

MINUTES

LONG-TERM CARE SERVICES TASK FORCE

October 23-24, 2003
Room 514-S—Statehouse

Members Present

Representative Bob Bethell, Chairperson
Senator Larry Salmans, Vice Chairperson
Senator Janis Lee
Senator Chris Steineger
Representative Patricia Barbieri-Lightner
Representative Nancy Kirk
Representative Jim Morrison
Representative Judy Showalter

Non-Legislative Members Present

Deanne Bacco for Evie Curtis (October 24)
Janis DeBoer
Linda Lubensky
Dr. Carol Moore
Charles Moore
Sister Beth Stover
Ray Vernon
Margaret Zillinger

Members Absent

Senator Susan Wagle
Mark Baily
Bob Smith

Staff

Audrey Dunkel, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Lisa Montgomery, Revisor of Statutes Office
Mary Shaw, Committee Secretary

Conferees

Karen Braman, Policy Analyst, Health Care Policy, Kansas Department of Social and Rehabilitation Services

Robert Williams (Bob), Executive Director, Kansas Pharmacists Association
Pat Hubbell, Pat Hubbell Associates, Inc.
Rosa Molina, Executive Director, Medical Service Bureau, Wichita
Brent Widick, Grant Manager, Real Choices Systems Change Grant, Kansas Department of
Social and Rehabilitation Services
Jeanine Schieferecke, Medicaid Eligibility Manager, Integrated Service Delivery, Kansas
Department of Social and Rehabilitation Services
K. J. Langlais, Executive Director, Friends of Johnson County Nursing Center, Inc.

Thursday, October 23
Morning Session

Representative Bob Bethell, Chairman, called the meeting to order at 10:10 a.m., and welcomed everyone to the meeting. Staff presented a briefing regarding an update on federal action to address foreign pharmaceuticals. Copies of the following information were distributed to the committee:

- Federal Drug Administration (FDA) Takes Action Against Companies That Are Importing Unapproved, Potentially Unsafe Drugs, dated September 9, 2003 ([Attachment 1](#)).
- Federal Drug Administration/U.S. Customs Import Blitz Exams Reveal Hundreds of Potentially Dangerous Imported Drug Shipments, dated September 29, 2003 ([Attachment 2](#)).

Staff explained the information dated September 9, 2003, and noted that the FDA's main concern regarding foreign pharmaceuticals is that these drugs are potentially unsafe because they are not regulated by the United States. The labeling is inappropriate or in a foreign language, especially on drugs that need to be monitored, and then that monitoring is not available to the patients receiving these drugs. Some drugs are likely to be contaminated, counterfeit, or contain different amounts of active ingredients than those drugs that are available in the United States and it is a safety concern. The FDA has also taken steps to help consumers meet their medication needs at a more affordable price, without compromising drug safety and effectiveness.

In regard to the information dated September 29, 2003, staff explained that a recent series of spot examinations of mail shipments of foreign drugs to United States consumers was conducted by the Food and Drug Administration and U.S. Customs and Border Protection (CBP or Customs) revealed that these shipments often contain dangerous unapproved or counterfeit drugs that pose potentially serious safety problems. The joint operation was carried out to help FDA and CBP target, identify and stop counterfeit and potentially unsafe drugs from entering the United States from foreign countries via mail and common carriers. It was also designed to help the FDA and CBP assess the extent of the problem. Staff noted that the FDA does not have the manpower available to control this. They will open every shipment from every company, but they cannot do it right now and can only spot check and give trends on what is happening.

Senator Lee requested information from staff regarding drugs made in Canada and if Canada has an equivalent of the FDA, or is there some type of an agreement with the United States.

Chairman Bethell welcomed Karen Braman, Policy Analyst, Health Care Policy, Kansas Department of Social and Rehabilitation Services (SRS), who presented an update on SRS and foreign pharmaceuticals (Attachment 3). Ms. Braman presented testimony to address questions raised by the Committee regarding the following areas:

- Drugs from foreign countries, specifically Canada;
- If there are any efforts to allow the purchase of Canadian drugs through Medicaid; and
- If there are concerns about foreign drugs.

Ms. Braman explained in her testimony that importation of drugs from foreign countries, including Canada, is illegal. She mentioned that because it is not legal, there are currently no efforts underway to purchase medications for Medicaid beneficiaries through Canada. Committee discussion followed.

Chairperson Bethell welcomed Robert (Bob) Williams, Executive Director, Kansas Pharmacists Association, who addressed the Committee regarding the importation of prescription medication (Attachment 4). Mr. Williams addressed the importation of prescription medication. He noted in his written testimony that two factors have come together to create the current “rush” to import prescription medication from other countries—the high cost of prescription medication in the United States, and the “electronic age.” The Internet and fax machines now make it possible to easily order products from all over the world.

Mr. Williams explained that in regard to obtaining prescription medication over the Internet, the State of Kansas and the pharmacy profession began dealing with that issue many years ago. In Kansas, a nonresident pharmacy must register with the State Board of Pharmacy. In addition, the National Association of Boards of Pharmacy (NABP) has established a Verified Internet Pharmacy Practice Sites program (VIPPS) whereby they investigate Internet pharmacies to verify their legitimacy. However, all of the above only applies to those entities operating in the United States and it is not foolproof. The VIPPS program does not apply to those entities operating outside the United States.

Mr. Williams noted a letter (attached to his written testimony) from William Hubbard, Associate Commissioner for Policy and Planning, Food and Drug Administration addressed to Gregory Gonot, Deputy Attorney General for the State of California. Mr. Hubbard’s letter was in response to a letter from California regarding the potential liability associated with importing prescription drugs from Canada. Mr. Williams explained that it is a federal crime for individuals or groups to import prescription medication into the United States. He explained that there is an exception for personal use, as is detailed in Mr. William’s written testimony.

Mr. Williams mentioned that while the Canadian drug approval process may be similar to the United States, their importation laws are more lax. He also noted that the high cost of prescription medication in the United States is creating a lucrative market for counterfeit drugs and counterfeit medication is on the increase in the United States. Committee questions and discussion followed.

The Chairperson welcomed Pat Hubbell, Pat Hubbell Associates, Inc., who addressed the illegality of importing drugs and provided copies of “States that Import or Facilitate the Importation of Foreign Pharmaceuticals Risk Lawsuits” (Attachment 5). Mr. Hubbell responded to questions from the committee. Chairperson Bethell asked that Mr. Hubbell address the issue of reduced prices, the

give-away programs the pharmaceutical companies have and how those with low incomes can get involved in some of them. Mr. Hubbell explained that most of their 42 companies are involved in some type of program where they make their products available to people that cannot afford them. There are various requirements for each program and they are complicated.

Mr. Hubbell also explained that regarding FDA inspections, an FDA inspected facility is an inspected facility wherever it is at. The FDA looks at the package, and the labeling that is on the package, and what is on the advertising. Mr. Hubbell mentioned that the pharmaceutical industry spends a lot of money on research and development in trying to come up with new products. They face an increasing problem in delay of approval of getting these products to the marketplace. By the time the product gets to the marketplace, their patent has a very short life span until the generic drugs come in and replace them as the prescription of choice. Increased advertising has been the result.

The meeting recessed at 11:50 a.m., for lunch.

Afternoon Session

The meeting reconvened at 1:30 p.m. Chairperson Bethell welcomed Rosa Molina, Executive Director, Wichita Medical Services Bureau ([Attachment 6](#)). Ms. Molina explained that a survey done by the Kansas Department on Aging in 2000 stated that the number one concern of seniors is the cost of medication. The Medical Service Bureau (MSB) has three programs designed to ease the burden of high cost medication:

- The Non-Profit Pharmacy Program (250 percent of federal poverty level);
- The Voucher Program (150 percent of federal poverty level); and
- The Pharmaceutical Drug Program (PDP, 200 percent or set by the pharmaceutical company).

Ms. Molina mentioned to qualify for MSB's programs, individuals must:

- Live and work in Sedgwick county;
- Not have any other prescription insurance or be enrolled in any government program that provides access to medications; and
- Meet income guidelines (three different federal poverty levels used).

Representative Showalter requested a copy of MSB's application form.

The Chairperson welcomed Brent Widick, Real Choices Systems Change Grant Manager, Kansas Department of Social and Rehabilitation Services ([Attachment 7](#)). Mr. Widick presented an overview of the Real Choices Systems Change Grant. He explained that Kansas was awarded, from the Centers for Medicare and Medicaid Services (CMMS), a three-year Real Choices Systems Change Grant in September 2002. The award amount of the grant is \$1,385,000 in federal funds,

and an in-kind match of \$312,282, for a total project cost of \$1,697,282. He noted that the grant seeks to build upon the improvements in long-term care which Kansas has implemented through Medicaid home and community based services waivers. The primary overarching goal is to make home and community based services as accessible to individuals with disabilities or long-term illnesses as institutional care.

