms that connect facilities with temporary nursing staff; and
- Consider at omnibus the addition of \$2.4 million SGF, to be distributed through Community Behavioral Health as the coordinator of the Kansas Behavioral Health Center of Excellence, to provide \$7,000 base pay increases and \$2,500 retention bonuses to nursing faculty at community and technical colleges for FY 2025.
- Approving HB 2277 or SB 151 to amend KSA 75-37,105, to authorize hiring and recruitment and retention bonuses, and raise the maximum bonus cap from \$3,500 to \$10,000 per fiscal year, among other things;
- A 5.0 percent pay increase for all state employees, setting a market starting rate of \$15 per hour for all state employees, and making the 24/7 Pay Plan permanent;
- Adding \$5.4 million, to be distributed through Community Behavioral Health as the coordinator of the Kansas Behavioral Health Center of Excellence, for behavioral health workforce programs at Wichita State University and University of Kansas School of Medicine—Wichita for FY 2025;
- Funding state-operated tuition reimbursement or student loan repayment programs; and
- Ensuring state employees can take advantage of flexible scheduling while maintaining benefit eligibility, such as schedule options allowing three 12-hour shifts per week or one weekend per month.

The Subcommittee also recommended the House Committee on Appropriations review and consider the following items proposed by KDADS: