MINUTES

JOINT C0MMITTEE ON HOME AND COMMUNITY BASED SERVICES OVERSIGHT

November 8, 2010
Room 548-S—Statehouse

Members Present

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

Members Absent

Senator Carolyn McGinn, Vice-chairperson
Senator Dwayne Umbarger
Representative Brenda Landwehr

Staff Present

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

Conferees

Gerald Sloan, Vice-president, Midwest Association for Medical Equipment
Kim Gustafson, Interim Executive Director, Health-E-Quip, Hutchinson, Kansas
Jane Kelly, Executive Director, Kansas Home Care Association
Sara H. Sack, PhD., Assistive Technology for Kansans
David Kemp, OTR/L, ATP, Vice-president, Technical Services, Carney Rehab Engineering Center, Cerebral Palsy Research Foundation of Kansas, Inc., Wichita, Kansas
Kevin Robertson, Executive Director and CAE, Kansas Dental Association
Maggie Smet, RDH, President, Kansas Dental Hygienists' Association
Doreen Eyler, Extended Care Permit, Grace Med, Wichita, Kansas
Tanya Dorf Brunner, Executive Director, Oral Health Kansas
Dr. Andy Tompkins, Board President and CEO, State Board of Regents
Ray Dalton, Deputy Secretary, Kansas Department of Social and Rehabilitation Services

Martin Kennedy, Secretary, Kansas Department on Aging
Bill McDaniel, Program and Policy Commissioner, Kansas Department on Aging
Scott Brunner, Chief Fiscal Officer, Kansas Health Policy Authority

Morning Session

Chairman Bethell called the meeting to order at 10:10 a.m. and welcomed those in attendance. The Committee's attention was turned to the charge given to the Committee as detailed in the handout entitled *2010 Joint Committee on Home and Community Based Services Oversight (*Attachment 1). Chairman asked the Committee to consider the recommendations they would make before today's adjournment.

Gerald Sloan, Vice-president, Midwest Association for Medical Equipment Services, provided a power-point presentation on the effect of Medicare's Competitive Bidding Program on Access to Durable Medical Equipment. Mr. Sloan presented written copy of the power-point presentation (Attachment 2). He stated the National Competitive Bidding System will go into effect in January 2011. He explained that, at the present time, Medicare patients can buy from any qualified provider and may switch providers if they are not satisfied with the quality of care they are receiving. Under the new government program called Competitive Bidding, Medicare patients will not be able to receive services from any durable medical equipment provider of their choosing. Medicare will be taking bids from providers and will choose the lowest bidder. These chosen providers will furnish goods and services to Medicare patients. Mr. Sloan voiced the concerns of several home health care providers regarding the National Competitive Bidding program. These concerns included small providers feeling pressured to accept economically unsustainable bids in order to receive a contract, decreased access to local providers in rural areas, and the inability of bid-winning out-of-state providers to provide immediate care. A question and answer session followed.

Kim Gustafson, Interim Executive Director, Health-E-Quip located in Hutchinson, Kansas presented her testimony regarding the effect of Medicare's Competitive Bidding Program. Ms. Gustafson provided written copy of her testimony (Attachment 3). She stated the bidding program will restrict consumer access to care and choice for home medical items and services; will trigger a race to the bottom in terms of quality; and will also increase Medicare costs by leading to longer, more expensive hospital stays and more emergency room visits. Ms. Gustafson indicated the bidding program is anti-competitive because it reduces the number of competitors which will result in the closing of thousands of small businesses and in as many as 100,000 job losses nationwide. In closing, she urged the Committee to contact their representatives in Washington asking them not to support the Competitive Bidding Program. A question and answer session followed.

Chairman Bethell recognized Jane Kelly, Executive Director, Kansas Home Care Association to provide her testimony regarding the effect of the CMS Competitive Bidding Program on Durable Medical Equipment on access for our elderly, disabled and chronically ill population. Ms. Kelly presented written copy of her testimony (Attachment 4). She opened by explaining durable medical equipment (DME) refers to a class of medical supplies. These supplies are reusable, used in the home, and used to help an illness or a symptom of an illness. Examples would include scooters, hospital beds and prosthetics. The Competitive Bidding Program was mandated by Congress through the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Ms. Kelly indicated the Competitive Bidding Program would lower quality, reduce access to care, and reduce competition by eliminating up to 90 percent of home health equipment businesses in any market area where the program is implemented. She stated competitive bidding would ignore the critical role of services required to provide care to people in their homes, and does not adequately

account for the providers' ability to serve a geographic market. Ms. Kelly further stated the result of provider competition based on price, rather than the quality of supplies or customer service, may result in significant reductions to the quality of items and services beneficiaries need to remain at home, independently. Ms. Kelly stated this program is not the solution to Medicare's reform, and it is certainly not the answer for patients and seniors. In closing, she urged the Committee not to support this program. A question and answer session followed.

Sara H. Sack, PhD, Assistive Technology for Kansans, testified regarding the CMS Competitive Bidding Program for Durable Medical Equipment. Dr. Sack presented written copy of her testimony (Attachment 5). Assistive Technology for Kansans has the following bidding program concerns:

- Durable medical equipment suppliers, especially small businesses, will be going out of business;
- Loss of small businesses and employment opportunities in Kansas will be devastating to communities and the consumers;
- The economic saving from competitive bidding may not be as forecasted;
- Loss of durable medical equipment supplies is bad for consumers;
- A longer waiting period for equipment and repairs puts Kansans at medical risk;
- Lack of access to durable medical equipment negatively impacts a person's ability to live independently;
- Proposed savings from the competitive bidding process, especially for this population of persons with disabilities and significant health conditions, may in fact result in increased costs for other programs due to increased medical and care costs;
- The competitive bidding process, as designed, does not protect beneficiaries against difficulties in accessing equipment and necessary services;
- There is no requirement for response time, i.e, delivery time;
- Reducing the choice of suppliers jeopardizes the lifelong relationships often established with suppliers and technicians who are familiar with the specific needs and care of persons with significant disabilities and health conditions;
- Choice, in terms of suppliers and equipment, will be limited;
- Durable medical equipment is not a "one size fits all" type commodity that is easily interchangeable and is often customized to fit the individual which further necessitates the need for a range of equipment and options; and
- Prior to competitive bidding, consumers may have obtained all necessary services from a single supplier. Under competitive bidding, consumers may have to visit several suppliers in order to meet their needs, thereby increasing the time, expense, and transportation barriers.

In closing, Dr. Sack stated while Assistive Technology for Kansans applauds efforts to use healthcare dollars wisely, competitive bidding for durable medical equipment and services does not seem to be the recommended strategy, as the potential negative impact is too great.

Chairman Bethell recognized David Kemp, OTR/L, ATP, Vice-president of Technical Services, Carney Rehab Engineering Center, Cerebral Palsy Research Foundation of Kansas, Inc., located in Wichita, Kansas, to provide his testimony on the CMS Competitive Bidding Program for Durable Medical Equipment. Mr. Kemp presented written copy of his testimony (Attachment 6). He stated that Technical Services at the Daniel M. Carney Rehabilitation Engineering Center, which is a division of the Cerebral Palsy Research Foundation (CPRF), has many concerns regarding the competitive bidding program. Last year, CPRF performed evaluations and custom fittings of wheelchairs for over 700 Kansans residing in over 80 counties. Their clients have long-term chronic conditions which can include cerebral palsy, neuromuscular disease, multiple sclerosis, spinal cord injuries, spina bifida, chronic obstructive pulmonary disease, congestive heart failure, etc. In CPRF's opinion, there are many reasons to be concerned with the current competitive bidding process established by CMS. Occupational and physical therapists rely on the expertise of the DME provider for individual equipment recommendations for each of their clients. CPRF uses four providers who have years of experience. The DME providers do more than provide wheelchairs. The providers must know the unique rules and regulations for each third party payer. These DME providers coordinate all documentation with the insurer and with the client's doctors, order and inventory the wheelchair frames and individual seating components, follow-up with each client, and provide warranty work as needed. The few DME providers used by CPRF are unique in that they have made a commitment to quality service, not only to the clinic, but also to the clients. It appears the competitive bidding program will lead DME provider bid winners to severely under bid the contracts for a given area, so that they can continue to survive. CPRF asserts this could force them to recommend inappropriate wheelchairs for their clients because that is all the DME bid winner can afford to provide. Medicare and Kansas Medicaid are the dominant payers of the wheelchairs CPRF recommends. If Kansas Medicaid adopts the current competitive bidding system without meaningful changes, CPRF believes it is likely that many of the high quality DME providers they use will have to close. In closing, Mr. Kemp stated the idea of pursuing cost reduction is admirable and needed. But, in CPRF's opinion, the current competitive bidding process has serious consequences for disabled Kansans and the current provider network that serves these individuals.

