



Timothy Keck, Interim Secretary

Sam Brownback, Governor

To: Senate Ways and Means Committee

From: Tim Keck, Interim Secretary

Date: March 16, 2016

Subject: SB 460, Social and rehabilitative institutions; appointment of superintendents, physicians, employees and staff

Chairman Masterson and members of the Committee:

I appreciate the opportunity to present testimony in support of SB 460, legislation modifying employment classifications of certain positions at the four state hospitals under the authority of the Kansas Department for Aging and Disability Services (KDADS). The scope of this bill is technically very narrow. However, I anticipate a much broader conversation. So at the outset, I want to state unequivocally that I am absolutely committed to maintaining the state hospital facilities that anchor one end of the continuum of care for Kansans with behavioral health concerns or intellectual/developmental disabilities. Specifically, I intend to discuss with you the state psychiatric hospitals, and Osawatomie State Hospital (OSH) in particular.

### History and Context

OSH opened in 1866 and has been continuously operating in the community since that time. As you may have calculated, OSH will celebrate its 150<sup>th</sup> anniversary this year. Osawatomie and the surrounding communities have supported the state hospital, its patients, and employees for a century and a half and plans are being made to commemorate such a significant milestone. Yet, even more impressive to me than the sesquicentennial is the legacy of dedication to patient care that remains palpable when you talk to staff at OSH today. Despite the strain of repeated and intense scrutiny as a result of on-going concerns with certification for Federal government payments, employees remain steadfast in the resolve to continue to serve their patients well.

Given this level of commitment from the community and staff, we in turn should also assess whether state government, collectively, is serving the state hospitals well. Are we doing the very best we can to support their patients, employees, and the communities that rely on their services? And that's really what I want to discuss with you today.

### Looking Toward the Future

Currently, there is only one model available to administer the state hospitals. We are familiar with the model we have today. It is possible that it is still the best model, but at minimum, it is worth examining whether better options may exist. The OSH facilities were constructed in an era when the delivery of health care, especially mental health care, was done in a much different way. The entire system has changed, and we should at least ask ourselves whether more than just the infrastructure at OSH needs to be updated. I firmly believe that the most irresponsible course is to continue the status quo while closing the door to a potential public/private

partnership before it has even been considered. We have an opportunity, if not an obligation, to review all options available to us, as Kansans, to provide the best care possible in a timely manner to those most in need.

In November 2014, CannonDesign completed an “Analysis for the Ten-Year Plan for the Provision of Services to Persons Served by State Psychiatric Hospitals,” on behalf of the Texas Department of State Health Services. The report recommended replacement hospitals for five sites that are comparable in age and condition to OSH. Below is a summary of the estimated costs from pages 47-51 of that report:

- Austin State Hospital (350 beds) = \$175 million
- North Texas State Hospital (250 beds) = \$123 million
- Rusk State Hospital (350 beds) = \$167 million
- San Antonio State Hospital (350 beds) = \$175 million
- Terrell State Hospital (350 beds) = \$167 million

Closer to home, we have a more personal example of the expense to modernize even a small part of a hospital’s behavioral healthcare environment. Last year, the cost of renovating OSH facilities to comply with new requirements from the Centers for Medicare and Medicaid Services (CMS) for ligature points was about \$1 million dollars per 60 beds. At a time when we have been decertified by CMS and are prioritizing immediate steps to address ongoing staffing challenges and regain certification, we are simultaneously forced to look to the future of OSH and we must do so with eyes wide open. To arrive at a responsible decision, we must consider all options available.

### Evaluating Options

On December 29, 2015, during a public hearing in the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight, my predecessor indicated that all options were on the table concerning the administration of the state hospitals. One of those options is a public/private partnership that would include agency oversight of a private entity and strict requirements for the private entity to remain CMS-certified and appropriately licensed while conducting some or all operations of a state psychiatric hospital at the Osawatomie location.

No decisions have been made to enter a public/private partnership. It is an option to consider. In order to evaluate whether such an option is feasible for OSH, we need to have as much information as possible. Consequently, KDADS is considering the questions that should be asked to determine what an effective public/private partnership might look like. We have begun preliminary work on a Request for Proposal (RFP). We intend to continue that work responsibly and expeditiously, but we cannot do it alone. We need the input of a diverse group of stakeholders.

