

MINUTES

LEGISLATIVE BUDGET COMMITTEE

September 9-10, 2004
Room 123-S—Statehouse

Members Present

Senator Steve Morris, Chairman
Representative Melvin Neufeld, Vice Chairman
Representative Clark Shultz
Representative Bill Feuerborn

Members Absent

Senator Dave Kerr
Senator Henry Helgeson
Representative Dean Newton

Staff

Alan Conroy, Kansas Legislative Research Department
J. G. Scott, Kansas Legislative Research Department
Leah Robinson, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
Matt Spurgin, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes
Bruce Kinsey, Revisor of Statutes Office
Theresa Kiernan, Revisor of Statutes Office
Judy Bromich, Administrative Analyst, Senate Ways and Means Committee
Mary Shaw, Committee Secretary

Conferees

Pat Scalia, Executive Director, State Board of Indigents' Defense Services
Pamela Johnson-Betts, Secretary, Kansas Department on Aging
Karen Braman, Deputy Director, Governor's Office of Health Planning and Finance
Donna Boswell, Health Group and Hogan & Hartson, L.L.P.
Scott Brunner, Director of Medical Policy and Medicaid, Kansas Department of Social and Rehabilitation Services
Dr. Robert Maile, Superintendent, Kansas School for the Deaf
William Daugherty, Superintendent, Kansas State School for the Blind
John Kitchens, Kansas School for the Blind Graduate and Pre-Law Student at Washburn University
Gwen Singletary, Parent of a High School Student at the School for the Deaf

September 9 Morning Session

Senator Steve Morris, Chairman, called the meeting to order at 10:10 a.m., and welcomed everyone to the meeting. *Representative Neufeld moved, with a second by Representative Shultz, to approve the minutes of the August 5, 2004, meeting as presented. Motion carried.*

A memorandum from Deb Hollon, Kansas Legislative Research Department, was distributed regarding the Public Defender Office—14th Judicial District ([Attachment 1](#)).

Chairman Morris welcomed Pat Scalia, Executive Director, State Board of Indigents' Defense Services, who presented a report on the consolidation of the Independence public defender office with the existing Chanute office ([Attachment 2](#)). Ms. Scalia mentioned that they expect the savings in dollars from assigned counsel to equal the cost of the consolidated office within two years. They have adjusted their start-up costs from \$23,800 to \$10,300 which more than accommodates the \$11,000 in unanticipated rent they will spend. She noted that the county commissioners did not want the new office to occupy the basement of the courthouse. Ms. Scalia mentioned that they will occupy office space located in a building with other state agencies and use equipment that was handed down from other state agencies. Chairman Morris noted that in recent years the public defender offices that have been added have been effective.

Ms. Scalia addressed a new project that has been started this year. She explained that they have a partnership with the Washburn University Law School, whereby, they have provided to the law school an appellate public defender who is functioning as a visiting professor. This professor is instructing a class at the law school to write appellate briefs. The students are writing briefs on State Board of Indigents' Defense Services (BIDS) cases. The class of students will accomplish the same workload of one public defender. In exchange for the person serving as visiting professor, Washburn University has conducted for BIDS, national level death penalty defense training. Ms. Scalia noted that any attorney who hopes to do death penalty defense work must attend national level death penalty defense training that normally costs thousands of dollars to send one person. It had never been available in the State of Kansas.

In November 2003, Ms. Scalia sent ten public defenders to the death penalty defense training at Washburn University and now they are qualified to serve as second chair on a death penalty defense case. These public defenders were pulled out of trial offices statewide with the understanding that Ms. Scalia may call on them to serve as second chair on a death penalty defense case. The result is that the State Board of Indigents' Defense Services office should never have to hire a private attorney to handle a death penalty case, except in cases where more than one individual are charged with the same crime. Questions and discussion followed.

Audrey Dunkel, Kansas Legislative Research Department, presented an overview of Medicare Part D ([Attachment 3](#)). Ms. Dunkel detailed information regarding Medicare and Medicare eligibility, Medicare Part D, Low Income Assistance, Financing Medicare Part D and Implications for the State of Kansas. Copies of a time line for Medicare Part D was distributed by staff ([Attachment 4](#)). Copies were distributed of the *Prescription Drug Coverage for Medicare Beneficiaries: An Overview of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173)*, by The Henry J. Kaiser Family Foundation ([Attachment 5](#)).