Upon completion of the testimonies on the CMS Competitive Bidding Program for Durable Equipment, Chairman Bethell turned the Committee's attention to the expansion of the scope of practice for dental hygienists.

Kevin Robertson, Executive Director and CAE, Kansas Dental Association presented his testimony related to the expansion of the scope of practice for dental hygienists. Mr. Robertson provided written copy of this testimony (Attachment 7). He stated, since the Kansas Dental Association (KDA) believes it is essential that all Kansans have access to good oral health care, the Association is very interested in working with the members of the dental team to enhance and increase the care provided to patients under various levels of dental supervision. In 2002, the KDA and the Kansas Dental Hygienist Association hammered out the agreement that became the Extended Care Permit (ECP) Dental Hygienist. The KDA was also involved and supported changes to the ECP I and II legislation in 2007. KDA believes strongly that prevention is the most cost effective and promising strategy to improve the oral health of Kansas citizens in all settings, and the dental hygienist is the dental team prevention specialist. The KDA is exploring a concept that combines the work of the Community Dental Health Coordinator (CDHC) dental team member concept piloted by the ADA, and expands upon the Extended Care Permit (ECP) dental hygienist role to create a dental community health worker of sorts. The concept would create a new level of ECP, an ECP III, whereby a dental hygienist would be required to complete some social work/counseling education regarding underserved populations, as well as training on providing additional dental

services. These dental services might include evaluation, temporary fillings and other emergency stabilization techniques. The ECP III would not perform surgical and diagnostic procedures, instead they would concentrate on preventative services, dental education, case management and emergency procedures to help change habits and get patients into a dental home with regular dental care. The KDA has established a task force charged with working out the details of this concept.

The KDA also believes that Kansas should increase the number of dental seats Kansas has with UMKC by five or six per year, add another dental school, or do both. KDA feels it is time to require the dentists in those seats, as part of their dental school admission, to return to Kansas to practice in an underserved area for a certain number of years. The Association will also ask the Legislature to again implement a dental student loan repayment bridging loan program that would provide an incentive for dental graduates to locate their practice in underserved areas of Kansas. In closing, Mr. Robertson stated Kansas dentists currently fund, administer and support two programs for adult dental care in Kansas through the Donated Dental Services program and the Kansas Mission of Mercy. It is estimated that the average dentist provides $33,000 in charity and reduced-fee care to patients every year. This amounts to $46.3 million in free and reduced care provided annually by Kansas dentists to Kansans. A question and answer session followed.

Maggie Smet, RDH, President of Kansas Dental Hygienists' Association, in private practice in Wichita, Kansas, provided her testimony on the expansion of the scope of practice for dental hygienists. Ms. Smet presented written copy of her testimony (Attachment 8). She is a registered dental hygienist and was the first Extended Care Permit (ECP) provider. Kansas has approximately 1739 Registered Dental Hygienists and 1430 practicing dentists. Ms. Smet explained the scope of practice of ECP hygienists, outlining the services they may provide, and the locations and persons the ECP hygienist may serve. None of the dentists who supervise ECP hygienists were educated in Kansas due to the absence of a dental school in the state. At this time approximately 127 Kansas dental hygienists hold an Extended Care Permit and primarily work in conjunction with one of 19 safety net dental clinics in Kansas. In closing, Ms. Smet stated the Kansas Dental Hygienists' Association urges the Kansas Legislature to support enhancements to the current ECP legislation to allow these preventive oral care providers easier access to those populations in need, and to consider implementation of a new mid-level oral health practitioner to help fill the enormous gaps in access to oral health care. A question and answer session followed with Chairman Bethell requesting an outline of the extended program envisioned by the Kansas Dental Hygienists' Association. Ms. Smet stated she would provide that information to the Committee.