Last May, KDADS convened an Adult Continuum of Care (ACC) Committee. This group of approximately 30 of the best Kansas minds on mental health policy represented an excellent community cross-section. The ACC Committee included community mental health centers, legislators, judges, hospital administrators, law enforcement, private clinicians, local government representatives and many others across the spectrum of delivery of mental health services. The ACC Committee was charged with reviewing “the current system for providing behavioral health services,” including the role and capacity of state psychiatric hospitals. The Committee’s final report, published in July 2015, contained recommendations regarding both inpatient and community-based behavioral health services, among other issues addressed. We are expanding on the excellent work of this group by incorporating the committee into a permanent position within the Governor’s Behavioral Health Services Planning Council. In addition, I intend to utilize some of the most engaged ACC Committee members to help KDADS further evaluate options available to the state to administer OSH. I will be forming a work group to advise KDADS on any RFP concerning OSH operations. We have discussed with the Department of Administration the process to legally operationalize such an advisory group, in order to abide by procurement rules while fully utilizing their expertise.

By tapping into the best available resources to structure and publish a quality RFP, it is my hope that we would have multiple options to review, including both non-profit and for-profit entities. I understand that you may have testimony today from entities in each of those business models.

Ideally, RFP responses might include a way for Kansas to expand and improve the OSH facilities. Based on some preliminary information I have received, it may be possible to expand bed capacity at OSH with new facility construction and add permanent employees to the community as part of the increased capacity. Another possibility is to partner with a private contractor to provide specific administrative or clinical support.

### Legislative Engagement and Oversight

As I indicated at the outset, SB 460 concerns the appointment of various employees at the state hospitals. The bill would amend current statute to allow the KDADS Secretary flexibility in the appointment of the superintendent, physicians and other employees of the state hospitals. As the statutes currently exist, the Superintendent, physicians, and other employees **shall** be appointed into the Kansas civil service system, either as an unclassified or classified employee, depending on the specific position.<sup>1</sup> SB 460 modifies “shall” to “may,” allowing the Secretary flexibility inasmuch as the appointment can be made by a “person, entity or organization under contract with the secretary” of KDADS. The bill would allow potential interested parties to consider staffing flexibility and the possibility of selecting their own superintendent, physicians, and related staff, thereby facilitating accurate RFP responses and a proper evaluation of the options I have discussed.

Beyond specific action on SB 460, I expect the legislature to engage in the RFP process and, frankly, I need you to do so. Legislative representation was an important component of the ACC Committee last year. The Committee agreed, virtually without exception, that viewpoint contributed beneficial context and perspective to their final recommendations. I will request that legislators again serve on the advisory group to assist with the RFP and hope they will be willing to contribute their time and expertise.

### Proposed Amendments to SB 460

In the budget signed by the governor earlier this month, the legislature included a proviso prohibiting KDADS from expending funds to privatize state psychiatric hospital operations without prior legislative authorization. KDADS currently contracts with private entities for some functions, including specialized medical services and temporary nursing staff, at both state hospitals. Consequently, the legislature would either need to authorize those contracts or the effect of the language could be significant and severe if enforced as currently written. While I don’t believe it was the legislature’s intent to jeopardize existing contracts or their renewal, I understand and expect the legislature’s desire to exercise due diligence and oversight of a potential RFP process for more significant hospital operations. Because of the concerns I have heard from some regarding a public/private partnership, I have provided the revisor with suggested language to amend SB 460 as follows:

New Section 6. State hospital services and functions of the Larned state hospital or Osawatomie state hospital contracted or under agreement prior to March 4, 2016, and the renewal or extension of such agreements, shall not be subject to legislative or state finance council review and authorization.

New Section 7. Nothing within this act shall prohibit a state agency from expending funds in preparation to post publically a request for proposal to enter into a public-private partnership for state hospital operations. The state finance council shall review and approve of any proposed contract(s) resulting from a request for proposal to privatize state hospital operations prior to execution by the successful bidder and the state agency.

Thank you for the Committee’s time and consideration. I would be pleased to answer any questions you may have.

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<sup>1</sup> K.S.A. 76-12a02 to K.S.A. 76-12a05