Ms. Dunkel explained that one of the main concerns for Kansas, and other states, would be the implications with clawback provisions in FY 2006. The concern is the accuracy of trending forward 2003 prescription drug requirements to 2006 by the growth in national per capita

prescriptions drug expenditures. Ms. Dunkel explained that starting in 2007, per capita growth in Part D spending will be used. These numbers may not accurately reflect measures implemented to control state drug costs during and after 2003. Other implications for Kansas were detailed by Ms. Dunkel and are found in her written report.

Chairman Morris welcomed Pamela Johnson-Betts, Secretary, Kansas Department on Aging, who provided information regarding the impact on seniors of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, known as the Medicare Modernization Act (MMA) ([Attachment 6](#)). Secretary Johnson-Betts explained that the implementation of Medicare Part D in January 2006 will have a significant impact on seniors who currently use the Kansas Senior Pharmacy Assistance Program (KsPAP) because KsPAP will be “suspended on the day upon which payments commence under any federal law,” as directed in KSA 75-5961. She noted that the Kansas Department on Aging (KDOA) is concerned about the impact this transition will have on low-income seniors in Kansas. KDOA is participating in the Health and Human Services Cabinet Team’s Steering Committee on the Medicare Modernization Act to examine the issue and explore options.

Secretary Johnson-Betts also addressed a concern that while the Centers for Medicare and Medicaid Services (CMS) will be planning an information campaign around Medicare Part D, many seniors may not be aware of the new benefit, or will not understand it. KDOA plans to notify KsPAP participants of the program’s sunset provision when they mail KsPAP applications in April and September 2005. They are exploring ways to inform all seniors of their options for prescription drug coverage. KDOA has applied for a grant through CMS to assist in these efforts.

Following questions and discussion, Chairman Morris requested a comparison by KDOA of the people now under Kansas law and the new federal program and expressed concern about the potential that some Kansas seniors may be worse off under the new federal program. The Chairman also requested that KDOA look at a typical individual in Kansas in all categories and how they would come out under the new federal provisions, including how these individuals might be affected by the co-pay requirements.

The Chairman welcomed Karen Braman, Deputy Director, Governor’s Office of Health Planning and Finance, who provided testimony on prescription drugs ([Attachment 7](#)). Ms. Braman clarified that the drug discount card Request for Proposal (RFP) they issued was intended for those individuals not eligible for the Medicare discount card. She detailed in her written testimony how the drug discount card would have worked.

Ms. Braman explained that in May of this year they issued an RFP for a drug discount card. The card was designed to be implemented at no cost to the state. Enrollees would pay an annual enrollment fee up to \$20 per household. There was no means test or eligibility for individuals because this would have significantly increased the program cost; however, the program would require the individual to attest that they are not eligible for Medicaid or Medicare and have no other access to prescription drug coverage.

It was explained by Ms. Braman that they received two bids on the RFP and she detailed in her written testimony why each company pulled out. She noted that they do not intend to issue another RFP for a drug discount card, but they do continue to explore other options to increase access to affordable prescription drugs for Kansans. Questions and discussion followed.

Chairman Morris welcomed Alan Conroy, Kansas Legislative Research Department, who provided an update on the State General Fund receipts through August, FY 2005 ([Attachment 8](#)). Mr. Conroy explained that the total receipts for July and August, the first two months of FY 2005, were \$18.2 million, or 2.7 percent above the estimate. The component of total SGF receipts from taxes was \$18.0 million, or 2.7 above the estimate. This reflects the fourth consecutive month SGF receipts have exceeded the estimate. Mr. Conroy noted that the only tax source that fell below the estimate by more than \$1.0 million was financial institutions, by \$1.6 million. He explained that staff

is looking into it. The Chairman indicated that the Committee would be interested in the findings. It was noted that this report excludes the July 1 deposit to the SGF of \$450 million, pursuant to issuance of a certificate of indebtedness. The certificate will be discharged prior to the end of the fiscal year.

The Chairman welcomed J. G. Scott, Kansas Legislative Research Department, who provided a report which was prepared by Mr. Scott and Leah Robinson, Kansas Legislative Research Department, regarding Actual FY 2004 Resources, Demands, and Balances of the State General Fund Preliminary ([Attachment 9](#)).

Mr. Scott also presented a report that was prepared by Audrey Dunkel and Amy Deckard of the Kansas Legislative Research Department, regarding the Kansas Department of Social and Rehabilitation Services (SRS) and Kansas Department on Aging State General Fund Re-appropriations ([Attachment 10](#)). Copies were distributed of the Kansas Savings Incentive Program Expenditures, Actual FY 2004 Expenditures and Available for Expenditures in FY 2005 ([Attachment 11](#)).