Doreen Eyler, Extended Care Permit Hygienist, Grace Med in Wichita, Kansas, spoke regarding the expansion of the scope of practice for dental hygienists. Ms. Eyler presented written copy of her testimony (Attachment 9). Grace Med is one of the 19 safety net clinics in Kansas. Ms. Eyler described the nature of the services performed by Grace Med ECP I and II hygienists and the outreach sites served. She shared the access issues resulting from the lack of transportation and the cost of dental procedures, and stressed the importance of preventative dentistry. The sponsoring dentists required for ECP hygienists working at Grace Med are the dentists employed by Grace Med. Grace Med employs three full time dentists and two part time dentists, and the clinic schedules are consistently full. The Grace Med ECP hygienists are doing full time outreach and providing clinical hygiene to manage the high demand for preventative services. They navigate the Kansas population through their health and dental needs, along with spreading the word about prevention. A question and answer session followed.

Chairman Bethell introduced Tanya Dorf Brunner, Executive Director, Oral Health Kansas, to testify regarding expanding the scope of practice for dental hygienists. Ms. Brunner presented written copy of her testimony (Attachment 10). She stated, in 2003, the Legislature established Extended Care Permits (ECP) for Kansas dental hygienists to allow for the provision of hygiene services for low-income children and adults in community health centers and prisons. The law was

revised in 2007 to expand the scope of practice to include community-based services for persons with developmental disabilities and the elderly. The Kansas Department of Health and Environment (KDHE) Bureau of Oral Health published a Kansas dental workforce study in 2009. The study included a comprehensive look at ECP hygienists. Two-thirds of the ECP hygienists surveyed indicated they sought the ECP permit to help serve the underserved population. Eighty percent of the respondents said they are working at least a few hours a week as an ECP hygienist, and 38 percent reported they are not using their ECP permit to the extent they would prefer. The workforce study also questioned respondents as to the barriers encountered in beginning their ECP practice. The ECP hygienists stated the barriers included the lack of current feasibility in making a living doing only ECP work because running an effective ECP program involves a lot of non-billable time for outreach and paperwork, and also the lack of Medicaid coverage for adult preventative services. Another obstacle, is that some schools also are hesitant to provide ECP hygienists access to the free and reduced price school lunch list. Lastly, if ECP hygienists are able to operate on their own, they still need to find a dentist or dentists who are willing to do the restorative work the ECP hygienist finds is needed.

Oral Health Kansas is partnering with the KDHE Bureau of Oral Health to facilitate an ECP Policy Work Group for the purpose of examining the potential barriers in the law to ECP hygienists' ability to practice. The work group plans to formulate policy recommendations by the end of the year.

Dr. Andy Tompkins, President and CEO, Kansas Board of Regents, provided testimony related to the expansion of the scope of practice for dental hygienists. Dr. Tompkins presented a written copy of his testimony (Attachment 11). He stated the issue of dental service in Kansas is certainly not a new one. Kansas has taken several actions to compensate for the fact that it lacks a dental school, perhaps the most significant being the development of a reciprocity agreement that allows Kansans to study dentistry at the University of Missouri-Kansas City (UMKC) Dental School at in-state tuition rates. Dr. Tompkins stated Kansas currently has five programs training dental assistants and five educating dental hygienists. Kansas also has one graduate certificate program located at Wichita State University (WSU). In closing, Dr. Tompkins stated he had been in contact with Kansas University (KU) and WSU administrators regarding the establishment of a dental school in Kansas, and noted it would be a very costly endeavor. He discussed several options other than the pursuit of a dental school. These options were:

- Enact a service requirement for Kansas residents attending UMKC dental programs and receiving our-of-state tuition waivers; and

- Establish a scholarship program for dental students that pays the difference between in-state and out-of-state tuition at dental schools other than UMKC. These scholarships would come with a service requirement that might include additional incentives to work in underserved geographic areas of Kansas.