Mr. Widick discussed the five goals contained in the project:

- Develop a strategic plan and a three-year action plan to guide future systems change.
- Investigate the potential of improved screening instruments for individuals with serious and persistent mental illness in Nursing Facilities for Mental Health (NF/MH).
- Enhance the Diversion Project by providing short-term case management services to divert individuals who are at-risk of placement upon discharge from a hospital.
- Provide technical assistance to expand capacity to deliver community based services based on currently identified needs and needs articulated in the strategic plan.
- Develop and present effective education material among the broad range of service providers and other long-term care stakeholders.

Committee questions and discussion followed.

Chairperson Bethell welcomed Jeanine Schieferecke, Medicaid Eligibility Manager, Integrated Service Delivery, Kansas Department of Social and Rehabilitation Services, who addressed the Committee regarding the process of the spend down resources to qualify for Medicaid and long-term care insurance credit (Attachment 8). Ms. Schieferecke explained that persons who request long-term care services under Medicaid must meet three basic eligibility requirements to qualify:

- a general/non-financial test;
- an income test; and
- a resource test.

Ms. Schieferecke mentioned that persons cannot own resources, or assets, in excess of \$2,000 and qualify for Medicaid. She noted that not all assets count toward this limit. Certain assets are exempt:

- the home in which the individual or spouse lives or intends to return;
- one vehicle per family;
- personal effects and keepsakes (e.g. furniture, clothing, household goods);
- burial funds and merchandise (limits apply); and
- small life insurance policies.

Most other assets, such as bank accounts, stocks, bonds, retirement accounts, and other investments, are countable toward the resource limit. Ms. Schieferecke mentioned that people are shocked at long-term care costs and the realization that Medicare does not offer long-term care costs. Committee questions and discussion followed.

The Chairperson welcomed K. J. Langlais, Executive Director, Friends of Johnson County Nursing Center, Inc., who testified regarding improving long-term care through education of all employees ([Attachment 9](#)). Ms. Langlais presented an overview of the Geriatric Education Research and Training Institute (GERTI). She explained that the average cost of recruiting a CNA exceeds \$1,350. The turnover rates range from 40 percent to 250 percent in long-term care. Ms. Langlais mentioned that in 2010 direct care positions will grow by about 80,000 nationally or 45 percent. Currently, in the United States there is a shortfall of approximately 90,000 registered nurses and 250,000 CNAs. She noted that if growth is at the level that is being said, then there will be a crisis in the country if a way is not figured out to meet those needs of the aging population.

Ms. Langlais mentioned that in 1999-2001 there were 9,000 abuse cases cited in nursing facilities in the United States. Education and training programs are extremely expensive to develop and conduct. Employees are not being trained in the soft skills, that of integrity, compassion, dependability, communication, and conflict resolution. They are one of the highest regulated industries, yet there is no formal education requirement for orientation and teaching employees the regulations.

Ms. Langlais explained that their first course at the Geriatric Education Research and Training Institute is a 40-hour comprehensive orientation program that focuses on:

- regulations;
- quality of life of residents along with culture change;
- understanding aging and dementia;
- soft skills of respect, dignity, and compassion;
- team building techniques;
- successful employee skills; and
- interactive learning.

Committee questions and discussion followed. The meeting recessed at 3:10 p.m.

**Friday, October 24
Morning Session**

The meeting reconvened at 9:10 a.m. Chairperson Bethell called the Committee's attention to discussion of the Long-Term Care Services Task Force committee report. Staff distributed copies of Topics for the Long-Term Care Services Task Force Report ([Attachment 10](#)). Copies of Notes for Consideration—2003 Long-Term Care Task Force report which was submitted by Evie Curtis, Task Force Member, who was not able to be present at the meeting ([Attachment 11](#)). Chairperson Bethell mentioned that the committee will review the committee report at the November 17, 2003, meeting and would have an opportunity to add more topics to the report.

The Chairman distributed copies of the following information:

- Poverty Guidelines, Division of the Budget, State of Kansas ([Attachment 12](#)).
- Status of Long-Term Care Facility Requirements Pneumococcal and Influenza Vaccines ([Attachment 13](#)).
- Before the Boom: Trends in Long-Term Supportive Services for Older Americans with Disabilities, October 2002 ([Attachment 14](#)).
- Organizations Opposed to Foreign Drug Imports ([Attachment 15](#)).