Chairman Morris requested an update from SRS, to be presented at the beginning of the September 10 meeting, regarding the CMS issues and the child welfare community-based services contracts involving the \$60 - \$70 million dollars.

The meeting recessed at 11:45 a.m.

September 9 Afternoon Session

The meeting reconvened at 1:30 p.m.

Audrey Dunkel introduced and Chairman Morris welcomed Donna A. Boswell, Health Group and Hogan & Hartson L.L.P., Washington, D.C., who provided a presentation on the MMA Medicare Part D, State Budget Impact: Kansas ([Attachment 12](#)). Ms. Boswell presented detailed information on the following topics (also detailed in her written testimony):

- Implications of Medicare Part D for the States;
- 2006 Medicaid Impact;
- Action regarding protecting the State budget;
- 2006—Remaining in Medicaid drug benefit;
- Kansas Medicaid Expenditures (from Kaiser Family Foundation 2002 data);
- 2006 Clawback Payment;
- 2006—What is available in Part D;
- Subsidy Eligibility and Benefits; and
- 2006—State Pharmacy Assistance Programs.

Ms. Boswell explained that the top spenders in Residual Medicaid—Prescription Drug Expenditures (Kaiser Family Foundation figures) are in the aged and disabled group and this group comprises 90 percent of national Medicaid payments for prescriptions. She also noted that 59 percent of Kansas Medicaid drug payments are for the dual eligibles. Ms. Boswell also noted that the Kaiser Family Foundation (2002 figures) indicates that Kansas had 39,000 full benefit dual eligibles in 2002.

Chairman Morris mentioned that it is time to begin thinking about changes in law and the state waiver process now because things need to be ready in a year. Ms. Boswell mentioned that she would be available in the future for further information.

The Chairman welcomed Scott Brunner, Director of Medical Policy and Medicaid, Kansas Department of Social and Rehabilitation Services, who provided information relevant to the State of Kansas regarding the Medicare Prescription Drug, Improvement and Modernization Act (Attachment 13). Copies of information from the Kaiser Commission regarding Medicaid and the Uninsured, and the Formula for Determining Monthly State Clawback Payments were distributed (Attachment 14). Mr. Brunner addressed background, dual eligibles, the “clawback,” eligibility for subsidies, potential “woodwork effect,” restrictive formularies and wrap-around coverage, and coordination activities. This information is detailed in his written testimony. He indicated that hopefully more answers will come as rules and regulations are established and the process proceeds.

Mr. Brunner also reviewed the issues regarding the Medicaid Management Information System (MMIS) operated by EDS (Attachment 15). He explained that the change from the Blue Cross/Blue Shield system to the newly designed EDS system occurred in October 2003. Mr. Brunner explained that implementation issues have included system defects that affected claims processing, continuing provider education on the system, and technology issues where providers have not updated their computers or software to versions compatible with the new MMIS. He noted that the project is still on budget. The new system provides new tools for the state to monitor utilization of services, to detect fraud and abuse, and to ensure greater accuracy of payments.

A letter was distributed to the Committee, that was addressed to Senator Steve Morris, Chair, Legislative Budget Committee, from Ron Denney, Chairman, Association of Community Mental Health Centers of Kansas, Inc., Third Party Payer Committee, regarding Medicaid claims processing problems (Attachment 16).

The meeting recessed at 3:05 p.m.

September 10 Morning Session

The meeting reconvened at 9:05 a.m.

Chairman Morris welcomed Scott Brunner, Director of Medical Policy and Medicaid, SRS, who responded to a request by Chairman Morris from the September 9, meeting to review the Centers for Medicare and Medicaid Services (CMS) issues (Attachment 17). Mr. Brunner explained that under the Managed Care Deferral that CMS has deferred federal Medicaid funding for the child welfare community-based-services contracts retroactively to July 1, 2003. This deferral is due to the state’s inability to comply with the new managed care regulations that came into effect August 2003 and is detailed more in Mr. Brunner’s written testimony. This is explained in detail in Mr. Brunner’s

written testimony. He also addressed Title XIX Funds for State Hospitals, Office of Inspector General (OIG) audits and other issues.

Chairman Morris confirmed with Mr. Brunner that the cost to the state could potentially be \$80 to \$100 million. The Chairman discussed a delegation going to Washington, D.C., to talk with the Kansas congressional delegation, or to Baltimore regarding these issues. The Chairman noted that it does not seem fair to go back retroactively, particularly since CMS did approve this plan and they reneged on it.