A short question and answer session followed.

Chairman Bethell called the Committee's attention to the "written only" testimonies of Debra Harmon Zehr, President and CEO of the Kansas Association of Homes and Services for the Aging (Attachment 12), and Connie Hubbell, Governmental Affairs Director for the Kansas Association for the Medically Underserved (Attachment 13).

Chairman Bethell recessed the meeting at 12:40 p.m and announced the afternoon session would begin at 1:45 p.m.

Afternoon Session

Chairman Bethel reconvened the meeting at 2:00 p.m. and introduced Ray Dalton, Deputy Secretary, Kansas Department of Social and Rehabilitation Services, to provide follow-up data on adult abuse and neglect in the Frail Elderly (FE) Waiver. Deputy Secretary Dalton presented written copy of his testimony (Attachment 14). He provided information on Adult Protective Service Substantiations and Rates Comparison of Pre and Post-Policy by Age, Parent Fee Program, Parent Fee Schedule, and Parent Fee Program Collection information which was requested by the Committee at an earlier committee meeting. A short question and answer session followed.

Martin Kennedy, Secretary, Kansas Department on Aging, provided an update on the Provider Assessment Advisory Panel. Secretary Kennedy presented written copy of his update (Attachment 15). He provided a list of panel members to date and stated the four Governor's appointees to the panel were pending. A question and answer session followed.

Chairman Bethell called on Bill McDaniel, Program and Policy Commissioner, Kansas Department on Aging, to give a follow-up on the use of the Program for All-inclusive Care for the Elderly (PACE) funds to address other budget needs. Mr. McDaniel presented written copy of his testimony (Attachment 16). He reviewed the charts and graphs provided to the Committee. Mr. McDaniel stated there are two PACE programs in Kansas: Via Christi Hope and Midland Connections. The total number of slots approved for Hope is 305 and for Midland, 100. Both are growing and will probably cap out at the end of this year. Mr. McDaniel also stated a 3% rate increase was placed in the enhancement.

A lengthy question and answer session followed resulting in these requests for information:

- Actual expenditures for Via Christi and Midland Connections on the PACE program;
- A cost benefit analysis for cost savings to the programs; and
- A comparison of the PACE rate and the non-PACE fee for service.

Mr. McDaniel agreed to provide the requested information.

Deputy Secretary Dalton, Kansas Department of Social and Rehabilitation Services, was called on to provide a follow-up on the Autism Waiver Parent Fee Program (Sliding Fee Scale). Deputy Secretary Dalton referred the Committee to the charts in his earlier handout (Attachment 14, Pages 2, 3, and 4) He provided information on the number of families in the program by fee level and waiver, the parent fee schedule, and collections through the Parent Fee Program. A discussion followed regarding the information presented on the charts.

There being no other questions, Deputy Secretary Dalton moved the Committee's attention to the FY 2010 Annual Report on the average number of individuals transferred from state and private institutions to HCBS including the Average Daily Census for State Institutions and Long Term Care Facilities, Savings on Transfers to HCBS Waiver, and HCBS Savings Fund Balance; and a FY 2011 First Quarter Report on the number of individuals transferred to HCBS Services. Deputy Secretary Dalton provided a follow-up SRS Report on Mental Health Facility Numbers from 2005-2010. He referred the Committee to his earlier handout (Attachment 14, Page 5, 6, 7, and 8) and reviewed the charts for the Committee.

A question and answer session followed during which questions were posed regarding the zero balance in both the SRS HCBS Services Savings Fund and the KDOA HCBS Savings Fund. Deputy Secretary Dalton explained that, in order to realize savings, units would need to close, not just beds. However, if the budget is cut resulting in a unit being closed, no savings is realized because the funds are already gone due to the budget cut.