The following topics were adopted by consensus of the Committee to be included in the committee report:

- Recommend to encourage legislation to be introduced to request mandated vaccinations for pneumonia and influenza in nursing homes in the state with an opt out because some people are allergic to the vaccine(s).
- Recommend utilization of the money in the Civil Monetary Penalty (CMP) funds to be written broadly to allow for the grant process and to encourage the Kansas Department on Aging to make waiver requests to access some of these funds for training, education like the Geriatric Education Research and Training Institute in Johnson County and extend these education programs throughout Kansas. It was also recommended to utilize the use of the CMP funds to encourage the poor-performing nursing facilities to volunteer for the Kansas Foundation for Medical Care voluntary program to correct the problems that created the CMP fines.
- Recommend encouraging culture change in nursing homes as recommended in the President's Task Force on Medicaid Reform to change the philosophy from case management to care management. Also recommend encouragement of a resolution to Congress at the federal level to attempt to effect these changes in nursing facilities, the frail elderly and physically disabled mandates. Recommend to include encouraging the Kansas Department on Aging to be creative in requesting the various types of waivers. Suggest recommending to encourage another proviso like the proviso in the 2003 Legislative Session to move 75 people out of nursing homes and encourage the Kansas Department on Aging

and the Kansas Department of Social and Rehabilitation Services to pursue having the funding follow the person.

Chairperson Bethell noted that the Kansas Department on Aging has been very attentive to the Long-Term Care Services Task Force especially with their taking of the first task force report and putting it in their Strategic Plan.

- Recommend that the legislators and the state departments be encouraged to work diligently to address the issue of liability insurance in the long-term care industry and home health to relieve the pressure of high costs.
- Recommend encouraging the Kansas Department on Aging to examine the additional costs from the nursing facilities cost reports in order to see if there is a need to adjust the reimbursement rates earlier than what they might have intended originally.

Ms. Lubensky noted to remember that none of the expenses in the other home health industry are really used in figuring out their rates and remember that there are other providers out there that are hurting just as bad and do not have recourse to figure in their cost when determining their rate.

- Recommend the lengthening of time between surveys for nursing facilities that do well. Recommend that the Kansas Department of Aging and the Bureau of Health Facilities look at their process in doing surveys and for those facilities that are giving good care be surveyed at the longest amount of time allowed from the federal government. Regarding the troubled facilities, recommend more frequent surveys and would then have an average of 12 months which is what the federal law says and thereby giving some relief to the better-performing facilities that have a history of better performance. Recommend a resolution to Congress to encourage the federal level to re-examine the policy on surveys for nursing homes.
- Recommend a task force to address the general issue regarding the workforce in all long-term care services, in the facilities and in the home and community based services, and look into the replication of some of the good programs that are happening in long-term care facilities in the provision of services to the developmentally and physically disabled.
- Recommend a federal resolution to Congress for a policy change to look into the funding for older adults to re-enter the workforce environment in the areas where the workforce is lacking. Staff will double-check the federal requirements.
- Request that the Kansas Department on Aging, the Kansas Department of Health and Environment, and the Kansas Department of Social and Rehabilitation Services in the areas of long-term care (*i.e.*, physically disabled, developmentally disabled, and the aged population) break out and give a report as to those things that are under state control and those things that are under federal control. Then it can be determined if the Legislature can effect change or go to the federal level to try to effect change. Recommended that the deadline for the report to be due to the Legislature by February 1, 2004, during the 2004 Legislative Session.

Sister Beth Stover suggested that the Committee may want to look at the article that was published regarding the Legislative Post Audit on the Community Developmentally Disabled Organizations (CDDOs) in the function regarding the case management assessment and the provider relationship. The Chairperson noted that it would be a good area to look at and could move ahead with it. Representative Showalter mentioned that now there is more competition for these services and suggested looking at how the CDDOs have evolved and what is happening now.

Chairperson Bethell thanked the Committee for the tremendous amount of work done by the Committee and noted his appreciation of what has been done.

Representative Showalter moved, with a second by Senator Lee, to approve the minutes of the September 29-30, 2003, meeting as presented. Motion carried.

The meeting adjourned at 11:00 a.m.

Prepared by Mary Shaw
Edited by Audrey Dunkel

Approved by Committee on:

November 17, 2003

(date)