Chairman Morris welcomed Amy Deckard, Kansas Legislative Research Department, who provided an update on the utilization and viability of the Kansas State School for the Blind (KSSB) and the Kansas School for the Deaf (KSD) ([Attachment 18](#)). Ms. Deckard explained that the Joint Committee on State Building Construction is reviewing the schools, with particular emphasis on the partially completed renovation of the Roth Dormitory at the Kansas School for the Deaf. She also provided information that the Joint Committee on State Building Construction requested regarding how other states organize services for blind and deaf students, but at this time only a small portion of the states have responded to the request for data.

Ms. Deckard provided the following information:

- KSSB is located in Kansas City, Kansas, and currently serves approximately 60 students during the school year in Kansas City. KSSB has an approved operating budget for FY 2005 of \$5,061,433, including \$4,687,303 State General Fund. In addition, KSSB has an approved capital improvements budget for FY 2005 of \$142,460 State Institutions Building Fund.
- KSD is located in Olathe, Kansas, and currently serves approximately 135 students during the school year at the Olathe campus. KSD has an approved operating budget for FY 2005 of \$7,818,985, including \$7,487,806 State General Fund. In addition, KSD has an approved capital improvements budget of \$901,795 State Institutions Building Fund.

The Chairman welcomed Dr. Robert Maile, Superintendent, KSD, who provided the Committee information regarding the school's background, programs, demographics, budget, and capital improvements while addressing utilization and capacity issues ([Attachment 19](#)). Dr. Maile explained the process of admission to KSD, their mission and school objectives. He noted that as an accredited elementary and secondary school, KSD complies with the No Child Left Behind (NCLB) initiative. Dr. Maile indicated that last year all capital outlay funds were removed from their budget as part of the budget reduction. They have asked that this year's money be put back into their budget. Details of Dr. Maile's presentation, including budget information, are found in his written testimony.

Chairman Morris welcomed William Daugherty, Superintendent, KSSB, who provided the Committee information regarding the school's background, programs, budget, and capital improvements while addressing utilization and capacity issues ([Attachment 20](#)). Mr. Daugherty provided the mission, agency philosophy, and admissions to KSSB. KSSB complies with the NCLB initiative. Details of Mr. Daugherty's presentation, including budget information, are found in his written testimony.

Mr. Daugherty introduced and Chairman Morris welcomed John Kitchens, a graduate of the KSSB and pre-law student at Washburn University, who shared his experiences while attending KSSB. (No written testimony was provided.) Mr. Kitchens covered various academic, technological, and extracurricular activities at KSSB. He noted that KSSB prides itself on its academic achievement and encourages its students to do well. KSSB programs are designed to provide visually impaired

persons with as much equality of education as is possible as with their sighted partners. The college training program prepares the student for work in the college environment by providing transitional theory and supplementing it with practical application in either a local high school or in a college environment. Mr. Kitchens noted that visually impaired people can do everything that a sighted person can do, if they have reasonable accommodations. He described participation in track and field at KSSB. A key component of KSSB is the dormitory experience because it allows the student to apply the things he learns in daily living skill classes such as time management, cooking, interaction with other visually impaired students, and finances. Mr. Kitchens closed his testimony with the KSSB and KSD motto: "The Students Can". The Committee thanked Mr. Kitchens and noted that he is a great representative of the school and wished him well.

Chairman Morris welcomed Gwen Singletary, parent of a student at the KSD, who provided testimony regarding the school. (No written testimony was provided.) Ms. Singletary explained that she took her son, now a Senior, to KSD eight years ago so he could learn to work, drive, and communicate with others. Her son is employed by Envision in Wichita during the summers, and after graduation, he plans to continue with Envision. She mentioned that the school is 180 miles away from their home in Wichita, and because her son participates on the football team, they attend all the football games. Ms. Singletary also noted that if her son had remained in the public schools, he would not have accomplished half of what he has had the opportunity to do at KSD. In closing, she noted that it is time to be thinking where these students should go after graduation from KSD. The Committee thanked Ms. Singletary for her testimony and noted that she is a good advocate for the students.

Chairman Morris mentioned that the Committee would make recommendations at a future meeting this fall. The next meeting is scheduled for October 4-5, 2004.

The meeting adjourned at 11:30 a.m.

Prepared by Mary Shaw
Edited by Leah Robinson

Approved by the Committee on:

November 9, 2004
(Date)