Chairman Bethell indicated the minutes of the meeting held on September 8, 2010 were previously distributed and *upon a motion by Representative Mast and a second by Senator Kultala to approve the minutes as written, the motion passed.*

Chairman Bethell introduced Scott Brunner, Chief Financial Officer, Kansas Health Policy Authority, to provide a follow-up on the Kansas Health Policy Authority's application processing procedure, the Clearinghouse backlog, and application processing changes being implemented. Mr. Brunner presented written copy of his testimony (Attachment 17). He provided a flow chart of the application processing system. The Clearinghouse is a centralized processing center which manages family medical eligibility determinations. It is operated by a private vendor through a competitive contract. The Clearinghouse processes applications and renewals through a mail-in process. Mr. Brunner stated that, in 2009 and continuing into 2010, a number of factors converged to create a large backlog of applications. KHPA has taken several steps to find a solution to the backlog of applications and the resulting delays in eligibility experienced by thousands of applicants. Mr. Brunner indicated that, as of November 1, 2010, the backlog numbers totaled 17,789 applications over 45 days old. He further stated that KHPA is now on track to resolve this backlog by March 2011.

A lengthy discussion followed with members of the Committee voicing their concerns regarding the delays in the application process. During the discussion, Scott Brunner explained how the applications were processed. Darin Bodenhamer, Medicaid Director of Eligibility at KHPA, entered the discussion explaining the oldest applications were processed first. Chairman Bethell requested KHPA provide a more detailed flow sheet of the application process before December 8, 2010. Chairman Bethell also requested information regarding the amount of money the state of Kansas has saved as a result of the Clearinghouse backlog with differentiation between State General Funds and federal funds.

Mr. Brunner invited the Committee to tour the Clearinghouse facility to observe the application processing system. Chairperson Bethell accepted the invitation and indicated he would consult with the Committee for a date when a majority of the members would be available for a tour.

Chairman Bethell turned the Committee's attention to proposed recommendations. Based on testimony heard and Committee deliberations, the Joint Committee on Home and Community Based Services Oversight made the following recommendations:

- **Access to Dental Care.** The Kansas Dental Association, the Kansas Dental Hygienists' Association, Kansas Association for the Medically Underserved (KAMU), Oral Health Kansas, safety net clinics, and any other groups relevant to the dental health care issue are encouraged to meet to discuss possible means to address the lack of access to dental health care. These groups are encouraged to present either joint or separate legislation during the 2011 Legislative Session to address the concerns.

- **Autism Waiver.** The appropriate legislative committees and members of the Executive branch are requested to consider legislating additional slots in the Autism Waiver during the 2011 Legislative Session.

- **Telehealth Program.** The Department on Aging is directed to again bring the Telehealth Program to the attention of the Legislature because this issue remains valid.

- **Extended Care Permit Expansion.** The ECP Policy Workgroup being facilitated by Oral Health Kansas and KDHE Bureau of Oral Health is encouraged to formulate policy recommendations articulating an Extended Care Permit expansion to meet the dental health care needs in the state to be considered during the 2011 Legislative Session.

- **Provider Assessment for HCBS DD Waiver.** The appropriate legislative committees and members of the Executive branch are requested to consider the expansion of the provider assessment program to include the HCBS Developmental Disability Waiver.

- **Community-Based Mental Health Services.** The 2011 Legislature is requested to look at the funding for the state's mental health system with the view of preventing further reductions in those services and address the issue of insufficient beds for mental health care. For FY 2012, as revenues allow, it is recommended that the 2011 Legislature begin restoring the cuts sustained by the mental health system.

- **Expansion of PACE Program.** The 2011 Legislature is requested to continue considering the expansion of the Program for All-inclusive Care for the Elderly (PACE) for FY 2012, as funding allows.

- **KHPA Clearinghouse Backlog.** The Kansas Health Policy Authority is encouraged to resolve the backlog in processing applications and renewals for determining medical benefit eligibility in a timely manner.

Chairman Bethell thanked all conferees and Committee members for their input and attention. The meeting was adjourned at 4:00 p.m. with no other meetings scheduled.

Subsequent to the committee meeting, the need to clarify information provided by Kevin Robertson (Kansas Dental Association) in his testimony came to the attention of the Committee. Mr. Robertson provided a letter dated November 23, 2010, explaining the information in question (Attachment 18). The letter was forwarded to Committee members for their review, and is herein incorporated as part of the testimony.

Prepared by Jackie Lunn
Edited by Iraida Orr

Approved by Committee on:

December 30, 2010
(Date)